

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 5TH DAY OF OCTOBER 2023 / 13TH ASWINA, 1945

CRL.APPEAL NO. 935 OF 2019

AGAINST THE JUDGMENT DATED 05.07.2019 IN S.C.NO.543 OF
2005 ON THE FILES OF THE ADDITIONAL SESSIONS COURT-III,

THALASSERY

APPELLANTS/ACCUSED NOS.1, 7 AND 9:

1 A.C.PAVITHRAN

AGED 50 YEARS

2 ANIL KUMAR,

3 P.V. ASHOKAN,

BY ADVS.

P.VIJAYA BHANU (SR.)

SRI.P.M.RAFIQ

SRI.M.REVIKRISHNAN

SRI.VIPIN NARAYAN

SRUTHY N. BHAT

SRI.V.C.SARATH

SRI.AJEESH K.SASI

SMT.POOJA PANKAJ

SRI.THOMAS J.ANAKKALLUNKAL

Crl.Appeal Nos.935, 1061, 1131 of 2019

RESPONDENT/STATE :

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM - 682 031.

SRI.ALEX M.THOMBRA, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL
HEARING ON 26.09.2023, ALONG WITH CRL.A.1131/2019 AND
CONNECTED CASES, THE COURT ON 05.10.2023 DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 5TH DAY OF OCTOBER 2023 / 13TH ASWINA, 1945

CRL.APPEAL NO. 1061 OF 2019

AGAINST THE JUDGMENT DATED 05.07.2019 IN S.C.NO.543 OF
2005 ON THE FILES OF THE ADDITIONAL SESSIONS COURT-III,
THALASSERY

APPELLANTS/ACCUSED NOS.2, 3 & 4:

1 PHALGUNAN,

[REDACTED]

2 K.P.RAGHU,

[REDACTED]

3 SANAL PRASAD,

[REDACTED]

BY ADVS.

P.VIJAYA BHANU (SR.)

P.S.SREEDHARAN PILLAI

SRI.S.RAJEEV

SRI.T.K.SANDEEP

SRI.K.K.DHEERENDRAKRISHNAN

SRI.V.VINAY

SRI.ARJUN SREEDHAR

SRI.ARUN KRISHNA DHAN

SRI.D.FEROZE

SRI.K.ANAND

SRI.ALEX ABRAHAM

Crl.Appeal Nos.935, 1061, 1131 of 2019

RESPONDENT/STATE :

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM-31.

BY SRI.ALEX M.THOMBRA, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL
HEARING ON 26.09.2023, ALONG WITH CRL.A.1131/2019 AND
CONNECTED CASES, THE COURT ON 05.10.2023 DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 5TH DAY OF OCTOBER 2023 / 13TH ASWINA, 1945

CRL.APPEAL NO. 1131 OF 2019

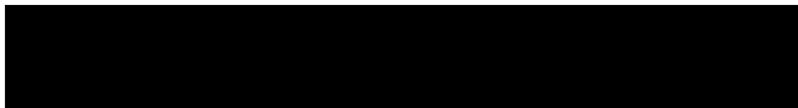
AGAINST THE JUDGMENT DATED 05.07.2019 IN S.C.NO.543 OF
2005 ON THE FILES OF THE ADDITIONAL SESSIONS COURT-III,
THALASSERY

APPELLANTS/ACCUSED 5, 6 & 8:

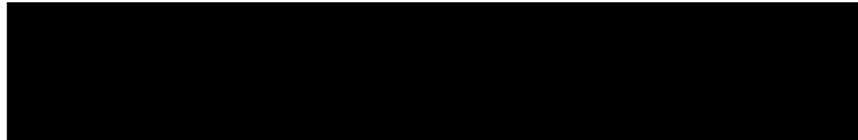
1 P.K.DINESHAN



2 SASI @ KOTTAKKA SASI,



3 THARASSIYIL SUNI,



BY ADVS.

S.RAJEEV

SRI.K.K.DHEERENDRAKRISHNAN

SRI.V.VINAY

SRI.D.FEROZE

Crl.Appeal Nos.935, 1061, 1131 of 2019

RESPONDENT/STATE :

STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031 (CRIME NO.236/2004 OF KANNUR
TOWN POLICE STATION, KANNUR DISTRICT)

SRI.ALEX M.THOMBRA, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL
HEARING ON 26.09.2023, ALONG WITH CRL.A.935/2019,
1061/2019, THE COURT ON 05.10.2023 DELIVERED THE
FOLLOWING:

P.B. SURESH KUMAR & P.G. AJITHKUMAR, JJ.

Criminal Appeal Nos.935, 1061, 1131 of 2019

Dated this the 5th day of October, 2023

JUDGMENT

P.G.Ajithkumar, J.

A murder occurred inside Central Prison, Kannur on 06.04.2004. A prison is expected to be a safe place, de hors, its inmates are persons involved in criminal activities. The State is the custodian and the society could repose its faith that the State is able to ensure safe detention of the prisoners and thereby ensure that safety of the polity is not at stake. If not, anarchy will be the result. The State and the officials have a solemn duty to ensure that prisons are administered with its avowed objective of reforming and reintegrating into society the inmates. No arbitrary or ill motivated act can have a place in the matters concerning prisons and the obligation of the State to curb any such undesirable act is absolute. In that backdrop we proceed to consider these appeals.

2. The appeals arose on the judgment of conviction and order of sentence of accused Nos.1 to 9 in S.C.No.543 of

2005 on the files of the additional Sessions Judge-III, Thalassery. After trial of 30 accused (accused No.12 has absconded) on a charge under Sections 143, 147, 148, 324, 326 and 302 read with Section 149 of the Indian Penal Code, 1860 (IPC) the trial court convicted Nos.1 to 9 for various offences. Accused Nos.1 to 9 were convicted and sentenced for offences punishable under Section 143, 324 and 302 read with Section 149 of the IPC. Accused Nos.1, 2, 5, 7 and 9 were convicted and sentenced under Section 148 of the IPC. Accused Nos.3, 4, 6 and 8 were convicted and sentenced under Section 147 read with Section 149 of the IPC. Accused Nos.1, 7 and 9 preferred Crl.Appeal No.935 of 2019, accused Nos.2, 3 and 4 filed Crl.Appeal No.1061 of 2019 and accused Nos.5, 6 and 8 filed Crl.Appeal No.1131 of 2019, under Section 374(2) of the Code of Criminal Procedure, 1973 (Code) assailing the conviction and sentence imposed on the respective appellants.

3. During pendency of these appeals, accused Nos.1 and 7, who are appellant Nos.1 and 2 in Crl.Appeal No.935 of 2019 expired and no one has come forward to prosecute their appeal, despite fine also forms part of the sentence.

4. Heard the learned Senior Counsel Sri.P.Vijayabhanu appearing for accused Nos.2 and 9, Sri.S.Rajeev appearing for accused Nos.5 to 8 and Sri. Sri.Arjun Sreedhar, the learned counsel for accused Nos.3 and 4 and the learned Senior Public Prosecutor.

5. The prosecution case unraveled from the records is the following:

Accused are activists of the Bharatiya Janata Party. They were imprisoned at the Central Jail, Kannur as convicts and remand prisoners. The deceased, Sri.Raveendran, and the injured, PW2 and PW6 were also convicts undergoing imprisonment in that jail. They were workers of Communist Party of India (Marxist). On 06.04.2004 at about 3.00 p.m. the accused, out of their political enmity formed themselves into an unlawful assembly and armed with deadly weapons like iron bar, bat, iron rod, etc., in prosecution of their common object, pelted stones and attacked using weapons Sri.Raveendran, the deceased, PW2 and PW6. The 1st accused hit Sri.Raveendran at his head using an iron bar, the 5th accused beat at his leg using a wooden bat and the

7th accused beat at his head using a wooden piece inflicting injuries to which he succumbed. PW2, Raju was beaten up by the 9th accused using an iron rod causing him hurt. PW6, Ragesh.P.S sustained injuries in the stone pelting.

6. On the basis of Ext.P1, a report of PW1 that was duly forwarded, a crime was registered from Kannur Town Police Station. The investigation was taken over by PW25, who was the Circle Inspector of Police, Kannur Town Police Station. He conducted major part of the investigation. PW26 was the successor Circle Inspector. He completed the investigation and submitted the final report before the Judicial First Class Magistrate Court-I, Kannur. The case was committed to the Sessions Court, Thalassery, which in turn, was made over for trial to the Additional Sessions Judge-III, Thalassery. The charge framed by the court was denied by accused Nos.1 to 11 and 13 to 31. Accused Nos.12 was then absconding. At the trial PW1 to PW26 were examined and Exts.P1 and P30 were marked on the side of the prosecution. Mos.1 to 12 were identified. Incriminating circumstances appeared in the

evidence were put to the accused. They duly had denied such circumstances put to them.

7. The 1st accused filed a written statement wherein he stated that PW1 gave a distorted version in court totally deviating from his stand before the police. It is further stated that PW1 gave a second report as instructed by PW25, the investigating officer in suppression of his first report, which contained true facts about the genesis of the incident. He further asserted that the incident had occurred in the canteen and to suppress that fact CWs 6 to 14 were given up by the prosecution. With that objective wound certificates relating to accused Nos.1 to 4 who also sustained injuries in the same incident were tried to be suppressed. Accused Nos.7 and 9 also filed written statements denying that they initiated the attack. Most of the other accused adopted what the 1st accused stated in his written statement.

8. The learned Sessions Judge did not find the case as one trite to be dealt with under Section 232 of the Code. Therefore, the accused were asked to enter their defence. DWs.1 and 2 were examined on their side and Exts.D1 to D18

were marked. The learned Sessions Judge, after considering the evidence in detail, came to the conclusion that the prosecution failed to prove its case in whole. It was held that the prosecution could successfully prove that accused Nos.1 to 9 in prosecution of the common object of the assembly, to which they were parties, committed murder of Sri Raveendran and the associated offences. They were accordingly convicted and sentenced.

9. The learned Senior Counsel as well as Sri.S.Rajeev and Sri.Arjun Sreedhar raised various contentions to assail the findings of the learned Sessions Judge. We are not jotting down each of such contentions now. The contentions will be dealt with at appropriate places. In the light of the submissions of the learned counsel appearing for the appellants and also the learned Senior Public Prosecutor following points require consideration,-

- i) Was the death of Sri.Raveendran a homicide?
- ii) Where did the incident in question occur?
- iii) Did accused Nos.1 to 9 in prosecution of the common object of the assembly to which they were members, commit murder of Sri.Raveendran?
- iv) Had any of the said accused committed any other

offence, either in prosecution of the common object of the assembly or otherwise?

Point No.(i)

10. The date of occurrence is 06.04.2004. It was at about 3.00 p.m. The place of occurrence, according to the prosecution, is the open area on the northern side of 7th block in the Central Prison, Kannur. The allegation is that while deceased Sri.Raveendran along with PW2 Raju was walking towards the watchtower where they were deputed for duty on that day, after having tea from the canteen, a group of persons, the members of which are said to be the accused, pelted them stones. Following that, accused Nos.1, 2, 5, 7 and 9 using various weapons attacked Sri.Raveendran, PW2 and PW6. They sustained injuries. The injured were immediately taken to the District Hospital, Kannur from where Sri.Raveendran was referred to the Medical College Hospital, Pariyaram. At the District Hospital, Kannur, Sri.Raveendran was attended by Dr.Tojo Mathai. After examination Dr.Tojo Mathai gave initial treatment to Sri.Raveendran, PW2 and PW6. Ext.P10 is the wound certificate relating to Sri.Raveendran. Dr.Tojo Mathai is no more. Therefore, his

colleague, PW17, Dr. Maya was examined to prove the wound certificates.

11. PW17 identified the handwriting and signature of Dr.Tojo Mathai in Ext.P10 and also in other wound certificates issued by him. She also deposed as to the alleged cause of injury stated in Ext.P10 and the injuries noted by Dr.Tojo Mathai on the body of Sri.Raveendran. The cause of injuries noted in Ext.P10 is that while going to the canteen to have tea at 3.05 p.m. from the 7th block in the Central Prison, 10-35 persons, including Phalgunan, Anil and Pavithran beat him using an iron rod. A lacerated wound of 14 x 3 x 3 cms piercing skull bone on the right side of his scalp was noted. At the time of examination, Sri.Raveendran was unconscious. He was immediately referred to a higher hospital.

12. Sri.Raveendran was taken from the District Hospital, Kannur to the Medical College Hospital, Pariyaram. At 6.45 p.m. on 06.04.2004 itself, he was pronounced dead. It is seen that PW12 Revenue Divisional Officer has held an inquest on the body of Sri.Raveendran and prepared Ext.P5 report. An autopsy was held on the body of Sri.Raveendran by PW23, Dr.Nirish Kumar P.,

who was a Lecturer in the Department of Forensic Medicine, Medical College, Pariyaram. Following are the ante mortem injuries noted on the body of Sri.Raveendran,-

1. Sutured lacerated wound 16 cm long, horizontal, over the right side of head; its middle part being 5 cm above the ear. Underneath the parietal and temporal bones showed a depressed comminuted fracture; some of the fragments were missing. A fissure fracture was seen extending from the above fracture in a horizontal plane in both directions upto the left side of head. Another, fissured fracture was seen extending vertically downwards from the first fracture and then horizontally to involve the floor of middle cranial fossae and pituitary fossa. The whole scalp tissues except that over the top of head towards the front on the right side were found contused. The dura was found torn at the right side underneath the depressed comminuted fracture and the brain matter was seen extruding out through it. Brain showed bilateral subdural bleeding; bilateral subarachnoid bleeding (minimal on the left side); petechial bleeding into the whitematter of the right hemisphere and bleeding into the lateral ventricles. Features of raised intracranial tension were present.
2. Split laceration 4 x 1.5 cm (irregular) on the top of right side of head towards the back and just outer to the midline. Skull underneath was intact.
3. Split laceration 8 x 0.4 cm, oblique, on the front of head at the left side; the front inner end being 5 cm above the inner end of left eye brow. skull underneath was intact.

4. Abrasion 3.5 x 1.5 cm over the back aspect of left ear at its upper part.
5. Multiple small abrasions over an area 3 x 2.5 cm just above the root of nose.
6. Abrasion 2 x 2 cm just outer to the left eye.
7. Lacerated wound 2.5 x 1 cm on the front of nose at its middle involving the bridge of nose; underneath bones and cartilages were normal.
8. Split laceration 1.5 x 1 cm over the right jaw margin 2.5 cm from the midline.
9. Four small contusions close together over an area 9 x 6 cm involving the front of right elbow and adjoining parts of arm.
10. Multiple small contused abrasions over an area 5 x 3 cm over the left side of chest just below the middle of collar bone.
11. Graze 6 x 5.5 cm involving the front of right knee and upper part of leg.
12. Multiple small contused abrasions over an area 4 x 4 cm on the inner aspect of right leg at its middle.
13. Abrasion 2 x 1.5 cm involving the front and inner aspects of left knee.
14. Superficial laceration 1.8 x 1 cm on the front aspect of left leg, 9 cm above the ankle with multiple small abrasions over an area 8 x 2 cm just outer to it.
15. Multiple small abrasions over an area 2.5 x 1.5 cm on the back of right side of trunk 10 cm above the prominence of hip bone and 2.5 cm outer to the midline.
16. Abrasion 5.5 x 0.4 cm, horizontal, at the back of trunk on the left side, 6 cm outer to the midline and 12.5 cm above the prominence of hip bone.

17. Fracture C4 vertebra with infiltration blood into the surrounding tissues; no external injury was seen over the neck.

In his opinion, Sri.Raveendran died of blunt violence sustained to the skull.

13. PW1 was the Head Warden in the Kannur Central Prison He sent Sri.Raveendran and other injured in the jail vehicle for treatment immediately. Sri.Raveendran sustained a head injury, which was bleeding. The said injury was noted by Dr.Toji Mathai in Ext.P10 and also by PW23 in Ext.P17 postmortem certificate. The head injury sustained by him resulted his death. The aforesaid evidence tendered by the respective witnesses regarding the injuries and cause of death has not been challenged. It is thus proved that Sri.Raveendran died as a result of the injury inflicted at his head in the incident that occurred at the premises of Kannur Central Jail on 06.04.2004 at or around 3.00 p.m. Hence, we find that the death of Sri.Raveendran is a homicide.

Point No.(ii)

14. The case of the prosecution is that the incident occurred at the open ground on the northern side of the 7th

block in the Central Jail, Kannur. The watchtower having three stories is situated in the middle and different blocks where the prisoners are lodged. The 7th block is almost on the southern side of the watchtower. There is a separate canteen building. It is on the south-eastern side of the 7th block. The learned counsel appearing for the appellants raised a contention that the prosecution did not adduce cogent evidence in order to show the exact position of various buildings inside the jail and therefore there arose a confusion with respect to the place of occurrence. Adding to that, it is contended that the sketch prepared by PW15, the Special Village Officer, does not have necessary details and is not useful. In this regard, Sri.S.Rajeev the learned counsel has brought to our attention the observation made by this Court in **Koshy @ Baby v. State [1991 (1) KLJ 453]**. It was observed,-

“A sketch in sessions case must help the court to understand and appreciate the evidence. Otherwise, there is no need to mark it as an exhibit. We feel that it is the duty of the Public Prosecutor to verify initially whether the sketch prepared by the Village Officer or Village Assistant has any practical utility in the case. If the sketch already prepared is

deficient in such particulars, there is nothing wrong in arranging to have another sketch. Even if the Public Prosecutor fails to supply one like that, it is desirable that the Sessions Judge calls upon the Village Officer or the Village Assistant concerned to prepare another sketch indicating necessary particulars. This can be done either before or after framing charge or at any other convenient stage so that a sketch would be made available at least during final stage of trial.”

15. Rule 75 of the Criminal Rules of Practice, Kerala, 1982 postulates preparation and submission of a sketch of the scene of offence in all cases triable by a Court of Session. Ext.P6, sketch does not contain all the necessary details so as to enable the court to have an idea regarding the place of occurrence. Location of the watchtower, 7th block, 8th block, canteen, distance between those structures, directions, etc. should have been the minimum requisites in the sketch so as to understand the place of occurrence and appreciate the other evidence. But it does not contain any such details. From the recitals in Ext.P2 scene mahazar that was prepared by PW25 investigation officer and the narration of witnesses about the structures available inside the Jail, it is possible to have an understanding about the place of occurrence and the

structures available in that area. Hence, the shabby nature of Ext.P6 does not dissuade this Court from entering a definite finding regarding the place of occurrence. We, however, express our anguish that even 30 years after this Court reminded the authorities concerned about the importance of preparing a proper sketch of the place of offence, there is no change in their attitude. If the investigating officer interact and apprise the official who prepares the sketch about the nature of the offence involved and the necessary particulars shown in the sketch, the issue can easily be addressed. We strongly deprecate the inaction of not only the revenue authorities but also the investigating agencies in this regard.

16. PW2 is one of the injured. It is his version that while he along with the deceased was going to the watchtower after having tea from the canteen, a group of persons pelted stones at them. Although they tried to escape and attempted to go inside the 7th block, stones fell on them. The assailants quickly approached with weapons and assaulted them. The deceased was allegedly beaten up by accused Nos.1, 5 and 7. PW2 was allegedly beaten by accused No.9. PW6 Ragesh stated that he

sustained injury in the brick-batting. The definite case of the prosecution is that those incidents took place at the open space on the northern side of the 7th block. The accused, however, dispute that aspect. They would contend that the evidence let in by the prosecution does not prove as to where exactly the incident had taken place. It is submitted by the learned defence counsel that going by the initial version of the prosecution the place of incident could only be inside the canteen building and that the investigating officer with an oblique motive changed the place of occurrence as the open-yard on the northern side of the 7th block building.

17. PW25 prepared Ext.P2 scene mahazar at 3.00 p.m. on 07.04.2004, the very next day. He had recovered MOs.1 and 3 to 12 from the scene of occurrence. He deposed that those articles were seen scattered at the place of occurrence. Those articles were identified by PW1 as the objects recovered from the scene of crime. The weapons allegedly used by accused Nos.1, 2, 5, 7 and 9 for assaulting deceased Raveendran, PW2 and PW6 were identified by the other witnesses as well. Whether the identification of the articles

connecting to the respective accused is reliable or not is a matter for consideration later. The fact that a pool of blood was there at the place of occurrence is noted by PW25 in Ext.P2 scene mahazar. There is an allegation that PW25 cannot be trusted as he distorted the case of the prosecution. Insofar as the location of the place of occurrence and preparation of the scene mahazar are concerned the attending circumstances render sufficient support to the version of PW25. Particularly that a pool of blood was there sufficiently substantiated Ext.P2. Therefore, it can safely be concluded that the incident took place at the open yard on the northern side of the 7th block building of the Kannur Central Jail and that place was correctly located by PW25 in Ext.P2 mahazar.

Point No.(iii) and (iv)

18. The case presented by the prosecution is that out of political enmity all the accused after forming themselves into an unlawful assembly and obtaining weapons from the store room in the 8th block in the jail reached in front of the 7th block building and assaulted the deceased Raveendran, PW2 and PW6 using weapons. Initially the accused had pelted

stones. It is alleged that accused Nos.1, 2, 5, 7 and 9 respectively were in possession of MO2 iron bar, MO12 wooden plank, MO1 wooden bat, MO3 reaper and MO4 iron rod. Sri.Raveendran was struck on his head by the 1st accused using the iron bar and the 7th accused using the reaper. Sri.Raveendran was struck at his leg by the 5th accused using the wooden bat as well. PW2 was beaten up by the 2nd accused using the wooden plank, the 7th accused using the reaper and the 9th accused using the iron rod; all at his head. While both of them sustained injuries on such attacks and also in the brick-batting, PW6 was said to have sustained injuries in the brick-batting.

19. The learned Public Prosecutor would submit that the aforesaid overt acts and nature of the aggression by the accused as a group possessed with weapons prove that they are the aggressors. It is submitted that the inconsistencies in the oral evidence do not fail the prosecution insofar as those parts of its case. It is also pointed out that PW8, who was an inmate of the 8th block has no allegiance to either of the political parties and happened to be in jail in connection with

his default in payment of maintenance in an M.C. case. His evidence that the members of the accused's group procured weapons from the store of the 8th block stands convincing, and that will go a long way to prove that the accused voluntarily unleashed attack on the inmates of the 7th block. The learned Senior Public Prosecutor would accordingly submit that even eschewing the embellishments and part of the prosecution evidence that is smacked by inconsistency, the rest of the evidence is enough to establish the guilt of accused Nos.1 to 9, the appellants.

20. The learned Senior Counsel for accused Nos.2 and 9 would submit that when the Sessions Court rejected the evidence of PWs.1 and 3, who are the officials cited by the prosecution to state about the incident, what remained is the evidence of PWs.2 and 4, who are indisputably interested witnesses, and their evidence should not have been placed any reliance. It is further submitted that the evidence of PW6 does not spell out anything to connect any of the appellants to the offences and in such circumstances the evidence presented by the prosecution is totally insufficient to prove

how the incident was incited. From the evidence, a strong inference that the incident started from the canteen is very much possible. In that context the first version of PW1 in the report which he admitted to have given in police and also in Ext.P1 are relevant. What can be understood, in the view of the learned Senior Counsel, is that it was a group clash with activists of BJP-RSS on the one side and activists of CPI(M) on the other side. The learned Senior Counsel accordingly submitted that the court below ought not to have concluded that it was a voluntary attack by the accused.

21. Sri.Rajeev and Sri.Arjun Sreedhar would point out the innumerable contradictions and the inconsistencies in the evidence of the prosecution witnesses and submit that the prosecution suppressed the real facts and therefore the case of the prosecution is liable to be rejected altogether. It is submitted that accused Nos.1 to 4 also sustained injuries in the incident and had undergone treatment in the District hospital, Kannur. Not only that no investigation was conducted into the cause of their injuries but also their wound certificates were tried to be suppressed. In their view, the failure of the

prosecution to explain the injury sustained by the accused looms large in the nature of the evidence in the case and the inevitable consequence shall be the acquittal of all the accused. They would also submit that it was a group fight following an altercation between two groups at the canteen and there was no voluntary attack by the accused.

22. PW1 was the Head Warden in the Central Prison, Kannur. He stated that at about 3.00 p.m. accused Nos.1 to 3, who were convicts and accused Nos.4 to 6, who were remand prisoners along with 20 others, came carrying weapons like iron rod, wooden sticks, etc. to the 7th block and attacked Sri.Raveendran, PW2 and PW6. PW2 deposed that while he along with Sri.Raveendran was coming to the watchtower from the compound of the 7th block, 30 BJP-RSS activists came with iron rods, wooden sticks, etc. and attacked them. He stated that initially the assailants pelted stones at them and one such stone hit at the head of Sri.Raveendran causing him injury. Immediately they broke open the gate and came to the courtyard of the 7th block building. The 1st accused beat Raveendran using an iron bar at his head, the 7th accused beat

at his head using a wooden stick and the 5th accused Dineshan using a wooden bat beat at his leg. PW2 further stated that accused No. 9 struck using an iron rod at his head and accused Nos.2 and 7 beat him using wooden sticks and planks causing injury to his head.

23. PW3 was an Assistant Jailer. He stated regarding the overt acts thereby attributing that the members among the accused's group had voluntarily attacked the deceased, PW2 and PW6. But during cross-examination, it has come out that he reached the spot hearing siren sounded by PW1 and that when he was reaching the jail, the deceased and other injured were being taken to the ambulance. Therefore, his claim that he had seen the incident from the inception was rejected by the Sessions Court.

24. PW4 deposed about the incident. His version is that on hearing about the attack he came out of the 7th block building and then accused Nos.1, 5 and 7 were attacking Sri.Raveendran. It is his version that the 1st accused assaulted Sri.Raveendran using an iron rod at his head, the 5th accused beat at his leg using a wooden bat and the 7th accused beat

him at his head using a wooden stick. He also stated that the 9th accused stuck at the head of PW2 using an iron rod causing him injuries. PW6 stated that he sustained injury in the incident and had undergone treatment. But he did not state anything about the identity of the assailants. It is his version that he saw a group of persons in front of the 7th block and in the melee he sustained an injury. He could not say how the incident erupted and what provoked such an incident. Therefore, his evidence is not useful to prove the charges against the appellants.

25. PW8 is a witness cited by the prosecution to prove that some among the accused procured weapons from the store room of the 8th block and they in a ferocious mood went out of the said block. What he stated is that accused Nos.1, 2 and 6 broke open the store room and obtained weapons like iron rod, iron bar and handles of spade. He added that after a few minutes they came back from the tower area, and the 7th accused then uttered 'they finished him'.

26. The fact that the accused were inmates of the central prison, Kannur is not in dispute. From Ext.A14 series,

the register of remand prisoners, and Ext.A22, copy of the gang register maintained in the Prison the said fact is evident, rather. The question is whether, by the aforesaid evidence, the prosecution could prove that the accused formed into an unlawful assembly and motivated by their common object, they proceeded to the 7th block, possessed with weapons and attacked the deceased as well as the injured.

27. PW1 during cross-examination had admitted that before Ext.P1, he had given another report. The suggestion of the accused that in that report he described the incident as a group clash and some of the accused also sustained injuries was admitted by him. Further, Ext.D2 contradiction brought out during cross-examination is so material entailing to doubt his veracity. Even in Ext.P1 it has been stated that the BJP-RSS activities on one side and CPIM activists on the other had indulged into a group clash. Such a statement given by him was totally denied by him and that is Ext.D2. In that nature of his evidence, he cannot be viewed as a trustworthy witness. Hence, we find that the Session Court had rightly disbelieved him. As pointed out above, the position of PW3 is also the

same. Going by his own version, he reached the spot only after the incident. Nonetheless he volunteered to depose in detail about the overt acts of the accused from the very beginning. No further deliberation is required to say that he has not stated the truth in court.

28. The prosecution therefore can rely only on the oral testimonies of PWs2 and 4 to prove how the incident had been initiated and also the manner in which the offensive had taken place. As admitted by them, PWs.2 and 4 were convicted prisoners in cases involving murder of BJP activists. The very case of the prosecution is that out of political enmity, Sri.Raveendran, PW2 and PW6 were attacked. Of course, another reason is also stated as the immediate reason for the attack. PW7 Biju went to the 8th block to install a ceiling fan. There occurred a dispute since the inmates of that block insisted on installing two ceiling fans there. It is said that PW7 was then assaulted by the 2nd accused, Phalgunan. PW7 intimated the inmates of the 7th block about that incident. Subsequently, at the canteen, CPM activists threatened the 2nd accused. The prosecution alleged that in

retaliation of that and also due to political enmity, the accused assembled and perpetrated the attack on the CPM activists.

29. PW2 described the incident from its very inception. His version is that while he, along with the deceased, was going to the watchtower the assailants came as a group and attacked them voluntarily. He testified that the deceased was beaten up by accused Nos.1, 5 and 7 and he was assaulted by accused Nos 2, 7, and 9. PW6 Ragesh was said to have sustained injury in the brick-batting. In the cross-examination, this witness deviated from the original version. A few contradictions were brought out in his evidence. Exts.D5 to D8 are such contradictions. Coming to the evidence of PW4 we can find a similar version regarding overtacts of those accused. But in his evidence also there are several inconsistencies. Exts.D9 to D13 are such contradictions in his evidence. It is trite that in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, errors of memory or due to mental disposition such as shock at the

time of occurrence. The omissions amounting to contradictions which create a serious doubt about the truthfulness of the witness alone make the evidence unreliable [See: **State of Uttar Pradesh v. Naresh, (2011) 4 SCC 324**].

30. It can be seen from the said contradictions in the testimonies of PWs.2 and 4 that there was a conscious attempt on their part to deviate from their original versions. PW2 denied his statement to police that the inmates of the 7th block pelted stones at the persons assembled near the tower. Also, the incident occurred at the canteen that the 2nd accused was threatened was also denied by him. In that context the cause of his injury stated to Dr.Tojo Mathai assumes importance. In Ext.P6 wound certificate what was stated to the Doctor is that while going to the canteen, he as well as the deceased were attacked. He feigned ignorance as to whether he had given such a statement. There is also contradiction with respect to his version that the assailants came inside the compound of the 7th block after forcing open the gate. Such deviations create an impression that PW2 made

embellishments with a view to demonstrate that the incident was an attack by the accused wholly unilaterally and voluntarily.

31. Both PWs.2 and 4 denied the incident occurred in the canteen although they stated to the police about such an incident. That contradiction in the evidence of PW2 is Ext. D6 and that in the evidence of PW4 is Ext.D13. As regards the overt acts of the 5th accused PW4 has given a statement in police contradictory to what was deposed in court. Considering the nature of the prosecution allegations and since the materials on record impel this court to infer that none of the prosecution witnesses stated the whole truth in court, we are of the view that the said contradictions are not normal discrepancies liable to be ignored. Viewed so, PWs.2 and 4 cannot be termed as wholly reliable witnesses.

32. Accused Nos.1 to 4 sustained injuries in the incident. Exts.P18 to P21 are the wound certificates issued by Dr.Tojo Mathai in relation to their examination. PW17, Dr.Maya, proved Exts.P18 to P21 as contemplated in Section 47 of the Evidence Act by identifying the handwriting and signature of

Dr.Tojo Mathai, who is no more. The cause of injury stated in those certificates are similar and it is that at about 3.15 p.m. on 06.04.2004 a group of 10 to 20 identifiable persons assaulted using sticks and other weapons at the canteen in the jail. Accused Nos.1 to 4 have bodily injuries and they had undergone treatment at the District Hospital, Kannur. Although they were examined by the Doctor a few hours after the incident, the cause of injury stated in Exts.P18 to P21 would probabalise that those accused sustained injuries in the same incident.

33. It may be noted that none of the prosecution witnesses stated in court about the use of or possessing of several weapons among MOs.1 to 12 by the accused. MOs 1 to 4 and 12 alone were used by the accused to offend the deceased and the injured. It is a fact that those weapons except MO2 iron bar were seized by PW25 from the place of occurrence. MO2 was seized from a different place; from beneath pepper wines on a tree in the compound. The use of MO2 by the 1st accused as a weapon of offence was stated also. In the case of stones, no such version can be expected.

But it is not so in regard to other weapons. If any of the accused used such weapons, the witnesses could have stated that in court. Also, as pointed out above, the prosecution did not offer any explanation as to how accused Nos.1 to 4 sustained injuries. In that context non-examination of CWs.6 to 14 assumes much significance. CWs.6 to 14 were given up for the reasons best known to the learned Public Prosecutor. Adding to that is the improper way of investigation. Why the cause of injuries to accused Nos. 1 to 4 was not investigated into, how the accused were selected without there having any process for their identification like a test identification parade and how noticeable variations in the statements of witnesses in police at different stages of the investigation are pertinent questions remain unanswered.

34. The Apex Court in **Kumar v. State represented by Inspector of Police [(2018) 7 SCC 536]** held that the criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. The authorities

concerned should take up the investigation in a neutral manner, without having regard to the ultimate result.

35. The Apex Court sounded a note of caution while considering evidence in a case of faction fight in **Arvind Kumar @ Nemichand and others v. State of Rajasthan [2021 SCC OnLine SC 1099]**. It was held that in a faction-ridden village community, there is a tendency to implicate innocents also along with the guilty, especially when a large number of assailants are involved in the commission of an offence. Evidence in such cases is bound to be partisan, but the courts cannot take an easy route of rejecting out of hand such evidence only on that ground. What ought to be done is to approach the depositions carefully and scrutinise the evidence more closely to avoid any miscarriage of justice.

36. Reverting to the facts of this case, the case of the prosecution is that the accused after forming themselves into an unlawful assembly together entered the compound of the 7th block and attacked the deceased, PW2 and PW6. But, on a close scrutiny of the evidence let in by the prosecution, what is established is that the incident was a faction fight and in

that course the deceased, PW2 and PW6 sustained injuries. Accused Nos.1 to 4 also sustained injuries in that incident. The question then is whether the conviction of accused Nos.1 to 9 by the Sessions Court with the aid of Section 149 of the IPC is justifiable in law.

37. The common object of an unlawful assembly can be gathered from the nature of the assembly, arms used by them, and behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case. (See: **State of U.P. v. Dan Singh [(1997) 3 SCC 747]** and **Gangadhar Behera v. State of Orissa [(2002) 8 SCC 381]**). Members of an unlawful assembly may have a community of object upto a certain point beyond which they may differ in their objects and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command but also according to the extent to which he shares the community of object. Hence, the effect of Section 149 of the IPC may be different on different members of the same

unlawful assembly. (See: **Shambhu Nath Singh and others v. State of Bihar [AIR 1960 SC 725]**; **Gangadhar Behera and others v. State of Orissa [2002 (8) SCC 381]** and **Bishna Alias Bhiswadeb Mahato and others v. State of West Bengal [2005 (12) SCC 657]**).

38. The rationale of the provisions of Section 149 of the IPC is explained by the Apex Court in **State of Assam v. Barga Dewani and others [1971 SCC (Cri.) 54]**. The first part of this section speaks of the commission of an offence in prosecution of the common object of the assembly, whereas the second part takes within its fold knowledge of the likelihood of the commission of that offence in prosecution of the common object. The knowledge contemplated by the second part does not mean knowledge of the mere possibility of the commission of the offence. The commission of the offence must be reasonably likely. Such knowledge may be collected from the nature of the assembly, its common object, the kind of arms its members bear and their behaviour at or before the actual conflict. At times even the presence in the unlawful assembly may make a person vicariously liable under Section 149 of

the IPC, provided he had an active mind to achieve the common object of the unlawful assembly.

39. When the prosecution shied away from explaining the injuries of the accused and the evidence it has adduced is insufficient to prove the way in which the incident was initiated, it has become quite impossible to find that every member of the assembly that indulged in the incident, to which the accused were members had the knowledge that there was a likelihood of commission of an offence of murder. In that context the law laid down by the Apex Court in **Kanbi Nanji Virji and others v. State of Gujarat [(1970) 3 SCC 103]** has application. In that case there was a melee at the time of the incident and the two groups indulged in a free fight as a result of which four persons were injured on the side of the prosecution and two on the opposite side. In that factual scenario, it was held that once the court comes to the conclusion that the injuries sustained by the persons were in the course of a free fight, then those persons who are proved to have caused injuries alone can be held guilty for the injuries caused by them. A similar view was taken in **Puran v. State of**

Rajasthan [(1976) 1 SCC 28], where it was held that in a case of sudden mutual fight between two groups, there could be no question of invoking the aid of Section 149 for the purpose of imposing constructive criminal liability on every member. One could be convicted only for the injuries caused by him by his individual acts.

40. We found above that the incident in this case was in the nature of a clash between two factions. Members of both factions were inmates of the prison. One faction was of the activities of CPI(M) and the other faction was of the activists of BJP-RSS. In view of that, those accused, who inflicted injuries to Sri. Raveendran, PW2 and PW6, are alone liable for conviction for the acts they had committed. Other members of the assembly cannot be held responsible for such acts of offences.

41. The prosecution succeeded in proving beyond doubt that the deceased Raveendran was inflicted injuries at the head by accused Nos.1 and 7. Sri.Raveendran was beaten up also by accused No.5 using a wooden bat, MO1 at his leg. The cause of death of Sri.Raveendran is the injuries inflicted at

his head by accused Nos. 1 and 7. Therefore, accused Nos.1 Pavithran and accused No. 7 Anilkumar can alone be held responsible for the offence of murder. Whereas, accused Nos.5 is liable for punishment under Section 324 of the IPC. Similarly, accused Nos.2, 7 and 9 caused hurt to PW2 using weapons respectively MOs.12, 4 and 7, which are obviously dangerous weapons. Therefore, accused Nos.2, 7 and 9 are liable for punishment under Section 324 of the IPC.

42. Accused Nos.1 and 7 are no more. So their appeal stands abated. Conviction of accused No.2 Phalgunan, accused No.5 Dinesan and accused No.9 Ashokan for the offence under Section 324 of the IPC by the Sessions Court is confirmed. They are acquitted of the other offences. Accused Nos.3, 4, 6 and 8 are acquitted of all the offences and they are set at liberty. If any one among Accused Nos.3, 4, 6 and 8 is in jail, he shall be released forthwith, provided his detention is not required in connection with any other case.

43. Each of accused No.2 (Phalgunan), accused No.5 (Dinesan) and Accused No.9 (Ashokan) was sentenced by the Sessions Court to undergo rigorous imprisonment for a period

of six months for the offence under Section 324 of the IPC. Undoubtedly, the sentence imposed is inadequate. But in these appeals filed against conviction, no enhancement of sentence is possible. Hence, we confirm the sentence. The periods during which they were in jail in connection with this case will be set off against the period of sentence.

44. Before parting, we hasten to add a few words about the nature of investigation and the manner in which officials of the Central Prison, Kannur discharged their duties.

45. The fundamental principle of our criminal jurisprudence is that it is the right of the victims as well as the suspect/accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. In the rarest of rare cases where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts can set aside the investigation and direct fresh or de novo investigation. Of course, that is a power of wide plenitude and, therefore, has to be exercised only sparingly. (See: **Balaji Y. v. Karthik Desari** [2023 KLT OnLine 1448].

46. We refrain from invoking such a power in this case considering the stage of the proceedings and the length of time that lapsed after the incident. While strongly deprecating the inappropriate and tainted kind of investigation in the instant case we recall the words of the Apex Court in **Kumar v. State represented by Inspector of Police [(2018) 7 SCC 536]** to remind the investigating agency in the State about their duties and obligations under the Constitution and the laws. The investigating authority has a responsibility to investigate in a fair manner and elicit truth. The authorities concerned should take up the investigation in a neutral manner, without having regard to the ultimate result. And, the investigator shall be honest in every respect.

47. Mahatma Gandhi said, "Crime is the outcome of a diseased mind and jails must have an environment of hospital for treatment and care."

48. The Kerala Prisons and Correctional Services (Management) Act, 2010 was enacted with the avowed objective of providing for the safe custody, correction, reformation, welfare and rehabilitation of prisoners. That is

consistent with the correctional jurisprudence followed globally in the realm of sentencing and imprisonment of offenders. The inmates of prisons shall be dealt with so, therefore, every detainee on his release from prison shall be a refined and reformed individual. There is no place for factionalism among detainees. We fail to understand how the authorities of the Central Prison, Kannur could house prisoners in different blocks based on their political allegiance. That, in fact, leads to incidents like the instant one. Like prison officers, prisoners also shall not indulge into any political activity inside the four walls of prisons. Section 13 of the Kerala Prisons and Correctional Services Act catalogues the duties of the officers of the prisons which insists to (i) treat every prisoner impartially and with humanity; (ii) hear any complaint or report made by a prisoner and redress his grievance;(iii) maintain discipline in the prison; and (iv) exercise or perform his powers and functions and discharge his duties promptly and effectively.

49. We accordingly direct the Director General of Prisons and Correctional Services, Kerala to ensure that the

prisons in the State are administered consistent with the provisions in the Kerala Prisons and Correctional Services Act and bearing in mind the objective of that Act.

Sd/-

P.B. SURESH KUMAR, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr

APPENDIX OF CRL.A 1131/2019

PETITIONER ANNEXURES

ANNEXURE I THE TRUE COPY OF THE MEDICAL REPORT
ISSUED TO THE PETITIONER BY HIS DOCTOR

APPENDIX OF CRL.A 1061/2019

PETITIONER ANNEXURES

- ANNEXURE I TRUE COPY OF THE TREATMENT CERTIFICATE ISSUED BY DR.M.RADHIKA M., ASST. PROFESSOR IN MEDICINE DATED 20.05.2020.
- ANNEXURE I TRUE COPY OF THE NEWS PAPER REPORT IN OBITUARY COLUMN OF MATHRUBHUMI DAILY NEWS PAPER DATED 20.05.2021.
- ANNEXURE I MEDICAL CERTIFICATE ISSUED BY THE KOYA'S HOSPITAL CHERUVANNUR TO THE PETITIONER'S MOTHER SHOWING HER MEDICAL CONDITION DATED 07.04.2021.
- ANNEXURE I TRUE COPY OF THE CT SCAN REPORT DATED 19.06.2021 ISSUED FROM MOTHER HOSPITAL, THRISSUR
- ANNEXURE II TRUE COPY OF THE APPLICATION SEEKING FINANCIAL ASSISTANCE DATED 24.06.2021.
- ANNEXURE II TRUE COPY OF MEDICAL CERTIFICATE ISSUED BY DR. HARIKRISHNAN AT HEART CENTRE, KOZHIKODE DATED 15.07.2021.
- ANNEXURE A1 TRUE COPY OF THE NEWSPAPER REPORT ON DESHABHIMANI DAILY DATED 07.02.2022.
- ANNEXURE A2 TRUE COPY OF THE LETTER DATED 06.02.2022 ISSUED BY SRI.BINNY ARAKKAL, WARD MEMBER, WARD NO.16, THALIKULAM GRAMA PANCHAYAT.
- ANNEXURE III TRUE COPY OF THE MEDICAL CERTIFICATE DATED 26.02.2022 ISSUED FROM MEDICAL OFFICER, ASWINI HOSPITAL LTD. AT THRISSUR.

- ANNEXURE IV TRUE COPY OF MRI SCAN REPORT ISSUED FROM VIA DISAGNOSTICS TRICHUR DATED 01.03.2022.
- ANNEXURE V TRUE COPY OF THE CERTIFICATE ISSUED FROM ASWINI HOSPITAL DATED 01.03.2022.
- ANNEXURE A1 COPY OF THE MEDICAL CERTIFICATE DATED 13.08.2022 ISSUED TO THE MOTHER OF THE PETITIONER
- ANNEXURE A2 COPY OF THE ORDER DATED 25.06.2021 PASSED BY THIS COURT.
- ANNEXURE I A TRUE COPY OF THE WEDDING INVITATION CARD OF MS. AJANYA, D/O. CHANDRAN
- ANNEXURE II TRUE COPY OF THE PETITION IN C.M.P. NO 2921 OF 2009 IN S.C. NO 543 OF 2005 BEFORE THE HON'BLE ADDITIONAL DISTRICT & SESSIONS COURT - III, THALASSERY
- ANNEXURE III TRUE COPY OF THE COUNTER FILED BY THE ACCUSED IN C.M.P. NO 2921 OF 2009 IN S.C. NO 543 OF 2005 BEFORE THE HON'BLE ADDITIONAL DISTRICT & SESSIONS COURT - III, THALASSERY