IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 685 OF 2018

CRIME NO.94/2007 OF Kannavam Police Station, Kannur

AGAINST THE ORDER/JUDGMENT DATED IN CP NO.53 OF 2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KUTHUPARAMBA ARISING OUT OF THE ORDER/JUDGMENT DATED IN SC NO.421 OF 2009 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, THALASSERY

APPELLANT/ACCUSED NO.8:

ANNERI VIPIN, AGED 38 YEARS, S/O.PAVITHRAN,
PAREKETTIL (H), KUTHUPARAMBA AMSOM, MOORIYAD,
KUTHUPARAMBA.

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.T.ANIL KUMAR
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.THOMAS ABRAHAM NILACKAPPILLIL
SRI.THOMAS SABU VADAKEKUT
SRI.E.VIJIN KARTHIK

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

Crl. A. No.685, 722, 740, 775 & 790 of 2018

BY ADV. SRI. ALEX M THOMBRA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 24.03.2025, ALONG WITH CRL.A.722/2018, 740/2018 AND CONNECTED CASES, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:

Crl. A. No.685, 722, 740, 775 & 790 of 2018

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 722 OF 2018

CRIME NO.94/2007 OF Kannavam Police Station, Kannur

AGAINST THE ORDER/JUDGMENT DATED IN CP NO.53 OF 2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KUTHUPARAMBA ARISING OUT OF THE ORDER/JUDGMENT DATED 04.04.2018 IN SC NO.421 OF 2009 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, THALASSERY

APPELLANTS/ACCUSED NOS.4 & 10 (IN JAIL):

1 **ANNERI PAVITHRAN, AGED 59, S/O KUNHIRAMAN, PAREKKATTIL HOUSE,KUTHUPARAMBA AMSOM, MOORIYAD.**

2 **PALERI RIJESH @ RIJU, AGED 42, S/O VASU, KIZHAKKAYIL HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, MOORIYAD PARA.**

BY ADVS.
P.K.VARGHESE
K.S.ARUN KUMAR(K/1588/2003)
M.T.SAMEER(K/3346/1999)
P.S.ANISHAD(K/560/2010)
DHANESH V.MADHAVAN(K/298/2006)
JERRY MATHEW(K/658/2015)
BIJU KUMAR(K/1085/2018)

Crl. A. No.685, 722, 740, 775 & 790 of 2018

SOJAN K. VARGHESE(K/1611/2019)
REGHU SREEDHARAN(K/653/2020)
APARNA ANIL(K/968/2020)
RAMEEZ M. AZEEZ(K/001008/2022)
NAMITHA K.S.(K/2262/2022)
SUDARSANAN U.(K/2436/2022)
ANU ASHOKAN(K/1343/2023)
ARJUN KUMAR K.S.(K/1680/2019)
ATHUL.P(K/001590/2023)

RESPONDENT/COMPLAINANT & FORMAL PARTY:

1 **STATE OF KERALA TO BE REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.**

2 **SUB INSPECTOR OF POLICE KANNAVAM POLICE STATION, KUTHUPARAMBA-670643.**

BY ADV. SRI. ALEX M THOMBRA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 24.03.2025, ALONG WITH CRL.A.685/2018 AND CONNECTED CASES, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:

Crl. A. No.685, 722, 740, 775 & 790 of 2018

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 740 OF 2018

CRIME NO.94/2007 OF Kannavam Police Station, Kannur

AGAINST THE ORDER/JUDGMENT DATED IN CP NO.53 OF 2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KUTHUPARAMBA ARISING OUT OF THE ORDER/JUDGMENT DATED IN SC NO.421 OF 2009 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, THALASSERY

APPELLANT/9TH ACCUSED:

PATTAKKA SURESH BABU, AGED 46 YEARS
S/O.CHATHUKUTTY, CHAMALAYIL HOUSE,
KUTHUPARAMBA AMSOM, MOORIYAD.

BY ADV SRI.NANDAGOPAL S.KURUP

RESPONDENT/COMPLAINANT:

1 **STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031.**

2 **BAR COUNCIL OF INDIA**
REPRESENTED BY ITS SECRETARY,21,ROUSE AVENUE INSTITUTIONAL AREA,NEAR BAL BHAWAN,NEW DELHI-110002

SUO MOTU IMPLEADED AS PER ORDER DATED 25/10/2023 IN CRL.A.740/2018

Crl. A. No.685, 722, 740, 775 & 790 of 2018

BY ADV. SRI. ALEX M THOMBRA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 24.03.2025, ALONG WITH CRL.A.685/2018 AND CONNECTED CASES, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:

Crl. A. No.685, 722, 740, 775 & 790 of 2018

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 775 OF 2018

CRIME NO.94/2007 OF Kannavam Police Station, Kannur

AGAINST THE ORDER/JUDGMENT DATED IN CP NO.53 OF 2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KUTHUPARAMBA ARISING OUT OF THE ORDER/JUDGMENT DATED IN SC NO.421 OF 2009 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, THALASSERY

APPELLANT/ACCUSED NO.11:

VALODATH SASI @ PACHADI SASI
S/O CHATHUKUTTY, AGED 51 YEARS, SHAKHIL NIVAS,KOOTHPARAMBA AMSOM, MOORIYAD DESOM, KUTTIKATTIL-670643.

BY ADVS.
R.ANIL R
SRI.B.RAMAN PILLAI (SR.)
M.SUNILKUMAR(K/926/1989)
SUJESH MENON V.B.(S-1613)
T.ANIL KUMAR(K/101/2006)
THOMAS ABRAHAM (NILACKAPPILLIL)(K/857/2011)
THOMAS SABU VADAKEKUT(KL/001082/2017)
MAHESH BHANU S.(K/1620/2018)
S.LAKSHMI SANKAR(K/001642/2018)
RESSIL LONAN(K/1251/2020)

Crl. A. No.685, 722, 740, 775 & 790 of 2018

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSEUCTOR,HIGH COURT OF KERALA AT ERNAKULAM, COCHIN-31.

BY ADV. SRI. ALEX M THOMBRA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 24.03.2025, ALONG WITH CRL.A.685/2018 AND CONNECTED CASES, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:

Crl. A. No.685, 722, 740, 775 & 790 of 2018

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 790 OF 2018

CRIME NO.94/2007 OF Kannavam Police Station, Kannur
AGAINST THE ORDER/JUDGMENT DATED IN CP NO.53 OF 2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KUTHUPARAMBA ARISING OUT OF THE ORDER/JUDGMENT DATED IN SC NO.421 OF 2009 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, THALASSERY

APPELLANTS/ACCUSED NOS.2,3, 5 TO 7:

1 **KUNNAPPADI MANOHARAN, AGED 58, S/O.ACHUTHAN, MANHAMPARAMBATH (H), KUTHUPARAMBA, MOORIYAD.**

2 **NANOTH PAVITHRAN, AGED 68, S/O.KUNHIKANNAN, MANIKYA PARAMBATH (H), KUTHUPARAMBA, MOORIYAD.**

3 **PATTAKKA DINESAN, AGED 60, S/O.CHATHUKUTTY, CHAMALAYIL (H), MURIYAD, KUTHUPARAMBU.**

4 **KALATHUMKANDI DHANESH, AGED 42, S/O.BHASKARAN, KUTTIMAKKOOL (H), KUTHUPARAMBU AMSOM, MOORIYAD.**

5 **KELOTH SHAJI @ KOYI SHAJI AGED 46, S/O.BALAN, JANAKI NILAYAM, KUTHUPARAMBU AMSOM, MOORIYAD.**

BY ADVS.

Crl. A. No.685, 722, 740, 775 & 790 of 2018

SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.T.ANIL KUMAR
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.THOMAS ABRAHAM NILACKAPPILLIL
SRI.THOMAS SABU VADAKEKUT
SRI.E.VIJIN KARTHIK

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

BY ADV. SRI. ALEX M THOMBRA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 24.03.2025, ALONG WITH CRL.A.685/2018 AND CONNECTED CASES, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:

Crl. A. No.685, 722, 740, 775 & 790 of 2018

JUDGMENT

[CRL.A Nos.685/2018, 722/2018, 740/2018, 775/2018, 790/2018]

Jobin Sebastian, J.

Criminal Appeal Nos. 685/2018, 722/2018, 740/2018, 775/2018, and 790/2018 arose out of the judgment of conviction and order of sentence passed in S.C. No.421/2009 on the file of Sessions Court, Thalassery, whereby the accused Nos. 2 to 11 were found guilty of the offences punishable under Sections 143, 341, 307, 302 r/w 149 of Indian Penal Code. Apart from the above-said offences, accused Nos. 2, 3 & 11 were found guilty of offence punishable under Section 147 r/w 149 of the Indian Penal Code, and accused Nos. 4 to 10 were found guilty of offence punishable under Section 148 r/w 149 of Indian Penal Code and they were convicted and sentenced for the said offences as well.

2. Altogether ten accused faced trial in this case. The case against the 1st accused was abated as he died after the commitment of the case to the Sessions Division. Out of the five appeals mentioned above, Criminal Appeal No. 685 of 2018 has been preferred by the 8th accused, Criminal Appeal No. 722 of 2018 has been preferred by the 4th

and 10th accused, Criminal Appeal No. 740 of 2018 has been preferred by 9th accused, Criminal Appeal No.775 of 2018 has been preferred by the 11th accused and Criminal Appeal No. 790 of 2018 has been filed by 2nd, 3rd, 5th, 6th and 7th accused.

3. The facts of the case, in brief, are as follows:

The accused are loyalists of the Communist Party of India (Marxist) [C.P.I.(M)], and Pramod and Prakashan, the deceased and injured in this case, were workers of the Bharatiya Janata Party [B.J.P.]. Due to political rivalry, on 15.08.2007 at 6.00 p.m., accused Nos. 1 to 3 hatched a criminal conspiracy in the house of accused No.3. In pursuance of the conspiracy, on 16.08.2007 at 7.00 a.m. accused Nos. 1 to 11 and other five identifiable assailants formed themselves into an unlawful assembly, armed with dangerous weapons, on a property where cashew trees were planted and in the prosecution of the common object of the said assembly, the accused attacked Pramod and Prakashan, while both of them were proceeding to Vannathimoola Bhagam from Muriyad by walking through a pathway situating close to the cashew tree plantation. Accused Nos. 1, 2, 3, and 11 raised exhortations to hack and kill Pramod and Prakashan. Meanwhile, the 4th accused hacked Pramod with a chopper while accused Nos. 5, 9, and 10 with choppers, and accused Nos. 6, 7, and

8 with swords repeatedly hacked Pramod and the other five identifiable assailants, struck Pramod's head, legs, and hands by using iron sticks and murdered him. Furthermore, the accused attempted to murder Prakashan by inflicting multiple hack and stab wounds to his head, hands, and legs with swords. Hence, the accused are alleged to have committed the offences punishable under Sections 120(B), 143, 147, 148, 341, 326, 307, 302 r/w 149 of Indian Penal Code.

4. On completion of the investigation, the final report was submitted before the Judicial First Class Magistrate Court, Kuthuparamba. As the case was one triable exclusively by the Court of Session, the learned Magistrate after complying with all the necessary formalities committed the case to the Court of Session, Thalassery. After taking cognizance, the learned Sessions Judge made over the case for trial and disposal to Additional Sessions Court-IV, Thalassery.

5. On the appearance of the accused before the Additional Sessions Court-IV, Thalassery, both sides were heard under Section 227 of the Cr.P.C. Upon hearing under Section 227 of Cr.P.C. and perusal of records, as it was satisfied that this was not a fit case to discharge the accused, the learned Additional Sessions Judge, framed a written charge against the accused for the offences punishable under Sections 120B, 143,

147, 148, 341, 326, 307, 302 r/w 149 of IPC. When the charge was read over and explained to the accused, all of them pleaded not guilty and claimed to be tried.

6. The prosecution thereupon examined 24 witnesses as PW1 to PW24 and Exts.P1 to P25 were exhibited and marked . MO1 to MO9 were the material objects identified by the prosecution witnesses and marked in evidence. The contradictions in the 161 statement of the witnesses brought out by the defence were marked as Exts.D1 to D8. Exts.D9 and D9(a) were the other exhibits marked from the side of the defence through prosecution witnesses. After completion of prosecution evidence, when the accused were questioned under Section 313 of the Cr.P.C., they denied all the incriminating materials brought out against them in evidence. Since it was not a fit case to acquit the accused under Section 232 of the Cr.P.C., the accused were directed to enter upon their defence. But no evidence, whatsoever, was adduced from the side of the accused.

7. After trial, accused Nos.2 to 11 were found guilty of the offences punishable under Sections 143, 341, 307, 302 r/w 149 of the Indian Penal Code and convicted. Apart from the above-said offences, accused Nos. 2, 3 & 11 were found guilty of the offence punishable under Section 147 r/w 149 of the Indian Penal Code, and accused Nos. 4 to 10

were found guilty of the offence punishable under Section 148 r/w 149 of Indian Penal Code and they were convicted. The accused Nos.2 to 11 were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.75,000/- (Rupees seventy-five thousand only) each with a default clause to undergo rigorous imprisonment for one year for the offence punishable under Section 302 r/w 149 of the IPC.

8. The accused Nos.2 to 11 were sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.25,000/- each for offence punishable under Section 307 r/w 149 IPC. In default of payment of the fine, the accused were sentenced to undergo rigorous imprisonment for a period of six months.

9. The accused Nos.2 to 11 were sentenced to undergo rigorous imprisonment for three months each for the offence punishable under Section 143 r/w 149 IPC.

10. The accused Nos.2 to 11 were sentenced to undergo rigorous imprisonment for one month each for the offence punishable under Section 341 r/w 149 IPC.

11. The accused Nos.2, 3, & 11 were sentenced to undergo rigorous imprisonment for one year each for the offence punishable under Section 147 r/w 149 IPC.

12. The accused Nos.4 to 10 were sentenced to undergo rigorous imprisonment for 2 years each for the offence punishable under Section 148 r/w 149 IPC.

13. The accused Nos.2 and 3 were found not guilty of the offence punishable under Section 120(B), and they were acquitted under Section 235(1) of Cr.P.C. Similarly, accused Nos.2 to 11 were found not guilty of the offences punishable under Section 326 r/w 149 of IPC and acquitted.

14. The rivalry, that existed between loyalists of two political parties, viz, BJP and CPI(M) had allegedly led to the incident in this case, resulting in the death of Pramod and grievous injuries to Prakashan. The deceased Pramod as well as the injured Prakashan (PW2) were BJP workers, whereas the accused were CPI(M) loyalists.

15. The Sub Inspector of Police, Kannavam Police Station had set the law in motion in this case, by registering a suo motu FIR on the basis of the telephonic information that he had received from the Sub Inspector of Police, Kuthuparamba. The Sub Inspector, who registered this case suo motu, was examined as PW1. According to PW1, on 16.08.2007 while he was working as Sub Inspector of Police, Kannavam, at around 7.30 p.m., he received telephonic information from his colleague, the Sub Inspector of Kuthuparamba Police Station, that somebody had attacked and injured

two BJP workers named Pramod and Prakashan inside the property belonging to Ayisha Company situated at Mooriyad. Immediately then, he entered the said information in the general diary maintained in the Police Station and proceeded to Mooriyad along with his Police party in the department jeep. When he along with the police party arrived at the scene he found blood stains here and there on the road from Morolicham to Palaparamba. He also found blood stains on the northern side of the one-foot pathway that leads to Vannathimoola from Palaparamba - Morolicham road. Moreover, loose chappals and a chopper were also found lying there. Although he made enquiries, he was unable to find anyone. As the incident occurred in an uninhibited cashew plantation, he deputed a Police Constable for scene guard duty and proceeded to Indira Gandhi Co-operative Hospital to gather more information. Upon arrival at the hospital, he learned that two BJP workers namely Pramod and Prakashan had already been taken to the said hospital with severe injuries. Further inquiry revealed that Pramod, one of the injured had succumbed to the injuries at approximately 9 a.m., while the other injured person was undergoing treatment in the ICU. He then returned to the Police Station and informed his superior officers about the incident. Immediately thereafter, at around 9.30 p.m. he registered a case suo motu as crime

No.94/2007 of Kannavam Police Station. Ext.P1 is the FIR so registered.

16. Prakashan, who sustained serious injuries in the alleged incident was examined as PW2. According to PW2, during the period of occurrence in this case, he resided at a place called Ayodhya Nagar near Mooriyad and worked as a mason. On 16.08.2007, at 6.30 a.m., he left his house along with his brother (CW3, not examined) to go to work, as usual. When they reached the road in front of his house, Pramod, the deceased in this case, as well as Jinoy (PW4) and Ramesan (PW3), also arrived there to go to work. Usually, they go to Kuthuparamba for work through a route that passes through Mooriyad. However, about one and a half months back, a political clash occurred between BJP and CPM workers, resulting in escalating tension in the area. Furthermore, they faced threats from the CPM workers. The CPI(M) workers even conducted searches on buses passing through Mooriyad, armed with weapons. Scared of the CPI(M) workers he as well as his friends avoided traveling through Mooriyad to reach Kuthuparamba. Instead, they opted to go to Vannathimoola first, taking the Chullikkunnu road and from there they would proceed to Kuthuparamba by bus. On the alleged date of the incident, when he and others reached in front of the house of Valanki Vinod (PW5), they found PW5 standing there and after talking with him,

he proceeded further with others. Pramod, the deceased in this case was walking ahead of him. When they reached the road leading to Palaparamba, around 10 to 16 assailants approached them. Then accused Nos.1, 2, 3, and 11 uttered to hack and kill them. By that time, the accused repeatedly hacked Pramod. It was the 4th accused who hacked Pramod first. Following it, accused Nos.6, 7, and 8 hacked Pramod with swords, while accused Nos.5, 9, and 10 hacked Pramod with choppers. Five other identifiable assailants also hacked and beat Pramod using iron sticks as well as with other weapons. He was standing about 5 meters behind Pramod. He was unsure of what to do, so he raised the alarm and ran about 5 to 6 meters. But he stumbled and fell down. When he raised from the ground, someone hacked, aiming his head. Then he blocked the attack with his hands. Thereafter, those who hacked Pramod, hacked him also, incessantly. When he cried aloud, the accused fled from the spot to 'Valiyavelicham Bhagam'. Immediately thereafter, he contacted his wife over the phone and informed her that he had been assaulted and asked her to come urgently. He also contacted Shyju (PW7). Approximately five or six minutes after the incident Valanki Vinod (PW5), Murali, and two or three ladies approached him. Then he asked for some water, and one of them gave him water. After 20 minutes, a Tata sumo vehicle came and

he as well as Pramod were taken inside the said vehicle. Thereafter, he lost consciousness. It was on the next day while he was in the Medical College Hospital, Kozhikode he regained memory. The assailants belong to his locality. PW2 identified all the accused before the court with their names. According to PW2, both he and the deceased, Pramod were BJP workers, while the accused were CPI(M) workers. It was due to political rivalry the accused attacked him as well as Pramod. According to PW2, although he could identify the weapons used by the accused in the commission of the offence, he is unable to specify which accused used particular weapons. However, PW2 identified a 'Chopper' as the weapon used by the 4th accused. He also stated that the accused attacked him as well as Pramod with MO2 series swords and MO3 series Choppers.

17. Another occurrence witness, when examined as PW3, deposed that on 16.08.2007 at 6.30 a.m., he left his house to go for concrete work. When he reached Chulli Bhagam he met the deceased Pramod, Prakashan (PW2), Jinoy(PW4), and one Pradeepan. All of them walked together towards Vannathimoola, to catch a bus to go to work. Except Pramod he as well as the others were going to work at Kolassery and Pramod was going to work at Vellachal. While walking so, on the way he met Vinod (PW5) and his sister Nalini, and after exchanging a few

words, all of them proceeded further. Pramod was then walking ahead of all of them and Prakashan was walking behind him. He as well as Pradeepan and Jinoy were walking behind Prakashan. Thereafter, while all of them crossed the road near Ayisha Company, suddenly around 10 to 16 persons encircled Pramod, the deceased in this case, and Accused Nos.1, 2 3, and 11 uttered "വെട്ടടാ...കുത്തെടാ...കൊല്ലെടാ...". Then the 4th accused hacked Pramod using a chopper and accused Nos.6, 7, and 8 hacked Pramod with swords, and accused Nos.5, 9, and 10 hacked Pramod with choppers incessantly. Thereafter, the accused turned towards Prakashan. When Prakashan attempted to take to his heels, he stumbled down. Then the accused attacked Prakashan with weapons. The accused Nos. 4, 5, 6, 7, 9, and 10 hacked PW2 with swords and choppers repeatedly. Seeing that the accused are approaching PW3 and others, he as well as his friends Jinoy and Pradeepan ran away from the spot through the cashew tree plantation belonging to Ayisha Company. After half an hour he returned back to Chulli Bhagam and learned that both Prakashan and Pramod had been taken to hospital. PW3 identified all the accused before the court with their names. PW3 identified MO1 as the chopper used by A4. PW3 also identified MO2 series swords as the weapons used by A6, A7, and A8. However, he admitted that he could not identify which specific

accused used each of the weapons in the MO3 series. According to PW3, his statement was recorded by the investigating officer after three days of the incident.

18. Another witness to the occurrence, when examined as PW4, deposed that the deceased and the injured in this case were his neighbours and residents of his locality. The incident in this case happened on 16.08.2007, while he was walking towards Vannathimoola bus stop to catch a bus to go for his job. He was accompanied by Prakashan(PW2), Pradeepan(CW3), Ramesh (PW3), and Pramod the deceased, who were also heading to work. On the way they met Vinod (PW5), who was residing on the side of the road, and after making a casual talk with him, all of them proceeded further. The deceased Pramod and injured Prakashan were walking ahead of the group. After passing Chullikkunnu Heights, when Pramod crossed 'Palaparamba Valiya Velicham' road, the accused Nos.1 to 11 approached Pramod by shouting "വെട്ടെടാ...കൊല്ലെടാ...". Thereafter, all the accused encircled Pramod and hacked Pramod with weapons. After hacking Pramod they rushed towards Prakashan (PW2) and hacked him down. Even after Prakashan fell down, the accused continued to hack at him. According to PW4 fearing that the accused would attack him and his friends, they ran towards Palapramba

Bhagam and he then rushed to his house. Thereafter when PW4 was about to inform the neighbours about the incident, his father said that all the injured had been taken to hospital. Moreover, his father said he heard somebody giving directions to inform the matter to police. Afraid of the accused, PW4 as well as others remained near his house. According to PW4, he is acquainted with all the accused in this case as they belong to his locality. Apart from the accused facing trial in this case, five other persons were also involved in this case. PW4 identified all the accused before the court. He also identified the weapons of the offence. According to PW4, the MO1 chopper was used by the 4th accused. When MO2 series weapons were shown to PW4, though he identified those weapons as the weapons used by the accused, he deposed that he could not specify who used each one. However, he admitted that it was accused Nos.6 to 8 who used the swords in the commission of the offence. According to PW4 accused Nos.5, 9, and 10 used choppers to hack the deceased and the injured. He also identified MO3 series weapons, as those used in the commission of the offence. According to PW4, it was due to political rivalry, that the accused unleashed violence and attacked Pramod and PW2. According to PW4, the deceased Pramod and the injured Prakashan are B.J.P./R.S.S. workers and the accused are C.P.I.(M) workers.

19. Another independent witness, PW5, who rushed to the scene after the alleged occurrence, testified that he resides at 'Chullikkunnu'. PW2, the injured in this case as well as the deceased were familiar to him. The incident in this case happened on 16.08.2007. On the morning of 16.08.2007 at around 7.00 a.m. he saw PW2, PW3, PW4, and CW3 heading to Vannathimoola Bhagam to catch a bus for going for their work. On seeing him, Rameshan (PW3) exchanged friendly words with him and left the place by saying that, he was going for work. Five minutes after they departed, he heard a huge cry from Vannathimoola Bhagam. Hearing the same he immediately contacted his friend named Ashokan (PW13) over the phone and asked him to come quickly. Then he proceeded to the place from where the outcry was heard. His sister as well as one Dineshan also followed him. Upon arriving at the scene, he found Pramod lying in a pool of blood. Looking around, he spotted Prakashan (PW2) lying a short distance away, from the place where Pramod was found lying. While rushing towards the house of Ashokan to fetch him, he found Ashokan and one Mohanan coming along with two other persons. Meanwhile, his sister brought some water. Then Ashokan asked both Pramod and Prakashan whether they wanted water and gave water to them. By that time Shyju (PW7) and one Santhosh also arrived at the

scene. After ten minutes, a vehicle arrived and he along with others took Pramod and Prakashan to Indira Gandhi Co-operative Hospital in the said vehicle. After examining Pramod, the doctor reported that Pramod is no more. Thereafter, Prakashan, the injured in this case was taken to Medical College Hospital, Kozhikode for better management.

20. When Shyju, who arrived at the scene after the incident, was examined as PW7, he deposed that on 16.08.2007 at around 7.20 p.m., Prakashan (PW2) one of the injured in this case, contacted him over the phone and said that "എന്നെ അടിച്ചു, വെട്ടി". After saying so PW2 disconnected the phone. Then he called back PW2 and PW2 told that "എനിക്കും പ്രമോദിനും വെട്ടും അടിയും കിട്ടിട്ടുണ്ട്. പെട്ടെന്ന് വാ". Immediately then, PW7 disconnected the phone call and rushed toward the scene of the occurrence, accompanied by Sujeesh, Satheesh, and Santhosh. As PW2 said that the incident occurred near the house of Vinod (PW5), he rushed to the said place. When he reached there, Vinod, Ashokan (PW13), and some others were also present at the scene. Then PW2 was lying, soaked in blood, approximately 7 to 8 meters away from there, Pramod, the deceased was found lying in a pool of blood. Five minutes after PW7's arrival, a TATA Sumo Jeep came there and he along with others took Pramod and Prakashan in the said vehicle and took them to hospital. Then, Pramod

and Prakashan were partially conscious. Then he heard Pramod, the deceased saying the names of one Anneri Pavithran (A4), Koyi Shaji (A7), Rajesh (A10), Dhanesh (A6), Vipin (A8), and some others. When reached near Palathinkara, the conversation of the deceased dwindled into mere murmurs. Then he along with others took Prakashan and Pramod to Indira Gandi Co-Operative Hospital, where it was later confirmed that Pramod had succumbed to the injuries. After giving first aid, Prakashan was referred to Medical College Hospital, Kozhikode. According to PW7, the attack on Prakashan and Pramod was motivated by political rivalry.

21. The Circle Inspector of Police, Kuthuparamba who conducted the initial part of the investigation in this case was examined as PW24. According to PW24, he took over the investigation on 16.08.2007, and as part of the investigation, he prepared an inquest after reaching the mortuary of Government Hospital, Thalassery where the body of Pramod was kept. Ext.P6 is the inquest report prepared by him. Thereafter, on 16.08.2007 he visited the scene of occurrence and prepared a scene mahazar in the presence of independent witnesses. Ext.P9 is the scene mahazar prepared by him. According to PW24, one chopper found at the crime scene was taken into custody by him after describing it in Ext.P9 scene mahazar. Moreover, the chappals and a ball pen found at the crime

scene were also seized as per Ext.P9 scene mahazar. The scientific assistant collected blood-stained soil found at the crime scene in three packets and handed over the same to him. The same was also taken into custody. Thereafter, he interrogated and recorded the statements of PW5 and CW7 (not examined). Then he filed a report before the jurisdictional magistrate and Ext.P17 is the said report. Subsequently, the additional Sub Inspector, Kuthuparamba (PW17) recorded the statement of PW2, the injured, from Medical College Hospital, Kozhikode, and produced the said statement before him. On the basis of the said statement, he submitted a report before the jurisdictional magistrate showing the correct name and address of accused Nos.4 to 11 and Ext.P18 is the said report. Thereafter, on 25.08.2007 he effected the arrest of the 11th accused. Subsequently, accused Nos.2 to 10 surrendered before the jurisdictional magistrate, and thereupon, he submitted an application for getting those accused into police custody and the same was allowed.

22. According to PW24, after the arrest of the accused he interrogated all, and out of them accused Nos. 4, 5, 6, 7, 8, and 10 had given separate confession statements and on the strength of the disclosure statements made by those accused and as led by them he reached a place called Morolicham and recovered weapons used in the

commission of the offence which where kept separately in a concealed state from different places in and around the place of occurrence in this case. The mahazars prepared contemporaneously with the said recovery were marked in evidence as Exts. P2, P3, P4, P5, P7, and P8 and the relevant portions of the confession statements of the accused recorded in the above-said seizure mahazars which led to the recovery and proved through PW24 were separately marked as Exts. P2(a), P3(a), P4(a), P5(a), P7(a) and P8(a). The weapons allegedly recovered on the strength of the disclosure statement made by the accused were also identified by PW24 before the court. Moreover, PW24 identified the thondi articles recovered from the place of occurrence as well as the items recovered at the time of inquest. According to PW24, the weapons as well as the other items recovered by him were produced before the court, after entering it in the Ext.P22 property list. The forwarding note prepared by him for sending the thondi articles for FSL examination is marked as Ext.P23. The FSL report received after the examination of the thondi articles, in this case, was marked as Ext.P24 through PW24. According to PW24, a further part of the investigation was conducted by PW22, his successor in office.

23. The successor in office of PW24, who conducted the remaining part of the investigation when examined as PW23 deposed that

he took over the investigation on 18.01.2008. According to him, as part of the investigation, he perused the records in this case and submitted a report before the jurisdictional magistrate adding Section 326 IPC. According to PW23, it was he who laid the final report in this case after the culmination of the entire investigation.

24. This is a case in which two B.J.P. loyalists were allegedly hacked with swords and dangerous weapons by C.P.I.(M) loyalists, out of political rivalry. In the incident, one of the injured died and the other one survived the grievous injuries. The prosecution mainly relies on the ocular evidence of the said injured witness, who is the survivor of the attack as well as the evidence of two other occurrence witnesses to prove the matters that transpired in this case. Being a case built upon direct evidence of the ocular witnesses, the main question to be considered is whether their oral account regarding the incident is convincing and reliable.

25. Before delving into a detailed discussion regarding the reliability of the evidence of the occurrence witnesses, it is noteworthy that even the defence is not disputing the fact that the death of Pramod, the deceased in this case is a homicidal one. Now it is apposite to have a look at the evidence given by the doctor who conducted the autopsy

examination, who was examined before the court as PW15. On examination before the court, PW15 deposed that on 16.08.2007 at 1.40 p.m., while she was working as an Assistant Surgeon at General Hospital, Thalassery, she conducted a postmortem examination on Pramod, the deceased in this case and issued a postmortem certificate. The postmortem certificate issued by her is marked as Ext. P11. Referring to Ext. P11 postmortem certificate, PW15 testified that she had noted the following antemortem injuries in the postmortem examination;

- Total amputation of both legs just above the ankle with only skin attachment on the medial aspect on left leg and lateral aspect on the right leg;
- Multiple lacerated wounds exposing muscles inner aspect of middle third of right leg measuring 3½ "long and 2" wide;
- Linear wound partially cutting tibia and fibula measuring 5" long just below the level of amputation;
- 2.5cm long and 1cm wide oval-shaped wound on dorsal aspect of left foot over middle aspect partially cutting underlying muscles and bones 2½ " long and 1" wide wound dorsomedial aspect of left forearm 3" above left wrist cutting underlying muscles and radius and ulna;

- Another incised wound 1cm wide and 2.5cm "long 2 above the previous wound. 2½ " long and 1" wide incised wound on the scalp 2.5cm above the hairline the middle line;
- Another incised wound bone deep 2½ "long 1" wide just above the previous wound with track fracture of underlying skull bone 2" long and 1" wide incised wound bone deep back of head 2" behind the upper level of the left ear.

26. After referring to the postmortem certificate, the doctor opined that the death was due to multiple injuries causing blood loss and shock. When confronted with MO1, MO2 series, and MO3 series weapons, and after verifying the same, the doctor opined that the injuries noted in the postmortem examination could be caused using the said weapons. A conjoint reading of the evidence of PW15, and the postmortem certificate issued by her clearly shows that the death of Pramod was certainly and undoubtedly homicidal in nature.

27. While considering the question whether the prosecution has succeeded in proving the occurrence as well as in proving the complicity of the accused in the commission of the offence, first of all, it is to be noted that it is a case in which there is direct evidence to prove the occurrence. In addition to the ocular evidence of eyewitnesses, there exists evidence

of an injured witness, which significantly strengthens the prosecution's case in proving the occurrence. Now the crucial question is whether the evidence of the injured witness as well as that of the eyewitnesses is reliable to be acted upon. When the injured witness was examined as PW2, on unequivocal terms he testified that he was brutally attacked by the accused by using dangerous weapons. The evidence of PW2 further shows that when he along with his friends including the deceased reached the place of occurrence, Pramod, the deceased in this case was walking ahead of him and it was then the accused Nos.1, 2, 3, and 11 approached them by uttering "വെട്ടടാ... കൊല്ലടാ...". Then accused Nos. 4 to 10 incessantly hacked Pramod with swords and choppers. According to PW2, on seeing the same, when he attempted to flee from the spot, he accidentally stumbled and fell down, and in the meantime, the accused mercilessly hacked him with weapons and inflicted grievous injuries on him. It is pertinent to note that PW2 identified all the accused before the court by their names and also deposed about the overt acts committed by each and every accused while Pramod was under attack. However, it is true that PW2 had not deposed about each and every overt act of the accused while he was under attack, rather what he stated is that all the accused who attacked Pramod also attacked him incessantly. The fact

that all the accused were familiar to PW2 and other eyewitnesses in this case is not disputed. More pertinently, the offence was committed in the daylight. Therefore, we find no reason to suspect the identification of the accused made by PW2 and other eyewitnesses before the court.

28. When the doctor who examined PW2 immediately after the incident was examined as PW19, she deposed that on 16.08.2007 at 8.20 a.m., while she was working as a Casualty Medical Officer in Indira Gandi Co-Operative Hospital, Thalassery, she examined PW2 and issued a wound certificate. The wound certificate prepared by PW19 is marked as Ext. P12. Referring to Ext. P12 wound certificate, PW19 deposed that the alleged history was assault, and the following injuries were noted in the medical examination of PW2;

1. Stab wound 3 x 1 cms in left chin;
2. Stab injury 5 x 3 cms behind the left ear lobe;
3. Bone deep lacerated wound with bleeding on the left occipital area;
4. Swelling of right forearm upper 3rd portion fracture present;
5. Clear cut stab injury dorsum of the left hand extending up to the ring finger. Tendon and vessels injured;
6. Bone cut stab wound 20 x 10 cms, above the left ankle with bleeding. Absence of left foot movement;
7. Bone cut stab wound 2 x 10 cms with bleeding lateral lower 3rd

of right leg;

8. Abrasions over right knee creptus - Rt. ankle fracture noted;
9. Bone deep lacerated wound Rt. side of occipital area;
10. Stab injury over left chin with bleeding.

When MO1, MO2 series, and MO3 series weapons were shown to PW19, after verifying the same she deposed that the injuries mentioned in Ext.P12 could be caused with weapons of that nature. It is obvious that the injuries sustained by PW2 in the incident are life-threatening in nature and being an injured witness, the evidence of PW2 has to be accorded a special status. Unless a compelling reason exists, his evidence is not liable to be discarded. In **Brahm Swaroop And Another v. State of Uttar Pradesh [AIR 2011 SC 280]** the Hon'ble Supreme Court held as follows:

> *"Where a witness to the occurence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailants in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness"*

Thus, the evidence of an injured witness should be relied upon

unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

29. Therefore, the only conclusion that can be arrived on is that the evidence of PW2 can indeed form a reliable basis for proving the incident alleged in this case. Moreover, it is noteworthy that this is not a case in which the prosecution is relying on the solitary evidence of PW2, the injured witness, rather there is clinching evidence of PW3 and PW4 the other eyewitnesses to the occurrence. As stated earlier, on examination before the court PW3 and PW4 fully supported the case of the prosecution. PW2, PW3, and PW4 consistently testified that the incident occurred at 6:30 a.m. while they were on their way to catch a bus to go for their regular work. All of them deposed that the deceased Pramod as well as Pradeepan (CW3) were also with them. The fact that immediately prior to the incident, PW3, PW4, and Pradeepan accompanied the deceased and the injured in this case is further established by the evidence of PW5, who resides near the place of occurrence and who allegedly met all of them together before the incident. The evidence of PW5 in the above regard remains unchallenged in the cross-examination. Similarly, the evidence of PW2 to PW4 that prior to the incident, they met

PW5 also remains unchallenged in the cross-examination. Therefore, there is nothing to doubt that PW3 and PW4 were also with the injured and deceased in this case at the time when the accused unleashed an attack on the deceased and PW2. As already mentioned, on examination before the court PW3 and PW4 had deposed in a convincing manner even about the minute details of the incident. PW3 deposed that all the accused approached them while they were almost crossing the Ayisha Company road, and at that time, Pramod was walking ahead of all of them and Prakashan was walking behind Pramod. According to PW3, he as well as PW4 and Pradeepan were walking behind Prakashan and were 10 to 20 meters behind Prakashan. According to PW3, initially all the accused encircled Pramod, and accused Nos.1, 2, 3, and 11 shouted "വെട്ടെടാ...കുത്തെടാ...കൊല്ലെടാ...". PW3 deposed that the 4th accused then hacked Pramod with a chopper, accused Nos.6, 7, and 8 hacked Pramod with swords and accused Nos. 5, 9, and 10 hacked Pramod with choppers incessantly. It was thereafter, the accused turned towards Prakashan. When Prakashan attempted to take to his heels, he stumbled down, and then the accused attacked Prakashan with dangerous weapons. According to PW3, the accused Nos. 5, 6, 7, 8, 9, and 10 hacked PW2 with swords and choppers repeatedly. Upon seeing the accused approaching him and

the others, he and PW4 fled the scene through the cashew plantation belonging to Ayisha Company. PW4, the other occurrence witness also testified regarding the incident in similar lines as spoken by PW2 and PW3. Although PW3 and PW4 were subjected to searching cross-examination, nothing was brought out to discredit their evidence. Their evidence is mutually corroborative and free from contradictions and improvements of even minor nature. The medical evidence adduced in this case clearly shows that injuries corresponding to the overt acts assigned to the accused in the testimonies of PW2 to PW4 were noted in the postmortem examination of the deceased as well as the medical examination of PW2, the injured in this case.

30. One of the main contention taken by the learned counsel for the appellants to assail the identification of the accused made by PW2, the injured witness is that if he could have identified the assailants, he would have stated their names to his wife during the phone call made immediately following the incident. While considering the said contention, it is to be noted that, as rightly pointed out by the learned counsel for the appellants, PW2 admitted that immediately after the incident, he contacted his wife over the phone. From his evidence it is further

gatherable that he had not disclosed the names of the assailants to his wife. As revealed from his evidence, what he stated to his wife was that he had been assaulted. Moreover, he asked her to come urgently. His evidence further reveals that immediately thereafter, he also contacted one Shyju (PW7). However, PW2 had not deposed about the matters which he had told Shyju, when he contacted him over the phone, before the court. However, when the said Shyju was examined as PW7, what he deposed is that, on 16.08.2007 at around 7.20 a.m. i.e, immediately after the incident in this case PW2 contacted him over the phone and said that "എന്നെ അടിച്ചു, വെട്ടി" and after saying so, PW2 disconnected the phone. According to PW7 then he called back PW2 and PW2 told that "എനിക്കും പ്രമോദിനും വെട്ടും അടിയും കിട്ടിട്ടുണ്ട്. പെട്ടെന്ന് വാ". Immediately then, PW7 disconnected the phone call and rushed towards the scene of occurrence. Ofcourse, the evidence of PW2 clearly shows that other than informing his wife that he had been attacked and asking her to come fast, he had not disclosed who attacked him. Similarly, a conjoint reading of the evidence of PW2 and PW7 shows that after the incident, PW2 also contacted PW7 and informed him that he was assaulted and asked PW7 to come fast.

31. According to the defence counsel, if PW2 had known the

names of the assailants or had identified them at the scene, he would have disclosed their names to his wife as well as to PW7 when he contacted them. The learned counsel for the appellants urged that PW2's failure to mention the names of the accused to his wife and PW7, whom he contacted over the phone, shortly after the incident suggests that he was unaware of their identity. While considering the above contention, we cannot lose sight of the fact that, evidently PW2 had sustained several serious injuries in the incident. The evidence of PW19, the Doctor, who examined PW2 immediately after the incident, and the wound certificate issued by her reveals that PW2 had sustained 10 serious injuries and almost all of them were cut injuries that required immediate medical attention. Given the traumatic nature of the attack, it is understandable that PW2's primary concern was to seek medical assistance and ensure his survival. Therefore, it is not prudent to expect PW2 to have provided a detailed account of the incident, including the names of the assailants to his wife or PW7 immediately after the attack. His failure to do so does not necessarily imply that he was unable to identify the assailants. Rather, it highlights the severity of his injuries and the urgency of his need for medical attention. When viewed in the given circumstances, it can be seen that he contacted his wife as well as PW7, his friend, with the sole

intention of seeking their assistance. Therefore, the non-mentioning of the names of the assailants by PW2 to his wife and PW7 is not a ground to enter into an automatic inference that he could not identify the assailants, especially when the conversations over the phone lasted for a few seconds. At this juncture, it is noteworthy that none of the accused are strangers to PW2 but rather acquaintances. Moreover, the offence was committed in broad daylight. Therefore, we find no reason to suspect the identification of the accused made by PW2 before the court.

32. PW5 is the first person who allegedly arrived at the crime scene, following the incident in this case. The evidence of PW5 shows that he is residing near the place of occurrence and immediately prior to the incident in this case he saw PW2 to PW4, CW3 (not examined), and the deceased in this case heading to Vannathimoola Bhagam to catch a bus by walking near to his house. He clarified that on seeing them he made a casual talk with them and thereafter they proceeded. After a short while, he heard an outcry, and upon hearing the same, he rushed to the scene of the occurrence followed by his sister and one Dineshan. His evidence further shows that on reaching there, he found Pramod, the deceased in this case lying at the place of occurrence soaked in blood.

Similarly, when he looked around, PW2 was found lying in a pool of blood, a short distance away from the place where Pramod was found lying. According to PW5, one Asokan who also reached by that time at the crime scene had given water to Pramod and Prakashan. His evidence further shows that it took around 10 minutes to take the injured to the hospital as a vehicle could be brought only then. Furthermore, the wound certificate prepared by PW19 and marked in evidence as Ext.P12 shows that it was PW5 who brought PW2, the injured to the hospital. PW5 also admitted the said fact.

33. The evidence of PW19, the Doctor who medically examined the injured after the incident deposed that PW2 was brought to the hospital with alleged history of assault. A perusal of the Ext.P12 wound certificate shows that the alleged history was that "മുറിയാട് വച്ച് പ്രമോദുമായി വരുമ്പോൾ വെട്ടി പരിക്കേൽപിച്ചു". However, during the examination before the court, PW19 did not state who provided her with the patient history. Moreover, to a definite question put during the cross-examination, PW19 answered that she is not duty bound to mention the name of the person who provided/narrated the history and the alleged cause of injury. Anyhow, a close scrutiny of the evidence of PW19 as well as the wound certificate

prepared by her, shows that the patient was drowsy and not responding to the questions. Therefore, commonsense is not comprehending to believe that, it was the patient who stated the alleged history to the Doctor. Therefore the non-mentioning of the names of the assailants by the injured at the time of examination by the Doctor has no significance at all. Now by a series of judicial pronouncements, it is trite that, when an injured is brought before a doctor for urgent medical attention, his primary concern is to save the life of the person brought to him and to inform the matter to the police in medico-legal cases. Moreover, it is well settled that the mere failure of the eyewitness to disclose the names of the assailants to the Doctor would not discredit him as an eyewitness. Doctors are primarily not concerned with the culprit but with medical aid to the deceased. In the above regard, we are fortified by the decision in **Pattipati Venkaiah v. State of Andra Pradesh [1985 (4) SCC 80]**. Therefore, if at all the injured was oriented, conscious, and capable of speaking, the non-mentioning of the name of the assailants to the Doctor is insignificant. Reverting back to the evidence in the case, it can be seen that, PW2 was not in a position to answer the questions put to him. Therefore, it is gatherable that the history was not stated by PW2, but probably by the person who brought him to the hospital, who is none

other than PW5.

34. The learned counsel for the appellants contended that if PW2, the injured had duly identified the assailants he would have naturally told their name to PW5 who reached the place of the occurrence immediately after the incident. Furthermore, the learned counsel urged that after rushing to the spot on seeing PW2 in a pool of blood, the first question that would have been asked by PW5 would be what happened or who did it. According to him, the same is the thing that an ordinary human being will do. The counsel further urged that PW5 spent around ten minutes at the place of occurrence after the incident along with PW2, the injured. If that is so, it is highly suspicious why PW2 did not disclose the names of the assailants to PW5 and why PW5 did not ask PW2 who are the assailants. Evidently, PW5 does not have a case that, PW2 had disclosed the names of the assailants to him either when he reached the place of occurrence or while he took PW2 to the hospital. While considering the question whether the non-disclosure of the names of the accused by PW2 to PW5, the nature of the injuries sustained to PW2 and his health condition, etc. cannot be overlooked. As already stated around 10 cut injuries were inflicted on him. The injuries are certainly grievous and

life-threatening in nature, though he survived luckily. The evidence of PW19, the Doctor, who medically examined PW2 clearly shows that death would have been caused unless proper and timely medical treatment had been given to PW2. Absolutely, there is no evidence to show that PW2 was then in a condition to speak. We are cognizant of the fact that, immediately after the incident, PW2 contacted his wife as well as PW7 to secure their assistance. Moreover, the evidence clearly indicates that he said only a few words to them. It was thereafter, that PW5 came to the scene. There is absolutely no evidence to show that after the arrival of PW5, PW2 had spoken anything to anyone. Moreover, the evidence of PW19, the Doctor, clearly shows that when she examined PW2 after the incident, PW2 was not in a position to respond to the questions put to him and he was drowsy. The evidence further indicates that after giving first aid from Indira Gandhi Co-operative Hospital, Thalassery, PW2 was referred to Medical College Hospital, Kozhikode for better management. The medical evidence adduced in this case further reveals that PW2 regained consciousness only on 17.08.2007. Therefore, it is apparent that though immediately after the incident PW2 was in a position to make a phone call with his wife and PW7, thereafter, his condition worsened with the passage of time. It was after PW2 contacted his wife and PW7, PW5

came to the scene. Therefore, the fact that PW2 had not stated the names of the assailants to PW5 is not a reason to conclude that PW2 was unaware of the identity of the assailants who attacked him and the names of the accused were incorporated later with ulterior motives due to political reasons.

35. The evidence of PW2 is assailed by the learned counsel for the appellants mainly on the ground that there are some improvements in his evidence, to what he stated to the Police. According to the counsel, the evidence of PW2 shows that, when he along with his friends reached the place of occurrence, the accused encircled the deceased Pramod with dangerous weapons and it was after hacking the deceased and inflicting severe injuries on him, the accused turned towards PW2 and hacked him. According to the counsel, quite contradictory to the said evidence, what PW2 stated to the Police is that, the accused encircled all his friends including him and Pramod. We do agree that such a contradiction was proved when the investigating officer who recorded the statement of PW2 was examined. However, this contradiction is not of such significance as to undermine the credibility of an injured witness's testimony. Some minor contradictions are quite natural to occur. Moreover, merely because PW2,

while interrogated by the Police, made a casual expression in colloquial language that the assailants encircled all of them, the same does not mean that they were all detained within a circle formed by them. Moreover, the same is not a reason to disbelieve PW2's testimony before the court that the accused initially encircled Pramod, the deceased in this case alone. Moreover, the evidence of PW2 that Pramod was initially encircled and attacked by the assailants and it was thereafter, that they turned towards him when he attempted to flee from the spot is well corroborated by the evidence of PW3 and PW4. The evidence of PW3 and PW4 in the above regard remains unchallenged in the cross-examination and their entire evidence is free from material contradictions and omissions. Therefore, we are of the view that the minor contradictions in the statement of PW2 will in no way affect the credibility of the evidence of PW2. It is true that some omissions were also proven in the evidence of PW2. But those omissions are insignificant omissions and are not with respect to core matters of the incident. An omission is significant only when the same is with respect to an important aspect of the incident, which should have been stated by a witness at the time when the statement was given to the Police. Moreover, such omissions must amount to contradiction. Therefore, in the case at hand, none of the omissions

highlighted from the side of the defence are with respect to the core aspects of the incident and hence those omissions are only liable to be discarded.

36. Another contention taken by the learned counsel for the accused is that, the evidence of PW2 as well as that of other eyewitnesses that the deceased Pramod and PW2 were attacked not simultaneously, is absolutely false. The counsel further urged that the evidence of PW2 and other occurrence witnesses to the effect that PW2 was not attacked at the same location, but a short distance away from the place where Pramod was attacked is also false. In order to substantiate the above contentions the learned counsel heavily relied on the evidence of the investigating officer as well as the scene mahazar prepared by him in this case. According to counsel, a bare perusal of the scene mahazar, along with the evidence of the investigating officer who prepared it, clearly indicates that bloodstains were found only in one location. Counsel argues that this fact alone demonstrates the falsity of PW2, PW3, and PW4 evidence, which suggests that PW2 sustained injuries at a location slightly distant from where Pramod sustained injuries. We do agree that the evidence of PW5 and PW7, who came to the scene of occurrence after the commission of

the offence, clearly shows that the deceased Pramod as well as PW2, the injured were found lying in a pool of blood when they reached the place of occurrence. If the evidence of PW5 and PW7 that the deceased and PW2 were found lying soaked in blood is believed, certainly blood stains could have been detected from the places where they were found lying. Similarly, if they had sustained injuries at different locations blood stains could have been found in two locations. However, as rightly pointed out by the learned defence counsel a bare perusal of Ext.P9 scene mahazar shows that blood stains were found at two spots in the crime scene but the distance between the two spots is only 30 cm. If that be so, the said minimal distance necessarily leads to an inference that the blood stains are found only in one spot. When the investigating officer was examined as PW24 and when confronted with the Ext.P14 site plan prepared by a village officer (PW20), he deposed that in the Ext.P14 site plan also, blood stains were noted only in one spot. However, PW24 added that it was on the basis of the scene mahazar, that the site plan was prepared. Furthermore, PW24 admitted that in Ext.P9 Mahazar, though it is stated that blood stains were found in two places, the distance between the said places is only 30 cm.

37. However, we are of the considered view that the evidence of the investigating officer as well as the scene mahazar prepared by him alone is not sufficient to enter into a conclusion that PW2 and the deceased had sustained injuries at the same location. The ocular evidence adduced in this case clearly shows that when the injured and the deceased reached the place of occurrence, the accused first attacked the deceased; and, upon PW2 seeing this and attempting to escape, he stumbled, whereupon the accused attacked him. The evidence of the eyewitnesses in the above regard is well corroborated by the evidence of PW5, the witness who came to the scene immediately after the incident. The evidence of PW5 shows that when he reached the crime scene, Pramod the deceased was found lying there soaked in blood. Looking around, PW5 spotted PW2 lying a short distance away from the place where Pramod was found lying. Likewise, the evidence of PW7 also shows that when he reached the place of occurrence, PW2 was lying there soaked in blood, at approximately 7 to 8 meters away from there Pramod the deceased was found lying in a pool of blood. Thus, evidence of PW5 and PW7 clearly indicates that there is a short distance between the places where Pramod, the deceased, and PW2 sustained injuries. The evidence of PW5 and PW7 in the above regard is not even challenged in the cross-examination. Therefore, the fact that

blood stains were found by the investigating officer only at one location is not sufficient to discredit the ocular evidence adduced in this case. Lapses on the part of the investigating officer in preparing the scene mahazar do not, by themselves, justify disbelieving the evidence of eyewitnesses to the occurrence.

38. The defence counsel has raised a further contention that even in Ext.P17, the initial report submitted before the jurisdictional magistrate subsequent to the First Information Report, the names of all the assailants were not mentioned. The learned counsel further submitted that in Ext. P17 report, though it is mentioned that accused Nos.1 to 3 entered into a criminal conspiracy inside the house of the 3rd accused to murder Pramod and Prakashan it is not mentioned that they also took part in the actual perpetration of the offence. According to him, the omission of names of the accused in the Ext.P7 report itself throws light on the fact that no one had any idea about the identity of the actual assailants. While considering the said contention, it is noteworthy that the FIR in this case is one registered suo motu by the SHO, Kannavam Police Station. The said FIR was not registered based on the statement of any occurrence witnesses. Similarly, it is true that the Ext.P17 report was submitted on the next day

of the incident, and in the said report, the names of all the accused were not mentioned, although it did mention the names of accused Nos.1 to 3 as conspirators. However, it is pertinent to note that there is no evidence to suggest that any of the occurrence witnesses were examined by the time the Ext.P17 report was submitted. It is true that the statement of PW2 was recorded on 17.08.2007 at 4 p.m. and the statement of the other occurrence witnesses were recorded on 21.08.2007. While the report and the examination of the occurrence witness occurred on the same day there is no conclusive evidence to determine which one happened first. However, a reading of Ext.P17, suggests that it was prepared by the investigating officer prior to the recording of the statement of PW2 and the occurrence witnesses. Had the witnesses been examined earlier, their names would likely have been included in the Ext.P17 report, particularly considering that the report only reached the court on 25.08.2007. Moreover, a perusal of Ext.P18, report shows that, thereafter on 20.08.2007, the investigating officer filed a report before the court incorporating the names and addresses of accused Nos.1 to 7. Therefore, we are of the view that the non-mentioning of the names of all the assailants in Ext. P17 report is immaterial particularly when there is no evidence to show that the said report was prepared after recording the

statement of occurrence witnesses by the investigating officer.

39. From the nature of contentions raised from the side of the appellants, it is discernible that the attempt of the appellants is to establish that the names of the accused happened to be not mentioned in the FIR as well as in Ext. P17 report solely because of the reason that neither the Police nor the occurrence witnesses had any knowledge of the names or identities of the assailants. As already stated, the aforementioned contention is unsustainable, as it has been established that the FIR and Exhibit P17 report were not generated based on the statements of the occurrence witnesses. None of the witnesses had been examined by the time the said reports were prepared. Anyhow, the action of the Sub Inspector of Police who registered the FIR in this case and examined as PW1 raises serious suspicion regarding his bonafides. His evidence shows that after getting the telephonic information, he initially entered the said information in the general diary maintained in the police station. Thereafter, he proceeded to the crime scene along with the police party. Subsequently, he made enquiries but he could not find anyone who witnessed the incident. Thereafter he rushed to the hospital where the deceased as well as the injured were taken after the incident. It was only

thereafter he returned to the police station and registered the FIR suo motu. We are acknowledging the law that upon receiving information as to the commission of a cognizable offence, it is incumbent upon the police officer to register an FIR forthwith. However, in the case at hand, the precipitate action of the police in registering a *suo motu* FIR, despite the availability of an opportunity to record eyewitnesses' testimony prior to the registration, raises concerns regarding the propriety of the process particularly when it is a murder case motivated by political rivalry where the accused are allegedly loyalists of the C.P.I.(M), the ruling party. Therefore, no blame could be attributed if it is found that PW1 had an interest in ensuring the assailants' names were not included in the FIR. Similarly, if the investigating officer was quick in his action in recording the statement of the occurrence witnesses and submitting the reports adding the names of the accused before the jurisdictional Magistrate in time, the contentions sticking on the identity of the accused and doubting their participation in the commission of the offence raised from the side of the defence would have been avoided. Anyhow, laches in the investigation cannot be considered a ground to discard the convincing ocular evidence tendered in this case. If laches in the investigation are given undue importance, the same will create a situation where police rule the roster in

the criminal justice delivery system.

The Hon'ble Supreme Court in **State of Karnataka v. Yarappa Reddi [1993 KLT 496 (SC)]** held as follows:-

> *"Conclusion of the court in a case cannot be allowed to depend solely on the probity of investigation. It can be a guiding principle that, as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation". It is well settled that, even if the investigation is illegal or even suspicious, the rest of evidence must be scrutinised independently of the impact of it. Otherwise criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made the casually for the wrongs committed by the investigating officers in a case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit in investigating officer's suspicious role in the case."*

Therefore, we are of the view that the faults and lapses in the investigation that occurred in this case need not influence the mind of this Court while acting on the overwhelming evidence adduced in this case.

40. Another important material relied on by the prosecution to give corroboration to the ocular evidence adduced in this case is the recovery of weapons allegedly effected on the strength of the disclosure

statements made by the accused. When the investigating officer who effected the recovery of the said weapon was examined as PW24, he deposed that after obtaining the police custody of all the accused when he interrogated them, accused Nos.4, 5, 6, 7, 8, and 10 had given separate confession statements and on the strength of the disclosure statement made by those accused and as led by them he reached a place called Morolicham and recovered weapons used in the commission of the offence which was found in a concealed state from different places in and around the place of occurrence in this case. The mahazars prepared contemporaneously with the said recovery were marked in evidence as Ext.P2, Ext.P3, Ext.P4 Ext.P5, Ext.P7, and Ext.P8. The relevant portions of the confession statements of the accused which led to the recovery and proved through PW24 were separately marked as Ext.P2[a], Ext.P3[a], Ext.P4[a], Ext.P5[a], Ext.P7[a], and Ext.P8[a]. The weapons allegedly recovered on the strength of the disclosure statements made by the accused were also identified by PW24 before the court.

41. The learned counsel for the appellant strenuously assailed the above-said recovery by contending that the same is a fabricated one. According to the learned counsel, the alleged recovery was artificial and

not at all believable. Moreover, it is contended that the place of concealment was not mentioned in any of the so-called disclosure statements, and that itself indicates that the recovery was not effected on the strength of the information gathered from the accused, but rather a fabricated one. While considering the contention of the learned counsel for the appellants in the above regard, first of all, it is to be noted that there is no law that the place of concealment must be specifically mentioned by the accused in the disclosure statement made by him. In view of Section 27 of the Indian Evidence Act, it is not strictly necessary for an accused to mention the exact place of concealment for the recovery to be admissible in evidence. On the other hand, what is required is that the discovery of a fact must exclusively be on the strength of the disclosure statement given by the accused. Only when a fact is discovered exclusively on the strength of the disclosure statement given by the accused, the said statement can be proved against the accused. Reverting back to the case at hand, it can be seen that, as rightly pointed out by the learned counsel for the appellants, the exact place of concealment was not mentioned by any of the accused. However, the evidence of PW24 reveals that he effected recovery from the places to which he was led by the accused, and it was the accused who took and handed over the weapons

to him. In view of Section 27 of the Indian Evidence Act, the statement given by an accused gets relevancy when the said statement gets confirmation by the subsequent recovery. Therefore, the non-disclosure regarding the exact place of concealment will definitely pale into insignificance particularly when the recovery was effected from the places to where the investigating officer was led by the accused and taken and handed over to the investigating officer by the accused.

42. Another contention pressed into service by the learned counsel for the appellants to assail the recovery is that the same is an artificial one. According to the counsel, all the recoveries were effected from places near to the place of occurrence and the same is not at all believable. Moreover, the learned counsel urged that prior to the recovery, the Sub Inspector of Police visited the crime scene and deputed a Policeman for guard duty. Thereafter, PW24, the investigating officer also visited the crime scene and prepared a scene mahazar. MO1 weapon which was found at the crime scene was allegedly recovered by him after describing it in Ext.P9 scene mahazar. Thereafter, on 01.09.2007, the investigating officer again visited the scene of occurrence and allegedly recovered a weapon on the strength of the disclosure statement given by

the 4th accused. Hence highlighting the repeated presence of the Police Officer at the scene of the crime, prior to the recovery, the learned counsel submitted that there is every possibility of fabricating things, and recoveries made thereafter from near the place of occurrence is highly unbelievable. We do agree that prior to the effecting of the recoveries, the presence of Police at the scene of occurrence was established. Similarly, it is evident that the recoveries were effected from places near the scene of the crime. However, it cannot be undermined that, the weapons were recovered from a concealed state. Therefore, it could not be said that the recovery is vitiated or is the result of some manipulations and fabrications. Moreover, the FSL report which is marked in evidence as Ext.P24 shows that the chopper recovered from the crime scene (MO1) which is shown as item No.4 in the report, MO2 series swords which is shown as item Nos.10, and 11 and MO3 series choppers shown as item Nos.9, 12, and 13 contained human blood. Therefore, we have no hesitation in holding that the recovery evidence, as well as the scientific evidence adduced in this case, will lend sufficient corroboration to the ocular evidence adduced in this case. Even otherwise, as stated earlier, the substantive evidence of the eyewitnesses adduced in this case is convincing and reliable. Therefore, the same can form the basis for a

conviction in this case, even without corroboration from other sources.

43. The upshot of the above discussion is that the prosecution has fully succeeded in proving the charge levelled against the accused by the direct evidence of PW2 to PW4 who are the eyewitnesses to the occurrence. Notably, PW2, being an injured witness, his evidence has to be accorded a special weightage. He had given cogent and acceptable evidence and had accounted for the death of the deceased as well as the injuries found on him. The evidence of PW2 is well corroborated on material aspects by the evidence of PW3 and PW4, the other eyewitnesses. The medical as well as scientific evidence adduced in this case also will lend support to the prosecution to a large extent.

44. Therefore, we have no hesitation in holding that the prosecution has succeeded in proving the commission of the offences punishable under Sections 143, 341, 307, 302 r/w 149 of the IPC against accused Nos. 2 to 11, Section 147 r/w 149 of the IPC against accused Nos. 2, 3 & 11, and Section 148 r/w 149 of IPC against accused Nos. 4 to 10. The sentences imposed in this case for the said offences are also in consonance with the nature and gravity of the offence committed.

Resultantly, we confirm the finding, conviction, and sentence passed by the learned Sessions Judge in S.C No. 421/2009 on the file of the Sessions Court, Thalassery and hence, Criminal Appeal Nos. 685/2018, 722/2018, 740/2018, 775/2018, and 790/2018 stand dismissed.

Sd/-

P.B. SURESH KUMAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

ncd/ANS

Crl. A. No.685, 722, 740, 775 & 790 of 2018

APPENDIX OF CRL.A 722/2018

PETITIONER ANNEXURES

Annexure 1	**A TRUE COPY OF THE ACKNOWLEDGEMENT CARD DATED 30.07.2024 ISSUED BY THE OFFICE OF COMMISSIONER OF ENTRANCE EXAMINATIONS**
Annexure 2	**A TRUE COPY OF THE ORDER DATED 03.11.2023 IN CRL.M APPLN NO.3/2023 IN CRL.A 740/2018 OF THIS HONOURABLE COURT**
Annexure A1	**A TRUE COPY OF ALLOTMENT MEMO OF THE APPLICANT DATED 11/10/2024**

APPENDIX OF CRL.A 740/2018

PETITIONER ANNEXURES

Annexure 3	**TRUE COPY OF THE STATEMENT OF MARKS OF THE PETITIONER IN MASTER OF ARTS (SOCIOLOGY) DATED 06.05.2022 ISSUED BY THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY**
Annexure 4	**TRUE COPY OF THE PROVISIONAL CERTIFICATE CERTIFYING THAT THE PETITIONER HAS SUCCESSFULLY COMPLETED MASTER OF ARTS (SOCIOLOGY), DATED 06.05.2022 ISSUED BY THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY**
Annexure 5	**TRUE COPY OF THE ORDER NUMBERED G2-17019/2023/PRHQ DATED 06.06.2023**
Annexure 6	**TRUE COPY OF THE NOTIFICATION DATED 13.07.2023 ISSUED BY THE COMMISSIONER FOR ENTRANCE EXAMINATIONS, THIRUVANANTHAPURAM**
Annexure A7	**TRUE COPY OF THE RELEVANT PAGE OF THE ENTRANCE EXAMINATION RESULT PERTAINING TO THE PETITIONER**
Annexure A8	**TRUE COPY OF THE FIRST PHASE ALLOTMENT 27.09.2023 ISSUED TO THE PETITIONER BY THE OFFICE OF THE COMMISSIONER OF ENTRANCE EXAMINATIONS, KERALA**
Annexure A9	**TRUE COPY OF THE ORDER DATED 12.09.2023 IN SLP (CRI) NO. 11688/2019 PASSED BY THE HON'BLE SUPREME COURT OF INDIA**

APPENDIX OF CRL.A 790/2018

PETITIONER ANNEXURES

Annexure-G	**THE TRUE COPY OF THE PUBLIC NOTICE PUBLISHED BY NATIONAL TESTING AGENCY DATED 20-9-2022**
Annexure-A	**TRUE COPY OF THE APPLICATION FORM SUBMITTED BY THE PETITIONER FOR PH.D ENTRANCE EXAMINATION SEPTEMBER 2022 SESSIONS (APPLICATION NO.E22091201002) DATED 14/10/2022**
Annexure-B	**TRUE COPY OF THE NOTIFICATION FOR PHD. ENTRANCE EXAMINATION 2022 DTD.17-9-2022 ISSUED BY UNIVERSITY OF KERALA**
Annexure -A	**TRUE COPY OF THE PASS MEMO PUBLISHED BY UNIVERSITY OF KERALA DARTED 4-1-2023**
Annexure-C	**TRUE COPY OF THE COVERING LETTER SENT BY THE SUPERINTENDENT, CENTRAL PRISON AND CORRECTIONAL HOME, KANNUR**
Annexure A1	**TRUE COPY OF THE RELEVANT PAGE OF THE DISCHARGE SUMMARY DATED 19-5-2023 IS ISSUED IN THE NAME OF THE MOTHER OF THE PETITIONER**
Annexure A2	**TRUE COPY OF THE TEE REPORT ISSUED IN THE NAME OF THE WIFE OF THE PETITIONER FROM GOVERNMENT MEDICAL COLLEGE HOSPITAL, KANNUR**
Annexure A3	**TRUE COPY OF THE OUT-PATIENT RECORD ISSUED IN THE NAME OF THE WIFE OF THE PETITIONER FROM GOVERNMENT MEDICAL COLLEGE HOSPITAL, KANNUR**
Annexure A4	**TRUE COPY OF THE ORDER DATED 15-5-2023 IN SLP(CRI).NO.1620-1621/2023 PASSED BY THE HON'BLE SUPREME COURT INDIA**
Annexure- A1	**TRUE COPY OF THE ORDER DATED 15-05-2023 IN SLP (CRL)NO.1620-1621/2023 PASSED BY THE HON'BLE SUPREME COURT OF INDIA**

Annexure -C	**COPY OF THE DISCHARGE CARD DATED 7-9-2023 ISSUED FROM GOVT.MEDICAL COLLEGE HOSPITAL, KANNUR.**
Annexure-D	**COPY OF THE CERTIFICATE DATED 13-9-2023 ISSUED FROM INDIANA INSTITUTE OF CARDIAC SCIENCES, MANGALURU.**