

Paramban Mammadu and ors. Vs. the King

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Court : Chennai

Decided On : Jan-19-1949

Reported in : (1949)2MLJ544

Appellant : Paramban Mammadu and ors.

Respondent : The King

Judgement :

Horwill, J.

1. The four appellants and three others who were acquitted by the lower Court were charged by the Sessions Judge of South Malabar under Section 120-B read with Section 302, Indian Penal Code, of conspiring with P.W. 10 to commit the murder of one Ramasimhan. There was also a charge under section 148 of being armed with dangerous weapons and rioting. They were further charged under four separate counts for the murder of the said Ramasimhan, his brother Narasimhan, the wife of Narasimhan, and one Raju Iyer, a Brahmin cook of Ramasimhan. These four persons will be referred to during the course of the judgment as deceased Nos. 1 to 4 respectively. The learned Judge found the first accused only guilty of conspiracy and the four appellants guilty under Sections 147 and 34, read with Section 302, Indian Penal Code, on all the four counts. He sentenced the four appellants to death and, as already stated, acquitted the other three.

2. The motive for the offence is said to have been the enmity borne by the Moplah community in general and the seven accused and P.W. 10 in particular against Ramasimhan and his brother, the second deceased because they had renounced Islam and allowed themselves to be converted to Hinduism. Narasimhan had subsequently been elevated to Nambudiri rank and had been accepted by the Nambudiri community as one of their number; and to him in marriage was given the daughter of P.W. 26, a girl of 15 years of age, who was with her husband at the time of the murder and shared his fate. After the first deceased had been converted from Islam to Hinduism, he diverted the large sums of money that he was accustomed to contribute to Muslim charities and spent them on Hindu charities. In particular, he renovated a Hindu temple in the vicinity and was responsible for restoring regular worship there. He began a diligent study of the Hindu scriptures and was studying the Bhagavad Gita, and had perpetually with him P.W. 25, a Nambudiri, to teach mantrams to the second deceased. He had moreover sent his two sons to Delhi to be instructed and brought up in the Hindu religion. All this, the prosecution say, gave rise to a great deal of enmity against him among Muslims; and specific instances have been spoken to in the evidence in which Muslims were heard denouncing very severely the first deceased and even threatening his life.

3. Exhibit P-60 gives an accurate idea of the bungalow of Ramasimhan, by name ' Malaramba Bungalow '. The main entrance to the bungalow was on the eastern side. To enter the house one has to pass through a door situate on the eastern side of a porch, which is the entrance to the bungalow. Just inside that door were lying the first deceased and P.W. 24, a boy kept by the first deceased to massage him. This witness was lying on a mat (M.O. 17), which assumes some importance because on it was found a footprint, and P.W. 25 lay on another mat (M.O. 18), which is important for the same reason. From the verandah one can enter the room marked ' B ' on the plan and from that central room one can pass to rooms north and south. Immediately to the north of that central room was a room in which was lying a child of P.W. 26, the mother of the third deceased. Still north of that room again on a cot were lying the second and third deceased. To the south of the central room were lying P.W. 26 and two of her children. To the west of this series of rooms which run north to south is a verandah, from which is a passage way to

the west leading into the dining hall and the kitchen. The western verandah of the main building was separated from this passage way by a door which was said to have been fastened on the night of the offence, as was the main entrance at the east. If those doors were secured, then, apparently, the house could only be entered by breaking open those doors. If one passed through the door separating the western verandah from the passage way, one passed first into the dining hall, where were sleeping the fourth deceased and his assistant, P.W. 22. To the west of the main hall was a kitchen in which P.W. 22 subsequently took refuge.

4. According to the story of the persons who were in that bungalow on the night of the offence and who survived the murderous assault, the first inkling that any strangers were trying to enter came from a banging on the front door. P.W. 24, deposed that the door had not been securely fastened. Although there were three bolts, only the bolt on the top had been secured; and so when the door was knocked Aat bolt fell and the door opened. P.W. 24 does not give evidence of any great value; for as soon as he saw a person enter, he ran through into the middle room and there joined P.W. 26 and her children. P.W. 25, on hearing cries, hid behind an almirah situate close to where he was lying. From there he was able to see something of what was taking place. He deposed that a little after midnight (2 a.m. was that time generally agreed upon), he heard a sound of a battering of the front door. Before he hid behind the almirah, the first deceased came saying ' Who is it, Eda ' and then crying out ' Boy, I am cheated ', referring to the second deceased. He saw somebody cutting the first deceased with a weapon about a cubit long. He was able to see what was happening, not only by the moonlight shining through the door, but by the light of a torch which was being shown by the assailant. The second deceased then came running and flashed a torch to see what was happening. He ran back when she saw the assailant. The witness saw a person chasing the second deceased; but is unable to say whether or no that person was the same man who had attacked the first deceased. A little later, when things had become a little quieter, he made his escape. When the fourth deceased and P.W. 22 heard the door separating the verandah of the main building from the passage being broken open, P.W. 22 ran into the kitchen before anyone entered there; but he saw a person attacking the fourth deceased. Subsequently, somebody flashed a torch into the kitchen; but as he was hiding behind the door,

he was not seen. The fourth deceased, though severely injured, was able to escape and give two statements, Exhibits P-24 and P-7, before he died. Exhibit P-24 is a statement recorded by a Head Constable. Later on, he was taken to the hospital, where the Sub-Magistrate (P.W. 6) recorded the other statement, Exhibit P-7. The earlier statement was a simple one in which he said that at about 2-30 a.m. he saw somebody flashing a torch and heard him kicking at the door of the bungalow. The man kicked open the door, flashed the torch in his face, and immediately began to attack him. It would seem from this statement that only one person came into the dining room where he was sleeping; but he saw a number of persons running away after attacking the second deceased. Then somebody fired at him with a gun and wounded him in the hip. Exhibit P-7 is to the same effect and is clear that he saw only one person, and that that man incited another to shoot him. It is of importance that in Exhibit P-7 he stated that the man whom he saw was a Moplah. P.W. 18 was sleeping in a Ford Car in a shed that had been erected against the southern wall of the bungalow, and when some persons ran there and set fire to the car, he escaped without identifying anybody. He said that he was able to make out from the accent of the assailants that they were Moplahs. There is other evidence that the persons who were attacking there were Moplahs; and we find no reason for thinking that the persons who made these statements were unable to say to what community the attackers belonged; for the dress and speech of the Moplahs are distinctive.

5. The offence was committed on the 3rd August, 1947, and for a long time no clues were obtained. A person by the name of Haneefa was later arrested and identified by P.W. 25 as one of the assailants. On the day of his arrest (14th October, 1947) was arrested also Kunhammad, a brother of the first and second deceased, who had been converted upon the persuasion of his brothers, but later, reverted to Islam. Another person arrested at the same time was one Kutti AH, the father-in-law of Kunhammad. In the meanwhile, the police had been examining the bungalow very closely and a number of blood-stained foot-marks were found in the bungalow on the mats M. Os. 17 and 18 and in the portico. One of these impressions was thought at one time by the Footprint Expert (P.W. 33) to be that of the right foot of Haneefa. Soon after these persons were arrested and one of the footprints identified to be that of Haneefa, a charge sheet was filed against

these four persons. 6 or 7 weeks later, on 2nd December, 1947, another charge sheet was filed, this time against 13 persons, including the four who had been charge-sheeted earlier, but not including any of the present accused or P.W. 10, the approver.

6. On the 14th October, 1947, a special investigating officer (P.W. 45) had been sent to investigate, and he had come to the conclusion that the murder had been committed out of religious fanaticism; and since he had found some hair adhering to a door frame with broken glass in the room in which P.W. 26 was sleeping with two of her children, he sent out constables to make a diligent search in all the neighbourhood for persons who had been injured. The first man with scars to be found was apparently the seventh accused, who was arrested on 14th December, 1947. His arrest was followed on 17th December, 1947, by the arrest of the sixth accused. The fifth accused was found with scars and arrested on 26th December 1947. On 28th December, 1947, the second and fourth accused were arrested, the latter having scars. P.W. 10 had been arrested on 24th December, 1947 and gave a statement implicating himself and others on 30th December, 1947, whereupon the first and third accused were arrested almost immediately on 1st January, 1948. Footprints of the arrested men were taken and examined and provisional charge-sheets filed; but it was not until 22nd March, 1948, that the final charge sheet was filed against these seven accused, and these accused alone.

7. No special reason has been given by the prosecution why these seven accused and the approver P.W. 10. should have participated in this murder. It has not been shown that these eight persons bore any greater enmity towards the first deceased than any other member of their community, except possibly the fourth accused, who is the President of the Izzathai Islam Sangham, the principal objects of which are said to be to relieve needy Mussalmans and to send converted men to Ponnani for training. He is a leather merchant; but all the other accused seem to be men of humble status, though of independent means, with the exception of the seventh accused, a coolie. Accused 1 to 3 are ryots. The fifth accused is a cart driver and the sixth accused a tea shop-keeper. With the exception of the fourth accused, these men do not occupy any position either in society or in the religious life of the community that would make it likely that they would plot a murder of this

kind.

8. The principal evidence against the accused is that of the approver., P.W. 10. One generally expects the evidence of an approver to be rich in detail and colour, consistent within itself and not having any important contradictions when compared with other statements made by him earlier. Such evidence carries conviction to the mind; so that a court feels that very little other evidence is necessary to satisfy it beyond all reasonable doubt that the approver's story is true. The evidence of the approver in this case is not however of that kind. It is thin and bare and does not carry with it an air of conviction. After stating that he and other numbers of the Moplah community felt hatred towards the first deceased, he described very briefly the conspiracy, which he said took place on a Saturday about the 14th or 15th of the month of Ramzan, about a week or so before the plot was executed. The plot was hatched quite by chance. At Konapparamukku, a place where people gather together in their leisure time to have a chat, the witness chanced to meet accused 4 and 5, and later accused 6, and discussed with them the enormity of the first deceased's lapse into heresy. At the actual conspiracy were also present accused 1 and 2. Then, after giving a very short account of the conspiracy, he went on to describe the events of the day of the murder, and said that at about 4 p.m. on that day (Saturday) he went to Kavattuparamba and there met the sixth accused. They were joined some time later by accused 2 to 5 and 7. From there, with the exception of himself, these persons left in ones and twos, apparently, agreeing to meet at Abu Baker Haji's rubber estate at 10 p.m. or so. The witness waited behind until 7-30 p.m. for the first accused, who had been observing the Ramzan fast and intended to set out only after he broke it. They then went to the place of assignation and assembled there at 10 p.m. They had with them some unlicensed guns and, as agreed amongst themselves each one of them had a knife. They then proceeded to the Malaparamba bungalow of the first deceased and while the witness kept watch, the others went inside the compound over the southern wall. He then heard the sound of striking the door and human cries. About ten minutes later, all the seven accused returned. He fired a shot at somebody who was running away, presumably the fourth deceased. They then went on towards a tank about four miles away and there washed off the blood on their persons and either there or in the neighbouring jungle threw away their

weapons and bloodstained clothes.

9. One thing that strikes one about this story apart from its bareness, is the open, manner in which the accused and P.W. 10 met together on the day of offence prior to its commission. One would have expected that they would have adhered to their original plan of proceeding secretly to the place of assignation in Abu Bucker Haji's rubber estate and not being seen together before that. We find, however according to the story of this witness, that they met together as early as 4 p.m. and' openly waited for one another until all but the first accused had come. When one compares the evidence of P.W. 10 in the Sessions Court, with his confessional. statement, one finds material discrepancies relating to the circumstances under which the murder was planned. Exhibit D-7 series are extracts from his statement made to the police. There he stated that they first planned the murder on a Monday about 2-1/2 weeks or so before the murder was committed. Then they, i.e. P.W. 10, and accused 2, 3, 5 and 6 decided to murder the first deceased on the following Sunday. On that Sunday they received information that the first deceased was not in his bungalow; and so it was postponed to the following Friday. They then arranged that himself and accused 1 to 3 and 6 should meet at 10 p.m. that night and that accused 4 and 5 should join them after they had left the tope on their way to Malappuram. They however found that it was again impossible to execute their plan that night; and so the murder was postponed until the following day, with the slightly different arrangement that they should meet together at the Kottapadi maidan at 5 p.m. This seems to us a very different story from, what was given by P.W. 10 in his evidence. One cannot say upon reading through the evidence of P.W. 10 that it is necessarily false; but failing as it does to carry conviction, we feel that very substantial corroboration of his story would be necessary before it would be possible to bring home the guilt of this offence to the appellants beyond all reasonable doubt.

10. The learned Sessions Judge relied principally for the corroboration of P.W. 10's evidence on the evidence of P.W. 33, the footprint expert. In paragraph 38 of his judgment, the learned Judge stated:

So far as accused 1, 3 and 5 are concerned, their complicity is established, because their footprints were found at the scene. As regards the 4th accused, P.W. 16 proves that the 4th accused was on his way to the scene along with P.W. 10 and the 5th accused. This is sufficient corroboration for P.W. 13's evidence, as it is manifest that the 4th accused could not have had a destination different from his companions.

That is to say, assuming the guilt of accused 1, 3 and 5 because their footprints were found in the bungalow, the fourth accused must have been guilty, too, because he was associated with men whose footprints had been proved to be that of the murderers.

11. The opinion of a footprint expert is not admissible as evidence. If the court is to make any use at all of footprint impressions, it must be satisfied from a comparison of the various footprints that they are those of the persons whom the expert says they are. The value of evidence with regard to footprints is obviously very much less trustworthy than evidence with regard to finger prints. In a fairly good impression of a finger or even in an impression where only a portion of the finger is shown, there is a wealth of detail available to the expert and to the Court for comparison. One sees in a finger print a large number of ridges and sweat pores situated along them.

In examining a finger print, therefore, one not merely compares the general configuration of the finger and all the lines on it, but one is able to study such minute details as the bifurcations and junctions of the ridges and the relative positions on those ridges of the sweat pores.

With regard to footprints, on the other hand, it would seem from the evidence and from what we have been able to read from Dr. Hans Gross's book on Criminal Investigation that one can only compare the general shape of footprints found with the shape of impressions taken from the feet of the person suspected. Even in this limited comparison, one has not the same certainty as one would have in comparing fingerprints; because foot impressions vary considerably according to the circumstances under which they are made. Footprints made when a person is walking slowly or fast, or running slowly or fast or jumping, all create differences

which are material. Moreover, a footprint taken after a person has walked a considerable distance, as was the case here when the murder was committed., is larger than a footprint taken when a person has been at rest, as was the case when footprints were taken from the various persons in the Sub-Jail, including some of the accused and P.W. 10. At page 497 of John Adam's translation of the above book, the learned author says:

One may then say with Massen, and rightly, that the details of all the impressions of a bare foot are in each particular case so distinctive and so characteristic that it is always possible to differentiate them, one from another, and recognise again the same impression. This is wholly true only when the impressions in question have been produced under identical conditions....

If then the last and the first impression thus produced be compared, one will see how difficult it is to find this famous ' characteristic resemblance.

He then goes on to say that the difficulty increases if the foot is turned or moved. At page 499 he points out the necessity for making a number of trials in order to ascertain the circumstances under which an impression was made. He says that it is therefore necessary to find each time (when conducting the experiment of taking a number of impressions without adding any fresh colouring matter) a footprint resembling the original in the quantity of colouring substance, when, alone impressions from the same foot might be expected to be similar. At page 510,. the learned author says:

Another result flowing from these conclusions is that the deductions made are only relative;. they can never be expressed by pre-cited data and have only comparative value. It is impossible to give measurements or fixed sizes; for the numerous factors-the size, the weight, and the other corporeal singularities of the individual walking, his burden, his gait, and the variable nature of the oil differ in every case, and may be combined in so many diverse ways that it is absolutely impossible to give precise indications on this matter.

After discussing the matter further the author says:

If one has but one indistinct footprint and no clue therefrom, another must be searched: for.

The only other passage that need be set out is found at page 532:

Much prudence must here be exercised (in taking measurements) and nothing undertaken which shows no chance of success. On the one hand the foot itself varies considerably, e.g., it is much smaller in cold weather or after a long rest than during hot weather or after a long march; on the other hand it is difficult to measure, inasmuch as it is not a regular body and must be measured differently according to the parts dealt with.

If we bear all these facts in mind, then we are far from satisfied that the prosecution has proved that the foot impressions seen by the police on M.Os. 17 and 18 and on the portico are the foot impressions of accused 1, 3 and 5. The process adopted by the expert for comparison was first of all to lift the impression by placing over it a glass plate. Through that glass plate he would see the impression and make its outline on the glass with dots. He would then place the plate so marked over a plain sheet of paper and mark the dots on the paper. Finally, he compared that with an impression made directly from the foot of the person suspected.

12. Ex. P-4I is said to have been taken from M.O. 17, which is not a very good impression; and we do not think that the dots showing the outline of the toes follow very closely the outline on the mat. Then again we find in examining the angles of the toes on the tracing taken from the impression on the mat and comparing it with the impression taken directly from the feet of the fifth accused that the angles at which the toes meet the ball of the foot are different in the two cases. In discussing these impressions the footprint expert stated that in general the size and contour of the pad was the same, as were the relative positions of the toes and the contour of the heel. That is true; but we cannot attach any importance to the; inward curve in the, lower portion of the pad, which is given as a special characteristic. That inward curve, however, was not very well emphasised in the print taken directly from the foot of the accused; and the inward curve might well be due to the fact that blood did not cover that particular portion of the pad.

13. The impression on M. O. 18 is also not very clear. The lifted impression in Ex. P-42, the expert stated, is in general of the same length as the impression in Ex. P-55, i.e., the impression of the foot of the third accused; the outer line of the pad is similar; and the relative positions of the big toe, second toe, and third toe are similar, as is the size of the big toe and of the heel. When we examined these, we found that the relative positions of the big toe, second toe, and third toe are anything but similar. In fact, they are so dissimilar as to lead us to conclude, not merely that the resemblance between the impression of the third accused's feet was not the same as the impression on the mat, but that the impressions must have been by different persons. We also did not find that the outlines and sizes of the heel and big toe and the length were very nearly the same in the two impressions compared.

14. With regard to the impression, Ex. P-54, of the first accused, the expert gave six general characteristics and two special characteristics which he found common to Ex. P-54 and the impression, Ex. P-35, lifted from the footprint in the portico. The second special characteristic is that there is a depression on the pad between the first and second toe. This, as we have stated with regard to other peculiarities in the outline, may have been due to the fact that that portion of the feet was not sufficiently covered with blood to leave an impression, especially as the corresponding depression is not seen to anything like the same extent on the impression taken directly from the first accused's foot. In trying to ascertain whether the footprint in the portico was that of the first accused, we are handicapped by not having been able to compare the outline marked on the glass with the outline on the portico itself; and we feel that it will not be safe for us to come to any conclusion against this accused in the absence of the original impression.

15. The learned Sessions Judge, for demonstration purposes, had several impressions taken of the feet of two peons in the Court. These we compared with those taken from the mats and the portico; and we found a reasonably close agreement between Ex. G-4 and Ex. G-5, taken from a foot of one of the peons, and Ex. P-35, which was attributed by the expert to the first accused. This is perhaps some indication that one must be careful not to draw too hasty a

conclusion from such similarities as were pointed out by the expert. Incidentally, it may be mentioned that Mr. Jayarama Aiyar has emphasised the evidence that only one assailant was present in the portico; and so even if we assume that one of these three accused was present in the bungalow that night, the other two footprints could not have been those of the other two, and might have been the impressions of the first and second deceased, whose footprints could not be taken. We do not want to over-stress this point; because the observation of P.W. 25 might have been faulty, and he ran away before the assailants left the bungalow.

16. The learned Public Prosecutor, finding that the evidence with regard to the footprints is far from conclusive, has relied on the fact that accused 4, 5 and 7 were found, when examined by various doctors, to have had scars on their persons which could have been the result of injuries sustained on the night of the offence. If there is evidence that an assailant has received any injury on some particular part of his person and a corresponding injury is found on the body of the suspected person shortly after the offence is committed, and there is medical evidence that that injury was probably caused at or about the time when the offence was committed, the evidence of the injury would be strong corroborative evidence against that person. But such evidence becomes increasingly weak as the time between the examination of the injuries or the scars and the date of offence increases. These accused were examined five or six months or more after the offence was committed; and so it was impossible for the doctors who gave evidence to say precisely that these injuries were caused on the day when the murder was committed or even within a short period before or after. They could not even be sure to within a month or so of the offence when the injuries were caused. Further, there is no evidence that any of the assailants met with injuries at the time when the murder was committed, except that when the police officers were examining the bungalow they found some hair adhering to some broken glass. That would indicate that on the person of one of the assailants on a part of his body normally covered with hair, one could expect to find an injury. The learned Public Prosecutor has stated that since there was a lot of broken glass strewn about, some of the assailants might have cut their feet walking over it. That may be true; but it is a curious circumstance that while many scars were found on

the bodies of these accused persons, none was found on the feet of any of the accused. The seventh accused had no less than nine scars on his person, the fifth accused had three scars and the fourth accused had one scar and a number of scratches. The learned Public Prosecutor has been unable to suggest how so many injuries could have been caused to these three persons on the night of the offence. We are therefore unable to attach any value to this evidence.

17. P.W. 41, a tailor, deposed that he made a shirt for the fifth accused about eight months before the offence. When the tank spoken to by P.W. 10 was searched, a number of pieces of cloth were found there; and P.W. 41 claimed to be able to identify a piece of cloth about 15 inches long as a portion of a shirt that he had made for the fifth accused. We have examined that fragment; and we can scarcely believe it possible that P.W. 41 could identify it as a part of the shirt he had made so long before for the fifth accused.

18. P.W. 13, a keeper of tea shops at Kodoor and Chattuparamba, deposed that at about 8-30 p.m. on the night of offence he met a man whom he thought to be P.W. 10 and another. If it really was P.W. 10 that he saw, it would be in accord with the evidence of the approver; for he and the first accused might well have been where P.W. 13 said he saw them at about that hour. But P.W. 13 is unable to say with any certainty that it was P.W. 10; and so his evidence is of no value and the learned Sessions Judge very rightly did not place any reliance on it.

19. P.W. 12 deposed that he saw P.W. 10, whom he had known for a very long time, and the first accused, who was then a stranger, but whom he afterwards identified as the first accused, together in Malappuram at 4-30 p.m. on the evening preceding the offence and again at 7 p.m. in a tea shop. This evidence is inconsistent with the evidence of P.W. 10, who deposed that the first accused did not arrive there until 7-30 p.m. and that it was for him that he had remained behind after the other accused had left for Abu Bucker Haji's tope. Moreover if P.W. 12 had seen P.W. 10 at 4-30 p.m. one would have expected, if P.W. 10's evidence be true, that he would have seen the other accused who were with P.W. 10 at that time.

20. The only other witness whose evidence needs discussion is P.W. 16. In the absence of any definite conclusion to be drawn from the footprints, the learned Public Prosecutor relies very strongly on the evidence of this witness. He deposed that on the evening preceding the offence he was taking tea in a shop at Paha.-paramba and left it at about 8-30 p.m. He had not gone very far when he saw P.W. 10 coming along. Behind him in a group were five other persons whom he did not identify. Behind them again, at a distance of 12 yards, were the fourth and fifth accused, whom he had known from boyhood. The place at which he saw these persons was only about a quarter of a furlong from Abu Bucker Haji's plantation, which was the place of assignation. This evidence does not accord very well with the evidence of P.W. 12 who saw P.W. 10 and the first accused together on the other side of the plantation at the same time; and it conflicts still more definitely with the evidence of the approver, who stated that at 4-30 p.m. all the accused, with the exception of the first accused, left singly or in pairs, agreeing to meet in Abu Bucker Haji's plantation at 10 p.m. As he left with the first accused three hours later, he was unlikely to have been with these persons at 8-30 p.m. P.W. 16's evidence, if true, shows that they were leaving the plantation, presumably on their way to commit the murder. These differences in time between the evidence of P.W. 10 and the evidence of P.W. 16 can hardly be due to a mere misjudging of the time. The object of the conspirators was to proceed to the place of assignation singly or in pairs and not to be seen together; and so it is not likely that P.W. 10 would have been mistaken into thinking that he left the plantation at 10 p.m. if in fact he left it at 8-30 p.m. Moreover, their attempt at secrecy would have been frustrated if they had left the plantation as early as 8-30 p.m. when they would have expected to meet people on the road, who would see them all together. Nor could P.W. 10 very well have been mistaken as to the time; for he had just finished taking a cup of tea in the neighbouring tea shop and would have had a very good idea of the time in relation to his meal time; and it is not likely that he would have thought that it was 8-30 p.m., if in fact it was 10 p.m. The learned Public Prosecutor has asked us to accept the evidence of P.W. 16 on this point in preference to that of P.W. 10, and he has argued that we should not reject the evidence of P.W. 16 merely because we think it unlikely that the accused would have been in the open at about that time. If however we accept the evidence of

P.W. 16 as true, then it is most unlikely that at the time they were on their way to the scene of offence, which was only eight miles away, and which they did not reach until 2 a.m., the next morning. If he did see them, it would seem more probable they were bound on some peaceful errand or were going for shikar, as the fourth accused is reported to have stated to this witness.

21. It is seen from the above discussion that the evidence of the approver receives no corroboration of any importance from the evidence of any of the other witnesses and has therefore to be rejected, as not being sufficient to bring home the offences to the appellants.

22. It is unfortunate that such a grave crime has not been detected; but the failure of the prosecution to prove the offence against the appellants was not due to any defect in the investigation, which seems to have been most carefully-and certainly very honestly-conducted. No attempt was made to make evidence, where none was naturally forthcoming; and if the police were unable to obtain more evidence it was because the Moplah community largely succeeded in maintaining secrecy. It was almost impossible without their co-operation for the police to obtain any more evidence relating to the crime.

23. The appeals are allowed and the convictions and sentences passed on the appellants set aside. They are ordered to be set at liberty.