

Appu and ors. Vs. the State

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Court : Kerala

Decided On : Dec-08-1989

Reported in : 1990CriLJ2281

Judge : U.L. Bhat and; K.G. Balakrishnan, JJ.

Acts : Evidence Act - Sections 27; Indian Penal Code (IPC) - Sections 141, 143, 148, 149, 302 and 341; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal Nos. 233 and 363 of 1986

Appellant : Appu and ors.

Respondent : The State

Advocate for Def. : Public Prosecutor and; C. Raghavan, Adv.

Advocate for Pet/Ap. : K. Kunjirama Menon, Adv.

Judgement :

K.G. Balakrishnan, J.

1. Criminal Appeal No. 233 of 1986 is filed by accused Nos. 1 to 5 in Sessions Case No. 44 of 1985 on the file of the Additional Sessions Court, Trichur. Along with three others they were tried by the Sessions Court for having caused death of one Satheesan. These accused were found guilty of offences punishable under Sections 143, 148 and 341 and Section 302 read with Section 149, I.P.C. and sentenced to undergo imprisonment for life under Section 302, I.P.C. However, no separate sentence was awarded for the offences punishable under Sections 143, 148 and 341, I.P.C.

2. Criminal Appeal No. 363 of 1986 is filed by the State for enhancement of the sentence imposed on the accused alleging that the sentence of imprisonment for life under Section 302, I.P.C. is grossly inadequate.

3. Deceased Satheesan aged 27 years was a 'Karyavahak' of R.S.S. of Kodungallur taluk. He was employed in the Union Bank of India at its Kodungallur branch. A few days prior to the occurrence in this case, one V. K. Gopalan belonging to the Marxist party was done away with by some people allegedly belonging to R.S.S. The local members of the Marxist party believed that deceased Satheesan has a hand in the murder of V. K. Gopalan and according to the prosecution, the accused are workers of the Marxist party hatched a conspiracy to commit the murder of Satheesan in order to avenge the death of their leader Gopalan. On the fateful day Satheesan left the office of the Union Bank in the evening and was proceeding in a cycle towards north along the National Highway. As he reached a place where a pocket road leads to Padakulam, Satheesan turned his cycle towards that road. The first accused was waiting under a banian tree on the eastern side of the National Highway a few feet away from the junction. On seeing deceased Satheesan first accused rushed towards him and grabbed him by his neck. Satheesan sensed danger and got down from the cycle. Then all of a sudden

accused 2 to 5 surrounded Satheesan. They were all armed with weapons. The third accused stabbed Satheesan on his back. On sustaining injury deceased slowly took a few steps and reached the eastern side of the National Highway and held on to the gate of Davaswom building. All the accused pursued Satheesan and stabbed him incessantly. Satheesan lay dead on the road. All the five accused persons ran towards north. One knife was left in the body of Satheesan. Four accused persons took the daggers with them. The neighbouring shop owners and others gathered at the scene of occurrence.

4. P.W.5, an autorickshaw driver, went to the Kodungallur police station and gave information about this incident. P.W. 24, Additional Sub Inspector, registered a case on the basis of Ext. P1 first information statement against five unidentified persons. P.W. 25, Circle Inspector of Police, Valappad took up investigation and reached scene of occurrence and performed inquest over the dead body at 6.15 p.m. on the same day. P.W. 3 was questioned during the inquest. M.Os 7 to 19 were recovered during the inquest. M.O. 20 cycle, M.O. 21 series of magazines and M.O.3 a pair of chappals were recovered from the scene of occurrence. The body was sent for post-mortem examination and P.W. 21 conducted the post-mortem examination. M.O. 1 knife was still in the body of deceased Satheesan. P.W. 26 took over charge of the investigation on the next day and visited the scene of occurrence at 9.30 a.m. and prepared Ext. P2 Mahazar. Bloodstained earth (M.O. 6) was taken from the place of occurrence. P.Ws 1 to 3, 5 and 6 and a few others were questioned on that day. He proceeded to the Medical College Hospital, Trichur and took into custody M.O. 1 knife under Ext. P6 mahazar. The first accused was arrested on 17-5-1984. He gave Ext. P8(a) disclosure statement. Pursuant to that M.O. 22 knife was recovered from the property belonging to Kodungallur Town Club, situated on the western side of Kannoli canal. The knife was found immersed in a slushy area and the first accused searched that place and produced M.O. 22. The same was recovered under Ext. P8 mahazar attested by P.W. 14. Accused Nos. 4 and 5 were arrested by P.W. 26 on 22-5-1984. Pursuant to Ext. P9(a) statement alleged to have been made by the 4th accused, M.O. 23 was recovered from a canal 30 metres away from the house of one Viswanathan. M.O. 23 knife was recovered under Ext. P9 . mahazar attested by P.W. 15. In the same manner M.O. 24 knife was also recovered from the very same place under Ext. P10 mahazar. M.Os. 23 and 24 are alleged to have been searched and handed over respectively by 4th and 5th accused. The third accused was arrested on 16-6-1984. As a result of Ext. P11(a) disclosure statement P.W. 26 and his party proceeded to the place pointed out by the 3rd accused and recovered M.O. 25 knife from beneath a culvert situated to the north of the house of one Kurumba. P.W. 16 attested the contemporaneous. Ext. P11 mahazar prepared by P.W. 26. P.W. 26 laid the final report implicating all the accused for the offences of conspiracy, unlawful assembly, rioting and murder.

5. Twenty-six witnesses were examined on the side of the prosecution, of whom P.Ws. 1 to 3 and 5 are eye witnesses to the occurrence. P.Ws. 4 and 17 were examined to prove the movements of the accused after the incident. P.Ws. 6, 7, 8 and 13 were examined to prove that M.O. 2 canoe was used by the-accused to escape from the place of incident after the occurrence. P.W. 10 was examined to prove the conspiracy alleged to have been hatched by accused 1 to 8. P.W. 10 turned hostile and did not support the prosecution. P.Ws 9, 11 to 16 and 18 have attested the various mahazars prepared by the investigating officers. P.W. 19 is the Village Officer who prepared Ext. P13 plan. P.Ws. 20 and 22 are the photographers who had taken M.Os. 27 and 22 series of photographs respectively. P.W. 21 is a professor in the Medical College, Trichur who had performed the autopsy. P.W. 23 is the First Class Magistrate, Thodupuzha who conducted the identification parade. Ext. P15 is the report filed by the magistrate. P.W. 24 recorded the first information statement of P.W. 5. P.W. 25 conducted preliminary investigation which was later completed by P.W. 26.

6. On the side of the defence no witnesses were examined. However, a copy of the first information statement in Crime No. 84/84 of Mathilakam police station was produced to prove that the fifth accused was an accused in that case. The allegation in Ext. D1 is that the fifth accused along with some others attacked one Adimakunju on 8-5-1984 at about 5.30 p.m. The accused persons were questioned under Section 313 of the Criminal P.C. All the accused completely denied their involvement in the crime. Their main plea was that they were falsely implicated owing to political animosity and that prosecution witnesses are members of R.S.S.

7. The learned Sessions Judge considered the prosecution evidence in detail and came to the conclusion that 'accused Nos. 1 to 5 formed themselves into an unlawful assembly and committed murder of deceased Satheresan. They were accordingly found guilty of offence punishable under Sections 143, 148 and 341 and 302 read with Section 149, I.P.C. Charge of conspiracy was found against.

8. The learned counsel for the accused Sri Kunjirama Menon contended that the conviction and sentence against the accused are not sustainable and these persons were implicated as accused as they are members of the Marxist party and the police erroneously believed that Satheesan was murdered by these persons. It was also pointed out that Satheesan was a 'Karyavahak' of R.S.S. during the relevant time and there were disputes between R.S.S. people and the local Muslims, as the latter group tried to convert a library building situated very close to the renowned Kodungallur Devi temple into a prayer hall. The learned counsel for the accused characterised the entire evidence as artificial and cooked up. The learned Public Prosecutor strongly urged that the prosecution has succeeded in proving its case.

9. The fact that deceased Satheesan had an instantaneous death as a result of the brutal attack at the hands of assailants is not disputed. The medical evidence adduced in this case would clearly show that Satheesan was attacked by a group of persons. Ext. postmortem certificate issued by P.W. 21 shows that Satheesan had as many as 20 incised injuries on his body and as many as eight injuries centred round the right chest and it shows that chest was pierced with daggers as if it were a pin cushion. The neck region also showed infliction of several incised injuries. Injury Nos. 1 and 11 to 17 were on the right side of the front chest. There were also corresponding internal injuries. The right lobe of the liver was cut. It is clear that the daggers pierced through the intercostal space causing extensive damages to the internal organs. Injury No. 15 was on the front side of the abdomen. The small intestine was cut. A loop of the intestine was found protruding through the wound. Injury Nos. 6 to 9 and 20 were in and around the neck. Injury No. 8 which was on the right side of the root of the neck pierced into the chest cavity and cut the subclavian vein. Injury No. 9 which was on the middle of the left side of neck severed the common carotid artery. P.W. 21 deposed that injury Nos. 7 to 9 are fatal and can cause death in the ordinary course of nature. He also deposed that injury numbers 12 to 15 are individually sufficient to cause death in the ordinary course of nature. P.W.21 further deposed that in injury No. 17 he found a knife in situ. The knife was shown to the witness and he identified it as M.O. 1, P.W. 21 was shown M.Os. 22 to 25 weapons and he affirmed that the injuries found on the person of deceased Satheesan could be caused with these weapons.

10. The inquest report prepared by P.W. 25 would also show that Satheesan died at the spot and he had extensive injuries on his body. P.W. 26, who took up investigation on the next day, prepared Ext. P2 scene mahazar. P.W. 19 later prepared Ext. P13 plan. In the plan the shops owned by P.W. 1 Kalidasan and P.W. 2 Joseph are shown. They are very near the place of incident. The first part of the attack against Satheesan occurred at the junction where the Padakulam road joins the National Highway. The shop of P.W. 3 is at the junction. The pathway leading to the Union Bank of India wherein deceased Satheesan worked is also shown in the plan. As per the prosecution case Satheesan was proceeding in a bicycle from his office towards north through the National Highway. As he reached near the junction he was confronted by the first accused.

11. P.W.1 deposed that himself and P.W. 2 Joseph and one Gopi were standing and talking each other in front of the shop of P.W. 2. P.W.1 saw deceased Satheesan coming in a cycle and as .the cycle was about to turn towards Padakulam road, a person standing beneath the banian tree on the eastern side of the road rushed towards the deceased and intercepted the cycle. Satheesan stopped the cycle and put his right leg on the road and pushed aside the assailant. P.W. 1 further deposed that four other persons then came from Padakulam road and one of them stabbed the deceased. P.W. 1 identified third accused as the person who stabbed first. The witness also heard the noise of firing. P.W. 1 and others then got frightened and they did not interfere. Satheesan on sustaining the stab staggered towards east and caught hold of the gate of the Devaswom building. Then all the five assailants pursued him and surrounded and stabbed him incessantly. P.W. 1 would say that when Satheesan moved towards east a dagger was seen sticking in his back and when the second attack began this dagger was plucked out of the body and again the assailants stabbed him,

Satheesan fell on the ground headlong and all the assailants ran towards north. Four out of these five accused persons had their knives with them. One dagger with brass handle was still in the body of deceased Satheesan. Then all the assailants left the place. This dagger was in situ at the time when P.W. 21 performed post-mortem examination. This dagger was later identified by the witness as M.O.1. The evidence of P.W. 1 was seriously challenged. It was suggested that he was an R.S.S. worker and hence highly interested in the success of prosecution case. It was suggested to P.W. 1 that there existed factional fight between the R.S.S. people and the Muslims of the locality. P.W. 1 denied the suggestion that he was an R.S.S. worker. He also denied having knowledge about the procession and public meeting regarding the dispute between Muslims and R.S.S. However, he admitted that the Muslims wanted to have a prayer hall near the Cranganore temple and this was opposed by some people. P.W. 1 took part in the Test identification parade and was able to identify accused 1 to 5. He identified them in court also. The identification of the accused by this witness also was seriously challenged for the reason that he had seen photographs of the accused prior to the test identification parade.

12. P.W. 2 is a person having a radio repairing shop very close to the place of incident. He deposed that he had seen the entire incident and he tried to inform the matter to the police over telephone. But he could not do so. This witness identified accused Nos. 1 to 5 in court as well as during Test identification parade conducted by P.W. 23. P.W. 2 further deposed that a few days prior to the incident he had seen these accused persons loitering near Srirangapuram. He admitted having been involved in a petty case and he was directed to pay a fine of Rs. 30/-. This witness denied having any knowledge about the fight between the Muslims and Hindus on account of the building. P.W. 2 admitted that he had no previous acquaintance with these accused, and asserted he noticed the features of the assailants at the time of incident. He identified A1 to A5 in court as well as during Test identification parade.

13. P.W. 3 is the proprietor of a stationery and fruit shop. His shop is at the junction. The first part of the incident occurred in front of the shop of P.W.3. He was engaged in selling articles to his customers. Then he heard a firing sound and he came out of the shop. At that time he saw deceased Satheesan running to the east leaving his cycle in the road. A dagger was found sticking in his back. Satheesan caught hold of the Devaswom gate and five persons followed him and attacked the deceased. P.W. 3 further deposed that all these assailants incessantly stabbed deceased Satheesan and blood splashed from his wounds and fell on the ground and in the nearby pond. P.W. 3 saw P.Ws. 1, 2 and Gopi at the scene of occurrence. He deposed that Mani Achari, Subramonian and Mohammed had also seen the occurrence, P.W. 3 identified accused 1 to 5 in court as the assailants. This witness also had participated in the Test identification parade, but he could not identify fifth accused. P. W.3 was questioned at the time of inquest. At the time of evidence before court he deposed that the dagger which was still in the body of deceased while he was running from east to west was later plucked out and again used by one of the assailants for stabbing. But this fact was not spoken to P.W. 26 at the time of inquest. P.W. 3 denied having seen photographs of the Accused in newspapers. He also denied that he was an R.S.S. worker. He also admitted having given a statement to the police that he saw five persons retreating from the scene with daggers in their hands. He clarified that this was a mistake and only four of them had knives.

14. P.W. 5 is the next eye witness to the occurrence. He is an autorickshaw driver and according to him he used to park his vehicle in front of the S.N. Theatre, which is about thirty metres away from the place of incident. This witness deposed that while he was standing beside his vehicle he saw deceased Satheesan coming from the south and when Satheesan reached near Padakulam road a person standing beneath the banyan tree ran towards Satheesan and caught him by the neck and thereafter four persons surrounded Satheesan and one of these persons stabbed Satheesan. According to P.W. 5, the person who first inflicted the stab was a bald-headed man having a beard. P.W. 5 admitted in cross-examination that he had not mentioned in Ext. P1 that the first assailant was a bald-headed person. He also admitted that in the first information statement he had not mentioned that when Satheesan moved to the eastern side of the road a knife was stuck to his back and this knife was later pulled out by one of the assailants and used for stabbing

again. P.W. 5 identified M.O. 1 as the knife which was found in the body of Satheesan when he was lying dead on the road. P.W. 5 denied a suggestion that he was an R.S.S. worker. But he admitted that he was a member of Bharatia Mazdoor Sangham and he did not know whether it had any connection with R.S.S. However he knew that Bharatia Mazdoor Sangham was connected to R.S.S. on political plane. P.W. 5 identified accused 1 to 5 in court. He too participated in test identification parade and he could identify all accused. He denied the suggestion that he had seen photographs of the accused persons prior to his participation in the identification parade. P.W. 5 conceded that he heard that photographs of all the accused were published in Mathrubhoomi and Malayalam Express. P.W. 5 had no previous acquaintance with accused 1 to 5.

15. P.W. 4 is the witness who claims to have seen accused 1 to 5 immediately after the incident. P.W. 4 is a fisherman. He was returning from the fish market at about 3 p.m. He wanted to see a film in the S.N. Theatre. For that purpose he left the house at 4 p.m. and after crossing the Pulloot bridge he walked along the pathway situated on the southern side of Municipal office. Then he saw five persons coming towards east and four of them had bloodstained knives with them. The clothes worn by them also were bloodstained. A towel was tied around the head of each of them. P.W. 4 identified these persons as accused 1 to 5. P.W. 4 saw these persons at a distance of about 20 feet and he specially noticed their features as they were running. P.W. 4 identified A1 to A5 in court as well as during Test identification parade. He denied having seen photographs of A1 to A3 in newspapers. This witness also denied having any connection with R.S.S.

16. The evidence of P.Ws. 1 to 5 was seriously assailed by the learned counsel for the accused. The main contention urged was that the identification of the accused by these witnesses is totally unacceptable and no reliance can be placed on that evidence. The counsel contended that these witnesses had seen photographs of the accused persons in newspapers and therefore the identification parade conducted by the Magistrate (P.W. 23) was only a farce and the fact that these witnesses were able to identify some of the accused is of no significance. According to counsel for the accused, identification of these accused persons in court is of little evidentiary value.

17. Reliance was placed on the decision in *Laxmipat Choraria v. State of Maharashtra* AIR 1968 SC 938: (1968 Cri LJ 1124) where the Supreme Court said (para 21):

'There can be no doubt that if the intention is to rely on the identification of the suspect by a witness, his ability to identify should be tested without showing him the suspect or his photograph, or furnishing him the data for identification. Showing a photograph prior to the identification makes the identification worthless.'

In this case, the investigator showed photographs of two of the accused. That was a deliberate action on the part-of the investigator. The witness was not shown a large number of photographs and asked to pick out that of the suspect, In these circumstances it .was held that identification made by her in court was of no moment; but the court acted on other evidence showing complicity of accused.

18. In *Suryamoorthi v. Govindaswamy* (1989) 3 SCC 24: AIR 1989 SC 1410 :(1989 Cri LJ 1451) the Supreme Court observed (para 10):

'It is, however, in evidence that before, the identification parades were held the photographs of the accused persons had appeared in the local daily newspapers. Besides, the accused persons were in the lock-up for a few days before the identification parades were held and therefore the possibility of their having been shown to the witnesses cannot be ruled out altogether. We do not, therefore, attach much importance to the identification made at the identification parades.'

Nevertheless three of the accused were convicted by the Supreme Court since corroborative evidence was available. The court adopted a cautious approach and since regarding other accused corroboration was not forthcoming, Supreme Court confirmed their acquittal.

19. When a witness identifies an accused in court, court has to appreciate the evidence in the light of its

intrinsic worth, other evidence, circumstances and probabilities. If the witness knew him previously it is a matter of recognition; if not, it is a matter of identification. Recognition of a familiar person is certainly more reliable than identification of a stranger. When a stranger witness identifies an accused in court, the court, by way of caution or prudence may seek some assurance before accepting the identification as correct. That assurance would be available from the positive result of test identification parade; however absence of test identification parade is not invariably fatal, for assurance may be available from other sources and circumstances. See Chandran v. State of Kerala (1987) 1 Ker LT 391: (1986 Cri LJ 1865) and Aravindan v. State of Kerala (1989) 2 Ker LT (Sh. N.) page 2(2) where practically all decisions of the Supreme Court on the point have been considered. As observed in these decisions, a witness might have had a fair opportunity to see the accused, of noting his appearance and features; there might have been something in the context, manner and circumstance of the meeting which would render it easy for the appearance of the accused to fix itself in the memory of the witness or something might have taken place shortly thereafter which would have enabled the witness to recollect the prior meeting and the person concerned. These and a variety of other circumstances may lend assurance to the mind of the court in acting on the identification made in court.

20 Value of test identification parade, as a corroborative piece of evidence, depends on the safeguards adopted in conducting it. Witness should not get an opportunity to see the accused; there must not be any situation in which witness could be prompted. Suspects must be mixed up among adequate number of non-suspects who are more or less similar in appearance to that of suspects and dressed more or less similarly. It must be arranged at the earliest possible opportunity. As observed in Aravindan v. State of Kerala (1989) 2 Ker LT (Sh.N.) page 2(2) value of test identify cation parade is determined by the effectiveness of precautions taken, expedition in conducting it and the attendant circumstances, Just as showing an accused to the witness just before the parade may undermine the value of the parade, showing photographs of the accused to the witness just before parade may have the same consequence.

21. There is no contention before us that the test identification parades conducted in this case suffered any infirmity or that adequate or reasonable safeguards not adopted. The only contention urged on behalf of the accused is that P.Ws. 1 to 5 had seen photographs of accused published in newspapers after arrest and before the parades and hence results of test identification parades cannot be used to corroborate identification made in court. It is for this purpose that reliance is placed on the observations of the Supreme Court in Suryamoorthy's case AIR 1989 SC 1410 : (1989 Cri LJ 1451). We do not understand these observations as laying down any principle of law to the effect that in all cases where a witness had seen photograph of an accused in newspapers his evidence has no efficacy. The observations were made in the context of facts and circumstances of that case. Appreciation of evidence in any case rests upon the facts, circumstances, peculiarities and probabilities of that case. In the case in hand the Investigating Officer did not show photographs of accused to witnesses. It is not as if witnesses had only a fleeting glimpse of the accused. The occurrence witnessed by P.Ws. 1 to 3 and 5 must have occupied appreciable period of time and the witnesses would have had ample opportunity to notice the assailants and their features. The meeting which P.W. 4 had with the assailants must have been an impressive one and he must have left an indelible impression on his mind and he must have made a good look at them. I Assuming that some of these witnesses accidentally saw photographs of accused, that could very well have triggered recognition. At any rate, the mere fact that a witness might have accidentally seen photographs of accused in newspapers, particularly in the absence of evidence regarding captions or descriptions given in newspapers, cannot lead to rejection of identification of accused made by witnesses.

22. P.Ws. 1 to 5 identified accused Nos. 1 to 5 in court. P.W. 1 admitted having seen photos of these persons in a newspaper. He was frank enough to admit in court that he identified accused as he had seen them during the incident and also because their photos were seen by him in newspapers, P.W. 5 admitted having seen photos of the accused in newspapers. These two witnesses identified accused 1 to 5 correctly during test identification parade and in court. As they had admitted having seen photos in the newspapers and since this in a way helped them to recognize or identify the accused, we look to corroboration of their evidence.

Evidence of P.Ws. 2 to 4 stands on a different footing. P.W. 2 admitted that he use to subscribe to 'Malayala Manorama' newspaper. But he denied having seen photos of the accused. P.W. 2 further deposed that he had seen accused 1 to 5 two or three days prior to the occurrence. These five persons were found roaming near the locality. P.W. 2 deposed that he saw these persons at a distance of 30 feet and he particularly noted the features of these persons, as they were strangers to the locality. P.W. could not identify the fifth accused during the test identification parade. P.W. 3 deposed that he was not in the habit of reading newspapers but that he did not see photos of the accused in newspapers. He did not correctly identify the fifth accused during test identification parade. P.W. 4 is a fisherman; and he stated that he is illiterate and he did not see photos of the accused in newspapers. P.W. 4 identified all the accused. The fact that P.Ws. 2 and 3 could not identify the 5th accused during test identification parade throws some doubt as to the complicity of the fifth accused in this case. Identification by these witnesses corroborates the evidence of P.Ws. 1 and 5. However we entertain genuine doubt regarding the identity of fifth accused though the evidence clearly proves the participation of fifth assailant.

23. The next item of evidence relates to the recovery of weapons under S. 27 of the Evidence Act. Prosecution witnesses 14 to 16 attested the various mahazars. P.W. 14 is a salesman of lottery tickets and for the purpose of selling tickets he used to come to Kodungaliur and its suburbs. He deposed that he had seen the first accused searching for a knife in a marshy area belonging to Kodungaliur town club. This witness had first pointed out 8th accused instead of the first accused, but later correctly identified the first accused. Ext. P8(a) is the disclosure statement given by the first accused. P.W. 15 is a taxi driver. He deposed that on 23-5-1984 he saw accused 1 and 5 taking two knives from a water channel. P.W. 15 is a resident of that locality. He identified M.Os. 23 and 24 weapons. P.W. 16 is the witness who saw the third accused searching for M.O.25 knife and recovering the same from a water channel. P.W. 16 signed Ext. P11 mahazar. The evidence of P.Ws. 14 to 16 and the four contemporaneous mahazars prepared at the time of recovery of M.Os. 22 to 25 weapons support the evidence of the investigator P.W. 26, who proved the disclosure statement and the recoveries. This aspect corroborates the evidence of P.Ws. 1 to 5 to some extent.

24. On a reappraisal of the entire evidence in this case, we are of the view that the prosecution has satisfactorily proved the complicity of accused Nos. 1, 2, 3 and 4 in this crime. It is proved beyond reasonable doubt that deceased Satheesan was stabbed to death by A1 to A4 and another whose identity is not clearly proved. Their conduct definitely proves that the attack on Satheesan took place in furtherance of common object of wrongful restraining and committing murder of Satheesan. They acted in furtherance of this common object and therefore each of them is guilty of offences punishable under Sections 143, 148 and 341 and 302 read with Section 149 I.P.C. Therefore the conviction entered against accused 1 to 4 confirmed. We see no reason to interfere with the sentences awarded to the accused. We do not agree that this is one of the rarest of the rare cases which calls for the extreme penalty. The prayer of State for enhancement of sentence is rejected.

25. Fifth accused is acquitted of all charges and he is directed to be released forthwith if his detention is not required in connection with any other case.

26. Crl. Appeal No. 233 of 1986 is partly allowed as indicated above and Crl. Appeal No. 363 of 1986 is dismissed.