IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 23RD DAY OF AUGUST 2023 / 1ST BHADRA, 1945

CRL.A NO. 497 OF 2019

AGAINST THE JUDGMENT DATED 14.03.2019 IN SC.NO.705/2015 ON THE FILES OF THE COURT OF IVTH ADDITIONAL SESSIONS JUDGE, THRISSUR

APPELLANTS/ACCUSED NOS.1 TO 7:

1 NAVEEN,
AGED 25 YEARS, S/O. VELAYUDHAN, PATTALI HOUSE,
PUVATHUR P.O., ELVALLY VILLAGE

2 PRAMOD,
AGED 33 YEARS, PANNICKAN HOUSE, MANAPPAD DESOM,
THRITHALLUR P.O., VATANPPILLY

3 RAHUL,
AGED 27 YEARS, S/O.KUTTAPPAN, KONTHACHAN HOUSE,
CHUKKU BAZAR, VENMENAD P.O., PAVARATTY VILLAGE

4 VYSAK,
AGED 31 YEARS, MUKKOLAHOUSE, CHUKKU BAZAR,
VENMENAD P.O., PAVARATTY VILLAGE

5 SUBIN @ KANNAN,
AGED 29 YEARS, S/O. KARAPPU, THEKKEPPATTU HOUSE,
THIRUNELLUR DESOM

6 BIJU,
AGED 37 YEARS, S/O. SANKARANARAYANAN,
KONTHACHAN HOUSE, VENMENAD DESOM,
PAVARATTY VILLAGE

7 VIJAYASANKAR @ SANKAR,
AGED 22 YEARS, S/O VELAYUDHAN, KALPURAKKAL (H),
PUVATHUR DESOM, ELAVALLY VILLAGE

BY SRI.B.RAMAN PILLAI (SR.)
SRI.P.VIJAYA BHANU (SR.)
SRI.S.RAJEEV
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN
SRI.ALEX ABRAHAM
SRI.SUNILKUMAR
SRI.SUJESH MENON V.B.

SRI.T.ANIL KUMAR
SRI.THOMAS ABRAHAM NILACKAPPILLIL)
SRI.THOMAS SABU VADAKEKUT
SRI.MAHESH BHANU S
SMT.S.LAKSHMI SANKAR
SRI.R.ANIL
SMT.POOJA PANKAJ
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.K.ANAND

RESPONDENT/COMPLAINANT & STATE:

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

SRI.E.C.BINEESH PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 23.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

Crl.Appeal No.497 of 2019

Dated this the 23rd day of August, 2023

JUDGMENT

P.B.Suresh Kumar, J.

Accused 1 to 7 in S.C.No.705 of 2015 on the files of the Court of the Additional Sessions Judge - IV, Thrissur who stand convicted and sentenced for the offences punishable under Sections 143, 147, 148, 341, 506(ii), 326, 120B, 109, 212, and 302 read with Section 149 of the Indian Penal Code (IPC) are the appellants in this appeal. They challenge in this proceedings, their conviction in the said case. The case aforesaid pertains to the brutal and heinous murder of one Shihab, an activist of the political party, CPM. There were altogether 11 accused in the case and the remaining accused were acquitted of the charges levelled against them.

2. One Vinod, an office bearer of the organisation, RSS was murdered by the activists of the political party, CPM. Deceased Shihab was the first accused in the said case. The accusation in the case is that due to the animosity towards Shihab, he being the person who committed the

murder of Vinod, accused 1 to 10 hatched a conspiracy to cause the death of Shihab, and in furtherance to the said conspiracy, on 01.03.2015 at about 7.30 p.m., accused 2, 4, 5 and 6 proceeded in a black Ambassador car driven by the third accused and accused No.1 proceeded in a Passion Plus motorcycle ridden by the seventh accused through the public road leading to Chukku Bazar from Poovathur within the limits of Pavaratty Panchayat in Thrissur District. It was alleged that that it was based on the instructions given by the eighth accused who followed Shihab, who was proceeding in the opposite direction then on the very same road with one Baiju riding pillion on the motorcycle ridden by Shihab and at about 7.30 p.m., when they reached near Puthenambalam junction, the third accused knocked down the motorcycle ridden by the deceased with the car driven by the third accused. It is also the accusation in the case that when the deceased and Baiju fell down on the road, the second accused came out of the car with a sword and threatened Baiju to run away from the scene, if he wants his life and when Baiju ran away from the scene, accused 1, 2, 4, 5 and 6 struck Shihab with the swords carried by them, on the vital parts of his body. Shihab succumbed to the injuries sustained by him on the same day at 10.10 p.m. The accusation against the eleventh accused in the case is

that he provided shelter to the ninth accused knowing fully well that the ninth accused is involved in the crime.

3. Based on the information furnished by Baiju from the hospital where he was admitted on the same day after a few hours of the occurrence for treatment of the injury sustained by him on account of the fall from the motor cycle, a case was registered by Pavaratty Police. On submitting the final report in the case disclosing commission of offences triable exclusively by the Court of Session, the accused were committed for trial. Thereupon, the Court of Session framed charges against the accused under Sections 143, 147, 148, 341, 506(ii), 326, 120B, 109, 212 and 302 read with Section 149 IPC and under Section 27 of the Arms Act. As the accused pleaded not guilty of the charges framed against them, the prosecution examined 65 witnesses as PWs 1 to 65 and proved through them as many as 158 documents as Exts.P1 to P158. MOs 1 to 45 are the material objects proved in the case. Exts.D1 to D30 are the contradictions in the previous statements of the witnesses proved by the accused. After the prosecution tendered its evidence, when the accused were questioned under Section 313 of the Code of Criminal Procedure (the Code), they denied the incriminating circumstances brought out against them and maintained that

they are innocent. Since the Court of Session did not consider the case to be one fit for acquittal under Section 232 of the Code, the accused were called upon to enter on their defence. A witness was examined thereafter on the side of the fifth accused as DW1. As noted, based on the materials on record, the Court of Session acquitted accused 8 to 11 and convicted accused 1 to 7 for the offences charged and sentenced them to undergo imprisonment for life and pay fine for the offences punishable under Sections 302, 120B and 326 IPC. They were also sentenced to undergo rigorous imprisonment for different terms and to pay fine for the various other offences found to have been committed by them. The accused are aggrieved by the decision of the Court of Session and hence this appeal.

4. Heard Senior Counsel Sri.B.Raman Pillai for accused 1, 3, 5 and 7, Senior Counsel Sri.P.Vijaya Bhanu for accused 2 and 4 and Adv.Sri.S.Rajeev for the sixth accused.

5. The learned Senior Counsel for the accused took us through the evidence of the relevant witnesses and brought to our notice the contents of the proved documents. The case put forward by the learned counsel for the accused in unison is that since the deceased was an activist of the political party, CPM who was the first accused in a case registered in connection with the murder of a member of the

organisation, RSS, without conducting any investigation, the members of the organisation, RSS have been arrayed as accused in the case as dictated by the leaders of the political party, CPM and that they are not the assassins Shihab. It was also the case put forward by the learned counsel that in the circumstances, the accused were arrested long before any material connecting them with the crime was collected either in the form of statements of witnesses or otherwise. It was pointed out that it is based on the evidence tendered by PW1 and PW2, who deposed in Court to have seen the occurrence, the prosecution has attempted to prove the guilt of the accused, for the remaining evidence in the case is not independently sufficient to prove the guilt of the accused. It was vehemently argued by the learned counsel that both the aforesaid witnesses who are activists of the political party, CPM are not trustworthy and reliable and even the Court of Session which found the accused guilty of the offences charged, did not find it safe to place any reliance on the evidence tendered by PW2. In other words, it was pointed out that the conviction of the accused is solely based on the evidence of PW1. In order to bring home the point that the evidence tendered by PW1 is not reliable and trustworthy, the learned counsel pointed out various circumstances. We are not referring to the submissions

made by the learned counsel in this regard at this juncture, as we propose to deal with the same elaborately in the succeeding paragraphs of this judgment.

6. *Per contra*, Sri.E.C.Bineesh, the learned Public Prosecutor supported the impugned judgment pointing out that the ocular evidence tendered by PWs 1 and 2 together with the various facts discovered based on the information furnished by the accused, and other corroborative evidence let in by the prosecution would prove the guilt of the accused beyond reasonable doubt. The learned Public Prosecutor has also argued that the fact that the Court of Session did not place any reliance on the evidence tendered by PW2 does not preclude this Court in any manner from considering the evidence of PW2, if it is found reliable and trustworthy for the purpose of considering the question whether the prosecution has established the guilt of the accused beyond reasonable doubt.

7. As it was argued persuasively by the learned counsel for the accused that the investigation in the case was flawed and that the accused are only persons named by the leaders of the political party, CPM in the case, we have called for and perused the police diary pertaining to the case.

8. In the light of the submissions made by the learned counsel for the parties on either side, the point that

arises for consideration is whether the conviction of accused 1 to 7 and the sentence imposed on them are sustainable in law.

9. In order to deal with the point, the first aspect to be considered is whether the death of Shihab is a homicide. PW28 is the Doctor who conducted the post-mortem examination of the body of the deceased and issued Ext.P52 post-mortem report. 45 ante mortem injuries are seen noted by PW28 on the body of the deceased. PW28 deposed that injuries 1, 6 and 45 noted in the post-mortem certificate were fatal in nature and sufficient in the ordinary course of nature to cause death. In addition, PW28 also deposed that injury No.39 which is a chop wound on the back of the right forearm of the deceased is also sufficient to cause death by bleeding, if not attended to for a long time. PW28 also deposed that the injuries could be caused by the swords shown to him which were marked in the proceedings as MOs 1 to 5. PW28 deposed that the death was due to the multiple injuries inflicted by sharp edged weapons. Though PW28 was cross-examined by the learned counsel for the accused, nothing was brought out to discredit the said evidence tendered by him. It is in the above circumstances that the Court of Session found that the death is a homicide. The learned counsel for the accused did not raise any argument challenging the said finding of the

Court of Session. We, therefore, affirm the finding rendered by the Court of Session that the death of Shihab is a homicide.

10. Reverting to the point, as noted, even though the prosecution examined as many as 65 witnesses and proved 158 documents through them, they rely on mainly the oral evidence of PWs 1 and 2 to prove the case. PW1 in the case is none other than the person who was riding pillion on the motorcycle ridden by Shihab at the time of occurrence, namely, Baiju. As noted, the First Information Statement in the case was given by PW1. Ext.P1 is the First Information Statement. PW1 deposed that when he reached the scene of occurrence along with Shihab, a black Ambassador car came from the opposite direction and knocked them down. He deposed that as Shihab sensed that they were knocked down deliberately by the car, Shihab directed him to escape from the scene. He deposed that two other persons also reached the scene by the time, in a motorcycle. He deposed that thereupon, one person from the motorcycle and four from the car alighted; that one among the persons alighted from the car required him to run away from the scene if he wants to save his life by keeping a sword on his neck; that when Shihab attempted to run away from the scene, the second accused who threatened him struck on the head of Shihab with the

sword carried by him and that thereupon, accused 1, 4, 5 and 6 also struck with swords carried by them on different parts of the body of Shihab. PW1 deposed that the third accused was sitting in the driving seat of the car and the seventh accused in the motorcycle in which the first accused came to the scene while the remaining accused were inflicting injuries on Shihab. PW1 deposed that as he was unable to move fast, he ran towards west slowly and while so, he saw a motorcycle coming from the opposite direction. He deposed that when he turned back after a few moments, he found the aforesaid persons continued to strike on the body of Shihab. PW1 identified all the accused in court. PW1 also identified distinctly MOs 1 to 5 as the swords used by accused 2, 5, 6, 4 and 1 respectively. PW1 also identified MO11 black Ambassador car and MO13 Passion Plus motorcycle as the vehicles in which accused 1 and 7 respectively reached the scene of occurrence.

11. PW2 is a person stated to be engaged in catering business. He deposed that on the date of the occurrence, at about 7.30 p.m., while he was proceeding to Poovathur from Chukku Bazar, just before reaching the place called Puthenambalam, he saw that a car was parked on the opposite side of the road and a person running away from that place. He deposed that when he looked towards that place, he

saw that a motorcycle had fallen on the left side of the car. He deposed that there was another motorcycle near the car and a person was sitting on it. He deposed that he found the driver of the car in the driving seat. He deposed that he could see then five persons hacking a person, in the background of the street light. He deposed that they were hacking Shihab and that he could identify the assailants as he had seen them earlier. He deposed that accused 1, 2, 4, 5 and 6 were the assailants, the third accused was the person who was in the driving seat of the car and the seventh accused was the person who was sitting on the motorcycle. He identified all of them in court. He deposed that having seen the occurrence, on account of its shock, he returned home. PW2 also identified MO11 as the black Ambassador car he found at the scene and MO13 as the motorcycle.

12. Before referring to the remaining evidence in the case, it is necessary to examine the question whether the evidence let in by PWs 1 and 2 could be said to be reliable and trustworthy. While examining the said question, it is necessary to keep in mind that the most important aspect in a criminal case to connect the accused with the crime is identification. Even though there are various modes of identification, identification by sight is the most reliable and legally

acceptable mode and the standard prescribed for the same is very high in the sense that the same should be foolproof and of sterling quality.

13. As noted, both PWs 1 and 2 identified accused 1 to 7 in court. In Ext.P1, the version of PW1 was that while he was proceeding to Peringad from Chukku Bazar along with the deceased, an Ambassador car which came from the opposite direction knocked them down deliberately. He did not mention in Ext.P1 the colour of the Ambassador car. Likewise, the version of PW1 in Ext.P1 was that when they fell down, a dark slim person who alighted from the car with a sword in his hand threatened him that he should flee away from the scene if he wants to save his life; that he immediately got up and ran towards the reading room “Kairali”; that the deceased got up and ran towards the drain on the side of the road; that the deceased fell down near the drain while running; that when he was attempting to flee from the scene, he heard the persons who came out of the car shouting “വെട്ടികൊല്ലെടാ അവനെ” and that when he turned back while running, he saw those persons striking the deceased using swords and other weapons multiple times. It was also his version in Ext.P1 that after running a short distance, he proceeded to his house, after informing the occurrence to the brothers of the deceased and

his friend Praseel. PW1 did not state in Ext.P1 the names of the assailants of Shihab or that he knew them. PW1 did not also give the features of the assailants except that of the person who threatened him. Though he could not have seen all the assailants except the one who threatened him, going by his version in Ext.P1, he stated that he can identify them. As noted, the occurrence was at about 7.30 p.m. Going by the version of PW1 in Ext.P1, he saw the overt acts of the assailants when he turned back while running towards the reading room. Be that as it may, PW1 has not only deposed in court that accused 2 to 6 were the assailants who came to the scene of occurrence in the car, but also that accused 1 and 7 were the assailants who came to the scene in the motorcycle; that it is the second accused who threatened him; that it is accused 2, 5, 6, 4 and 1 who inflicted injuries on the deceased and that MOs 1 to 5 are the weapons used distinctly by the said accused to inflict injuries on the deceased. That apart, he also stated in cross-examination that all the accused are persons residing in the vicinity of his house and among them, the fourth accused is his relative also. The relevant portion of the evidence given by PW1 reads thus:

> "ഞാൻ മുല്ലശ്ശേരി പഞ്ചായത്തിൽ 10-40 വർഷമായി താമസിക്കുന്നു . രാഷ്ട്രീയക്കാരൻ എന്ന നിലയിലും librarian എന്ന നിലയിലും ആ പ്രദേശത്തെ

> ആൾക്കാർആയി ഇടപെഴകാൻ എനിക്ക് ധാരാളം അവസരം ഉണ്ടായിട്ടുണ്ട്. രാഹൽ എന്റെ വീട്ടിൽ നിന്നും ഒരു കിലോമീറ്ററിനുള്ളിൽ ആണ് താമസം. വൈശാഖ് 1/2 കി.മീറ്ററിനുള്ളിൽ ആണ് താമസം. വൈശാഖ് എന്റെ ഒരു ബന്ധുവും കൂടിയാണ്. എന്റെ വീട്ടിൽ നിന്നും 1/2 കി.മി. മാറിയാണ് സുബിൻ താമസം. ബിജു അര കി.മീറ്റർ മാറിയാണ് താമസം. എന്റെ വീട്ടിൽ നിന്നും 300 മീറ്റർ ഏകദേശം മാറിയാണ് വിജയ ശങ്കറിന്റെ വീട്. A4 വൈശാഖും ഞാനും തമ്മിൽ രാഷ്ട്രീയപരമായി ബന്ദ ശത്രുതയിൽ അല്ല ഞാൻ സംസാരിക്കാറുണ്ട്. സംഭവത്തിൽ ഉൾപെട്ടവരുടെ പേരുകൾ 6-)o തിയ്യതിയാണോ നിങ്ങൾ മനസ്സിലാക്കിയത്? സംഭവസ്ഥലത്തുവെച്ച്തന്നെ മനസ്സിലാക്കി.”

At any rate, the fact that PW1 had previous acquaintance with the second accused is evident from the assertion made by PW1 in cross-examination that immediately after the occurrence, he informed the brothers of the deceased that it is the second accused and others who attacked Shihab. The relevant portion of the deposition reads thus:

> "ശിഹാബിന്റെ അനിയൻമാരെയും സുഹൃത്തിനെയും അറിയിച്ചു. ആരാ അക്രമം ചെയ്തത് എന്ന് അവർ ചോദിച്ചു. പ്രമോദും കൂട്ടുകാരും ആണ് എന്ന് ഞാൻ പറഞ്ഞു. അക്രമികൾ ആരാണ് എന്നെനിക്ക് മനസ്സിലായി എന്നത് പ്രധാന വിവരം ആണ്. എന്നെനിക്കറിയാം. ശിഹാബിന്റെ അനിയൻമാരോടും കൂട്ടുകാരോടും പേരുകൾ പറഞ്ഞ വിവരം ഞാൻ പോലീസിൽ പറഞ്ഞു എന്നാണ് ഓർമ്മ. “

As a matter of fact, if PW1 had previous acquaintance with accused 1 to 7 or at least with the second accused who came out of the car and threatened him after pointing a sword on his neck, we do not find any reason as to why PW1 did not disclose the particulars of the accused or at least the particulars of the

second accused in Ext.P1 First Information Statement. There is no satisfactory explanation from PW1 as to why he omitted to disclose the names of the assailants in Ext.P1. The explanation offered by him during cross-examination is that he disclosed the names of the assailants to the police. Inasmuch as Ext.P1 First Information Statement does not indicate the particulars of the assailants, it has to be taken that PW1 did not disclose the particulars of the assailants in Ext.P1. The omission on the part of PW1 in not disclosing the particulars of the assailants who were known to him in Ext.P1 being a matter which would make the prosecution case improbable, is relevant under Section 11 of the Indian Evidence Act in judging the veracity of the evidence of PW1. Strangely, it is seen that Test Identification Parades have been conducted in the case to enable PW1 to identify the accused persons and PW1 has identified the accused in the Test Identification Parades. If as a matter of fact, PW1 had previous acquaintance with the accused, we fail to understand the very purpose for which Test Identification Parades were conducted to enable PW1 to identify the accused. It could thus be seen that the evidence tendered by PW1 in court is not consistent with Ext.P1 First Information Statement and there are significant omissions in the First Information Statement, amounting to contradiction. Needless

to say, it is not safe to place reliance on the evidence tendered by PW1 in the matter of considering the question whether the prosecution has proved beyond doubt the guilt of the accused. The only conclusion possible, in the circumstances, is either that the accused were not the persons who came in the Ambassador car which knocked down the deceased or that PW1 did not disclose the identity of the accused in Ext.P1 deliberately.

14. In this context, it was argued by the learned Public Prosecutor that inasmuch as PW1 was shocked and traumatised when he gave the First Information Statement, the conduct on the part of PW1 in not disclosing the particulars of the accused, cannot be reckoned as unnatural. True, the First Information Statement is not meant to be an encyclopaedia nor is it expected to contain all the details of the prosecution case, and it is sufficient that the broad facts of the prosecution case are stated therein. But, in the case on hand, as far as the occurrence is concerned, the most vital information that is expected to be stated, if known to the first informant, is the particulars of the assailants and there is absolutely no reason for a person, who is able to state other particulars as regards the occurrence, in not disclosing the particulars of the assailants, if the particulars of the assailants were known to

him and if he does not disclose the particulars of the assailants in such a case, according to us, it has to be taken that he was not aware at all about the particulars of the assailants at that point of time. Needless to say, inasmuch as it is admitted by PW1 that he had previous acquaintance with all the accused and that one among them is his relative, the evidence of PW1 as regards the particulars of the assailants deposed by him cannot be accepted. Needless to say, the evidence tendered by PW1 that the accused are the assailants of Shihab cannot be accepted.

15. Another reason to doubt the veracity of the evidence tendered by PW1 is that PW1, who did not have a case in Ext.P1 First Information Statement about any other assailants other than those who came in the Ambassador car, built up a story while deposing in court that two other persons also came to the scene in a motorcycle and injuries were inflicted on the deceased by them along with those persons who came in the car. Similarly, the version of PW1 in Ext.P1 was that before the assailants started inflicting injuries on the deceased, he fled away from the scene and he saw the overt acts when he turned back while running away from the scene. Whereas the version of PW1 in the witness box was that he got up from the place where he was knocked down, only after the

accused inflicted injuries on the deceased. Similarly, he built up a story while in the box that he was running slowly from the scene and after some time, he stood on the side of a wall and witnessed the overt acts of the accused, when such a version is seen to be absent in Ext.P1. Yet another story built up by PW1 in the box deviating from Ext.P1 was that he could see a person coming in a motorcycle from the opposite direction while he was running away from the scene. It is evident that such a deviation was made to justify the presence of PW2 at the scene of occurrence and to corroborate his evidence. True, minor embellishments and improvements on trivial matters which do not affect the core of the prosecution case shall not be a ground on which the evidence can be rejected in its entirety. Similarly, mere marginal variations in the statements of a witness cannot be taken as improvements, as the same may be elaborations of the statements earlier made by the witness. What is expected from the court in such cases is that, an opinion about the credibility of the witness must be formed and a finding as to whether his deposition inspires confidence must be recorded [See A. Shankar v. State of Karnataka, (2011) 6 SCC 279]. But, the improvements made by PW1 would not fall under the said category and the same would certainly cast a serious doubt in the mind of the court as to the veracity of

the evidence tendered by the witness. It is all the more so since the previous statement is the First Information Statement which is required to be obtained at the earliest opportunity to ascertain the circumstances in which a crime is committed, the names of the actual culprits, the part played by them as well as the names of the eye witnesses present at the scene of occurrence.

16. Yet another reason to doubt the veracity of the evidence tendered by PW1, especially as regards the identity of the accused is the fact that PW1, who took the stand in court that he knew the accused at the time of occurrence itself and that he gave the particulars of the accused to the police while furnishing the first information, he did not disclose the particulars of the accused to the police officer who prepared Ext.P2 inquest report, even though he was very much present at the time when the inquest of the body was prepared. The relevant portion of the evidence tendered by PW1 reads thus:

> "ഞാൻ body inquest സമയം പോയിരുന്നു. ആ സമയം നിറച്ച് പോലീസുകൾ ഉണ്ടായിരുന്നു. എത്ര പേർ എന്ന് ഓർമ്മയില്ല. ആ സമയത്ത് ഞാൻ മൗനി ആയിരുന്നു. ആ സമയം പാർട്ടിനേതാക്കന്മാർ ഉണ്ട്."

The inquest was conducted on the following day between 8 a.m. and 10 a.m. There is no satisfactory explanation from PW1 as to the reason why he did not disclose the particulars of

the accused then to the police officer who was conducting the inquest, if he knew the particulars, especially when it is at that point of time the police used to record the statements of persons in the locality as to their suspicion about the accused in the case. It is seen that a large of number of persons including activists and supporters of the political party, CPM assembled at the place where the inquest was being conducted and none of them had any clue as to the assailants. If as a matter of fact, PW1 knew about the particulars of the assailants, there was no reason why he could not have disclosed the same to the police and the fact that he did not disclose the same to the police is sufficient to infer that he was not aware of the particulars of the assailants even at that point of time.

17. Yet another reason to doubt the veracity of the evidence tendered by PW1 is the fact that PW1 is a sympathiser of the political party, CPM and a close associate of CPM activists. He admitted the said fact in cross-examination. The possibility of such a person falsely implicating the accused as the assailants of Shihab, cannot also be ruled out.

18. The learned Public Prosecutor vehemently contended that PW1 being an injured eye witness, his evidence carries lot of weight as also credibility and there is absolutely

no reason to disbelieve PW1. According to the learned Public Prosecutor, the discrepancies in the evidence of PW1 are trivial in nature and the same are not sufficient to reject his evidence altogether. The learned Public Prosecutor relied on various decisions of the Apex Court and this Court to contend that the criminal jurisprudence attaches great weightage to the evidence of a person who sustained injuries in the same occurrence and that there is presumption that he was speaking the truth, unless shown otherwise. There is no quarrel at all to the proposition aforesaid. As found by us in the preceding paragraphs that PW1 was not speaking the truth in court and that he was attempting to falsely implicate the accused persons in the case, the proposition of law canvassed by the learned Public Prosecutor has no application to the facts of the present case.

19. Let us now deal with the evidence tendered by PW2. As noted, this witness identified all the accused in court, although he did not identify the weapons MOs 1 to 5 alleged to have been used by accused Nos.1, 2, 3, 5 and 6. In reply to a question put to PW2 by the Public Prosecutor as to whether he had any previous acquaintance with the accused, he denied the same. Strangely, no Test Identification Parades were conducted to enable PW2 to identify the assailants of the

deceased. In other words, the identification of the accused in court by PW2 who had no previous acquaintance with the accused is several months after the occurrence, even though he claimed that he developed an acquaintance with them while identifying them in the police station on their arrest. The statement, if any, given by a witness before the police identifying an accused, is hit by the proviso to Section 162(1) of the Code. As such, it has to be taken that PW2 identified the accused for the first time in court. No sanctity could be given to such an identification in court even assuming that PW2 had witnessed the occurrence, for within this time, anyone could gather the features of the accused to identify them from other sources. Be that as it may, there is serious doubt as to whether PW2 had witnessed the occurrence. In this context, it is relevant to point out that the Court of Session which had the first-hand opportunity to observe the demeanour of the witness, did not find it safe to place any reliance on the evidence tendered by PW2. On an evaluation of the evidence tendered by PW2, we are also of the view that it is not safe to place any reliance on the evidence of PW2.

20. As noted, the police was groping in the dark as to the identity of the accused and they had no clue till 03.03.2015 as regards the assailants. In the meanwhile, it has

come out that this being a political murder, there was a hartal on the following day in the town and the situation in the neighbourhood of the place of occurrence was tense and additional police force was deployed to maintain law and order in the area. It has also come out that the murder was widely reported by print and visual media. As noted, the deceased was an activist of the political party, CPM. Admittedly, PW2 is an activist of LDF, of which the political party of CPM is a part. Despite all these, PW2 did not choose to inform the fact that he had witnessed the occurrence to the police on the date of occurrence or until 07.03.2015 on which day he gave a statement for the first time to the police. As noted, the version of PW2 in his evidence was that he was proceeding on the relevant day to meet a friend at Poovathur. He, however, admitted in evidence that he did not proceed to meet the said friend after witnessing the occurrence. There is absolutely no explanation forthcoming as to the reason why PW2 did not proceed to Poovathur after witnessing the occurrence, for the said stand may not be consistent with the common course of natural events and human conduct, which creates a doubt in the mind of the court as to his presence at the scene of occurrence. In the peculiar background of the occurrence, in the common course of natural events and human conduct,

PW2 would have certainly disclosed the occurrence to someone either on the said day or on the following day, if he had seen the occurrence. Even though PW2 deposed that he disclosed the occurrence to his brothers and to a friend, the same does not appear to be correct, for, had he disclosed the occurrence to anyone, in the peculiar background of this case, the said information would have spread like wild fire and the police would have reached him. That apart, the materials disclose that PW2 gave a statement under Section 164 of the Code to PW52, the Judicial Magistrate of First Class, Vadakkancherry. Ext.P82 is the statement given by PW2 before PW52. PW52 deposed in cross-examination that PW2 did not state in Ext.P82 that he disclosed the occurrence to his brother and friends. It was also deposed by PW52 that PW2 did not disclose in Ext.P82, the particulars of the accused nor their features. PW52 also deposed that PW2 did not disclose in Ext.P82 that he saw anybody coming from the opposite direction while he was proceeding to the scene of occurrence and that he could see the occurrence in the background of the street light and the light from the houses in the neighbourhood. In other words, the evidence of PW2 in court is not consistent with the previous statement given by him under Section 164 of the Code. There are significant omissions in the

statement given by PW2 under Section 164 of the Code. It is relevant in this context to mention that accused 1, 3 and 4 were arrested on 04.03.2015, the second accused was arrested on 12.03.2015, the seventh accused was arrested on 19.03.2015, the sixth accused was arrested on 21.03.2015 and the fifth accused was arrested on 09.04.2015. Ext.P82 statement was given by PW2 long thereafter, on 25.04.2015. In the meanwhile, on 07.03.2015, PW2 gave a statement indicating the particulars of the accused. Nevertheless, he did not disclose the particulars of the accused in Ext.P82 statement. There is no explanation as to why PW2 did not disclose the particulars of the accused in Ext.82 statement given by him on 25.04.2015, if he had actually seen the occurrence as claimed by him. Yet another reason which casts doubt on the reliability of the evidence tendered by PW2 is the fact that he is admittedly an LDF activist and the materials, especially D12 and D13 photographs would indicate that he is a close associate of the leaders of the political party, CPM and his statement was taken for the first time only on 07.03.2015, i.e. after the arrest of some of the accused.

21. As regards the evidence tendered by PW2, the argument advanced by the learned Public Prosecutor is that merely for the reason that PW1 did not disclose the presence

of PW2 in Ext.P1 First Information Statement and merely for the reason that PW2 did not report the matter to the police immediately after the occurrence, the evidence of PW2 cannot be discarded altogether. It was argued by the learned Public Prosecutor that a person who witnesses a brutal or violent act such as murder, would be traumatised and scared and would be reluctant to go and report the matter to the police. It was also pointed out by the learned Public Prosecutor that ordinary people would be reluctant under normal circumstances to be associated with violent and traumatising crimes. As noted, the First Information Statement need not be an encyclopaedia of all the facts which the informant knows about the occurrence and as such, we have no difficulty in accepting the argument that, merely for the reason that PW1 did not disclose the presence of PW2 at the scene of occurrence, the evidence of PW2 cannot be ignored. Similarly, we have also no difficulty in accepting the argument that merely for the reason that PW2 did not disclose the occurrence to the police, his evidence cannot be ignored. As discussed elaborately in the preceding paragraphs, it is not on account of the reasons aforesaid that we find ourselves unable to accept the evidence tendered by PW2, but it is due to various other reasons mentioned in the said paragraphs that we find it not safe to place reliance on the

evidence of PW2 while considering the question whether the prosecution has established the guilt of the accused beyond reasonable doubt.

22. Similarly, the argument advanced by the learned Public Prosecutor that there are only trivial discrepancies in the evidence of PW1, that could be ignored by the court, also cannot be accepted. As already found by us, the discrepancies are of very serious nature and the same cannot be ignored at all. It was also contended by the learned Public Prosecutor that the evidence tendered by PW29, the doctor who first examined the deceased and issued Ext.P3 wound certificate and PW28, the doctor who conducted the post-mortem examination and issued Ext.P52 post-mortem certificate corroborate the oral testimony of PWs 1 and 2. No doubt, the evidence tendered by PWs 1 and 2 is consistent with the medical evidence. But that does not mean that the court should accept the oral evidence as reliable and trustworthy. If the ocular evidence of the witnesses is found unreliable and not trustworthy, there is no question of considering the issue whether the same is consistent with the medical evidence.

23. The remaining evidence in this case is only the evidence let in by the prosecution to corroborate the evidence

tendered by PWs 1 and 2 and the evidence let in to prove the discovery of facts based on the information furnished by the accused which is admissible under Section 27 of the Indian Evidence Act. As already noticed, it is doubtful whether the evidence let in by the prosecution excluding the oral evidence of PWs 1 and 2 are independently sufficient to sustain the prosecution case. Be that as it may, let us now consider the remaining evidence also. The first and foremost among the said evidence pertains to the discovery of MOs 1 to 5. PW65, the investigating officer has given evidence that it is based on the information furnished by the fourth accused that MOs 1 to 5 swords were discovered and seized by him on 05.03.2015. Ext.P8 is the mahazar prepared in this regard and Ext.P8(a) is the disclosure statement. No doubt, if any incriminating fact is discovered based on the information furnished by the accused in the custody of the police, so much of such information as it relates distinctly to the incriminating fact thereby discovered, is admissible in evidence. In the case on hand, even if the evidence tendered by the investigating officer in this regard is accepted *in toto*, what has been proved is the fact that MOs 1 to 5 were seized from a place, exclusively known to the fourth accused. The said evidence, according to us, can be used by the prosecution, only if it is established that MOs 1 to 5 were

weapons used by the assailants to cause the death of the victim. First of all, there is no satisfactory and convincing evidence in this case to prove that MOs 1 to 5 were weapons used by the assailants to cause the death of Shihab. The only evidence in this regard is the evidence tendered by PW1. We have already found, while considering the question relating to the acceptability of the evidence tendered by PW1, that if the version of the occurrence as disclosed by PW1 in Ext.P1 is accepted, it is difficult for PW1 to give the precise particulars of the weapons used by the assailants. If there is no convincing evidence to connect Mos.1 to 5 with the occurrence, the evidence tendered by PW65 as regards the discovery and seizure of MOs 1 to 5, may not be of any use to the prosecution. The argument advanced in this regard by the learned Public Prosecutor is that it has been established that the weapons contained blood and therefore, it is sufficient to connect the weapons with the occurrence. Ext.P84 is the report of the official of the Forensic Science Laboratory where MOs 1 to 5 were examined. Ext.P84 report has been proved by PW55, the Assistant Director, Regional Forensic Laboratory, Thrissur. Item Nos. 16 to 19 and 20 in Ext.P84 are the swords respectively which were marked in the proceedings as MOs 1 to 5. In Ext.P84, it is stated that item Nos.16 to 19 contain

blood, but could not be identified as human blood. In other words, Ext.P84 report is not sufficient to connect MOs 1 to 5 with the occurrence. As noted, if there is nothing to connect MOs 1 to 5 with the occurrence, the evidence tendered by PW65, as regards the discovery and seizure of MOs 1 to 5 based on the information furnished by the fourth accused is not of any use to the prosecution.

24. Similarly, PW65, the investigating officer has given evidence that it is based on the information furnished by the third accused that MO11 Ambassador car used by the assailants for commission of the crime was discovered and seized by him on 05.03.2015. Ext.P9 is the mahazar prepared in this regard and Ext.P9(a) is the disclosure statement of the third accused. PW65 has also deposed that it is based on the information furnished by the first accused that MO13 motorcycle used by the assailants has been discovered and seized on 05.03.2015. Ext.P10 is the mahazar prepared in this regard and Ext.P10(a) is the disclosure statement. Ext.P9 mahazar would indicate that as shown by the third accused, the investigating officer seized MO11 black Ambassador car which was found parked on the side of a public road. Similarly, Ext.P10 mahazar would indicate that as shown by the first accused, the investigating officer seized MO13 motorcycle

bearing No. KL-46-C-5754 which was found lying on the ground in the bushes on the side of a public road. The argument advanced by the learned Public Prosecutor in this regard is that the aforesaid discoveries would fall within the scope of Section 27 of the Indian Evidence Act. We do not agree. First of all, the black Ambassador car and the motorcycle referred to above cannot be said to have been seized from places within the exclusive knowledge of accused 3 and 1 respectively. As noted, they were seized by the police from public places. As such, merely for the reason that the car and motorcycle referred to above were shown to the police by the first accused, it cannot be said that the same were concealed at those places by the first accused. He could have derived knowledge of the places aforesaid through some other sources also. If that be so, there is no question of the evidence tendered by the investigating officer in this regard being admissible under Section 27 of the Indian Evidence Act. That apart, there is nothing to connect the black Ambassador car and the motorcycle with the occurrence, for the same would be incriminating against the accused, if the evidence is admissible under Section 27 of the Indian Evidence Act. It was argued by the learned Public Prosecutor that one of the samples of blood stains collected from MO11 Ambassador car was found to be of human origin. Similarly, it was argued

by the learned Public Prosecutor, placing reliance on the evidence tendered by PW31 and Ext.P55 opinion that the chance fingerprints collected from MO11 Ambassador car tallied with the left thumb impression of the third accused. We do not think that the said materials are sufficient to connect accused 1 and 3 with the occurrence, for, going by the evidence tendered by PW11, Anila Venugopal, the vehicle is one owned by the first accused along with the third accused. Likewise, we wonder as to how the prosecution could connect the vehicle with the occurrence merely for the reason that the blood stain found in the ambassador car was found to be of human origin.

25. Similarly, the investigating officer has given evidence that it is based on the information furnished by the first accused that MOs 21 to 30 clothes allegedly worn by accused 1, 2, 4, 5 and 6 were discovered and seized by him on 11.03.2015. Ext.P11 is the mahazar prepared in this regard and Ext.P11(a) is the disclosure statement. As indicated, the said evidence, according to us, can be used by the prosecution only if its connection with the occurrence is established. Otherwise, the fact that those clothes were concealed in a place exclusively known by the first accused may not improve the case of the prosecution. The argument advanced by the

learned Public Prosecutor in this regard is that it has been established that one of the said clothes contained human blood of group 'A' and the blood group of the deceased is also 'A'. Item Nos.24, 25, 27, 28, 29, 30, 31, 32 and 33 in Ext.P84 are the cloths and item No.34 is a cover in which the cloths were kept which are marked in the proceedings as MOs 21 to 30. In Ext.P84, it is stated that there is no blood in item Nos.27, 29 and 31 to 33 and though there is blood in item Nos.24, 25, 30 and 34, the nature of the same could not be detected. It is also recited in Ext.P84 that item No.28 contains human blood belonging to group 'A'. True, one of the clothes discovered and seized based on the disclosure given by the first accused contains human blood belonging to group 'A' which is the blood group of the deceased. It is on the basis of the said material that the learned Public Prosecutor attempts to connect the accused with the occurrence. As noted, there were altogether 10 items of cloths in the cover seized pursuant to the disclosure made by the first accused and the blood stain was found only in one of the said ten items. There is nothing on record to indicate as to who among the accused had worn item No.28 in Ext.P84 at the time of the occurrence. As such, according to us, the said circumstance is not sufficient to connect the accused who are seven in number with the

occurrence.

26. The upshot of the discussion aforesaid is that the evidence let in by the prosecution other than the oral evidence of PW1 and PW2 do not, in any manner, improve the case of the prosecution.

27. The learned Public Prosecutor argued that a few incriminating circumstances brought out in evidence against the accused have not been satisfactorily explained by them. One of the circumstances highlighted by the learned Public Prosecutor in this regard is that MO11 Ambassador car which was used for the commission of the crime by the assailants of Shihab, is one owned by the first accused and its key was seized by the police from the third accused at the time of his arrest. We have already indicated that there is no satisfactory evidence in this case that MO11 is the Ambassador car which was used by the assailants of Shihab for commission of the subject crime, nor is there any satisfactory evidence to connect accused 1 and 3 with the crime. In the absence of any satisfactory evidence that MO11 was the Ambassador car that was used for commission of the crime or that accused 1 and 3 were among the assailants of Shihab, the aforesaid circumstances cannot be said to be incriminating against the accused. The learned Public Prosecutor has also contended

that MO13 motorcycle which was used by the accused for the commission of the crime is one which is owned by the first accused. According to the learned Public Prosecutor, it is also an incriminating circumstance which the accused are bound to explain. As already indicated, other than the evidence of PWs 1 and 2, there is absolutely no material to connect MO13 motorcycle with the occurrence. MO13 is a “Passion Plus” motorcycle. Even assuming that it is a case where PWs 1 and 2 had witnessed the occurrence and their evidence as regards the same is acceptable, it is very difficult to conceive that having regard to the narration of the occurrence given by PWs 1 and 2, it is possible for them to memorize either the registration number of the said motorcycle or its features to identify the same at a later point of time, for there would be hundreds of motorcycles of that brand in use with different registration numbers.

28. No doubt, the fifth accused has suffered a crush injury on his right thumb. According to him, he was working in the hollow bricks manufacturing unit run by DW1 at Coimbatore and the injury was suffered while operating a machine in the said unit. Whereas, the case of the prosecution is that the injury aforesaid was one sustained by him in the course of the crime and therefore, it is obligatory on the part of

the accused to explain the same. The said argument is raised in the light of the evidence tendered by PW37, the doctor in Dr.Muthu's Hospital, Coimbatore, who claimed to have treated the injury of the fifth accused. It is seen that PW37 deposed that on 03.03.2015, he examined the fifth accused in connection with the crush injury suffered by him on his right thumb and proved Ext.P66 wound certificate. He also deposed that the injury suffered by the fifth accused could be caused by MOs 1 to 5 weapons. The history of the injury is noted in Ext.P66 as “Alleged H/O cut injury while working in a machine at Ramanathapuram on 01.03.2015 at 7.00 p.m. and sustained injury to right thumb”. In cross-examination, PW37 has admitted that Ext.P66 is not a contemporaneous record prepared which bears any serial number in any form and its date of issue is not mentioned therein and that the same is only a wound certificate issued in the letterhead of the hospital. In the place of the evidence tendered by PW37, the evidence of DW1 is to the effect that the fifth accused was treated in a hospital namely, Saravana Ortho Hospital. No doubt, the evidence tendered by PW37 appears to be more credible. But the same, at the most, would only establish that the fifth accused suffered a crush injury on his right thumb during the relevant period in which the occurrence took place.

The said evidence creates a strong suspicion as to the genuineness of the defence set out by the fifth accused that he was not one among the assailants of Shihab. But in the absence of any other evidence, according to us, the said evidence which would have been a strong corroborative piece of material in favour of the prosecution, cannot be used by the court for any purpose.

29. As noted, the accused do not challenge the fact that Shihab lost his life as a result of multiple injuries suffered by him in an occurrence that took place at about 7.30 p.m. on 01.03.2015. Their case is only that they are not the assailants of Shihab and that they have been falsely implicated in the case being members of the organisation, RSS since the deceased Shihab was the prime accused in the murder of a member of the organisation, RSS namely, Vinod. It is to substantiate the said case that the learned counsel for the accused contended that without there being any clue that the Ambassador car spoken to by PW1 in Ext.P1 is a black Ambassador car, the investigating officer jumped into the conclusion that accused 1 and 3 are involved in the occurrence since a black Ambassador car originally held by PW11 stood in the name of the first accused at the time of the occurrence. Similarly, to substantiate the case that the accused are falsely

implicated in the crime, the learned counsel for the accused pointed out that no witness questioned by the investigating officer other than PWs 1 and 2 has informed the police having seen the occurrence. It was also pointed out that PW1, who has not disclosed the particulars of the accused to the officer, who recorded the First Information Statement or to the officer who prepared the inquest report, has given an additional statement disclosing the names of the accused on 06.03.2015. It was pointed out that it is thereafter on 07.03.2015, the investigating officer questioned PW2. It was submitted that in the meanwhile on 04.03.2015, accused 1, 3 and 4 were arrested by the police. It was vehemently argued by the learned counsel that there was absolutely no material before the police at the time when accused 1, 3 and 4 were arrested, and there is no satisfactory explanation from the investigating officer as to how he came to the conclusion that accused 1, 3 and 4 were among the assailants of Shihab, except the fact that they confessed before him that they are three among the assailants. Ext.P106 is the remand report submitted by the investigating officer on 05.03.2015. The version of the police in Ext.P106 is that accused 1 to 5 are the persons who came in the ambassador car, knocked down the bike ridden by Shihab with PW1 riding pillion and thereafter, caused the death of

Shihab by inflicting multiple injuries throughout his body. Ext.P117 is the remand report submitted by the investigating officer in the case on 13.03.2015. It is in Ext.P117, a version different from Ext.P106 is stated as regards the occurrence for the first time. It is in Ext.P117 that it was alleged by the investigating officer that accused 2 to 6 are the persons who came to the scene of occurrence in the ambassador car and that accused 1 and 7 came in a motorcycle to the scene of occurrence. It was argued by the learned counsel for the accused that there is absolutely no material on record to justify the change of version of the occurrence from Ext.P106, in Ext.P117. According to the learned counsel, the aforesaid circumstances would probabilise the contention of the accused that there was some external interference in the investigation of the crime and that the accused have been falsely implicated, being members of the organisation, RSS.

30. As already mentioned, it is in the context of the aforesaid submission that we have called for and examined the police diary. No doubt, police diaries of a case cannot be used as evidence in the case and the same can be used only for aiding the court to decide on a point. It is settled that the police diaries can be seen to ascertain the circumstances ascertained by the police at different stages through

investigation [See State v. Ammini and Others, 1987 KHC 267]. As rightly pointed out by the learned counsel for the accused, the police diary does not indicate that there was any material before the police as to the colour of the ambassador car involved in the crime. The police diary indicates that it is because the police received information that PW11 had a black ambassador car and that she sold the same to accused 1 and 3, the police came to the conclusion that accused 1 and 3 were two among the assailants of Shihab. It is also seen from the police diary that it is solely on the basis of the statements allegedly given by the said accused, the remaining persons were arrayed as accused at two stages. The police diary also indicates that it is thereafter on 06.03.2015, the police have questioned PW1 again and took his statement disclosing the particulars of all the accused. The police diary does not also indicate as to how the police came to the conclusion that MO13 is the motorcycle in which accused 1 and 7 came to the scene. The fact that PW1 did not disclose to PW65 the registration number or any other particulars of the motorcycle in which accused 1 and 7 reached the scene has been admitted by PW65 in court also. The facts aforesaid revealed from the police diary, according to us, would show either that this is a case where the investigating officer has arrayed the

accused in the case as the assailants of Shihab for extraneous reasons or solely for the reason that they are active members of organisation, RSS without conducting proper investigation. We come to this conclusion also for the reason that there was no satisfactory explanation for not questioning PW1 till 06.03.2015. Yet another reason for us to come to the said conclusion is that the police diary does not indicate as to how the investigating officer came to know that PW2 is a person who witnessed the occurrence, for him to obtain the statement of PW2 on 07.03.2015.

31. Above all, as we perused the police diary, we find serious lapses in the investigation as well. The delay in questioning PW1 who gave the First Information Statement is a very serious lapse. The investigating agency should have questioned PW1 at least before arresting the accused. Similarly, the delay in questioning PW2, if at all he has seen the occurrence, is also a lapse for which no explanation is forthcoming. There is no material as to how the police came to the conclusion that it is MO11 black Ambassador car that was used by the assailants of Shihab for commission of the crime. Similarly, there is no material to indicate as to how the police came to the conclusion that it is MO13 motorcycle which was used by the assailants for commission of the crime. There is

also no material on record justifying the arrest of accused 1, 3 and 4 on 04.03.2015 even before the additional statement of PW1 and the statement of PW2 were recorded by the police. There is no explanation as to how the police got information that PW2 had witnessed the occurrence. It is now trite that the benefits arising from faulty investigation ought to go to the accused and not to the prosecution [See **Kailash Gour v. State of Assam**, (2012) 2 SCC 34].

32. We have examined the impugned judgment meticulously. We find that the learned Sessions Judge did not comprehend the facts correctly, even though the learned Judge came to the conclusion that the testimony of PW2 is not reliable and trustworthy. The learned Sessions Judge did not take note of the various flaws in the evidence tendered by PW1 which casts a serious doubt as to the genuineness of the same. The learned Sessions Judge did not also take note of the fact that if the evidence of PW1 is eschewed, the remaining evidence in the case, even if admissible and reliable, is not independently sufficient for the prosecution to prove the guilt of the accused beyond reasonable doubt.

33. In the light of the discussion aforesaid, according to us, accused 1 to 7 are entitled to the benefit of doubt and their conviction, in the circumstances, is liable to be

set aside.

34. Before parting with this case, we find it worth referring to the following passage from the decision of the Apex Court in **State of Gujarat v. Kishanbhai**, (2014) 5 SCC 108, dealing with the plight of the courts which are compelled to acquit the accused who are brought before it in a brutal and heinous murder like the instant one :

> **"19.** Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the respondent-accused innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long-drawn litigation, spanning over a decade or more. The expenses incurred by an accused in his defence can dry up all his financial resources — ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over."

As observed by the Apex Court, as in the case dealt with therein, we are constrained to acquit the accused not because

we find that they are not the real culprits in the case, but because of the flawed investigation and lack of evidence. We do not find fault with the investigating officer in proceeding with the investigation in the case on the premise that on the facts of this case, the activists of the organisation, RSS must have committed the crime. Our anguish on the other hand, is with regard to the manner in which he jumped into the conclusion without collecting sufficient materials that it is the accused who committed the crime. We are conscious of the fact that acquittal of the accused in a case of this nature would seriously affect the credibility of the justice delivery system, but we are constrained to do so, as we have real doubt as to whether it is accused 1 to 7 who have committed the crime, though we do not have any doubt to the fact that the crime has been committed by a group of persons in the manner alleged. We understand that it is not an easy task for an investigating officer to collect sufficient materials in a case where there are no eyewitness or in a case where the materials collected cast a cloud as to the identity of the accused. But, that is not to say that such a case could be concluded in the manner in which the investigating officer in this case has done. In such cases, there has to be deeper investigation till the identity of the real culprit is found.

In the result, the appeal is allowed, the conviction of accused 1 to 7 (the appellants) and the sentence imposed on them by the Court of Session are set aside and they are acquitted. They shall be set at liberty forthwith and released from custody, if their continued detention is not required in connection with any other case. Registry will communicate the above order to the concerned Prison Authorities forthwith.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

ds 11.08.2023

APPENDIX

PETITIONER ANNEXURES

ANNEXURE-I	**A TRUE COPY OF THE ARGUMENT NOTES FILED AS CRL.M.P.NO.1095/2019 IN S.C.NO.705/2015 ON THE FILES OF THE COURT OF IV TH ADDL.SESSIONS JUDGE,THRISSUR**