



CrI. Appeal No. 677/2018 & batch

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE JOHNSON JOHN
WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946
CRL.A NO. 677 OF 2018
CRIME NO.1829/2015 OF MEDICAL COLLEGE POLICE STATION,
THIRUVANANTHAPURAM
CP NOS.11 & 18 OF 2016 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
THIRUVANANTHAPURAM
S.C.NO. 901 OF 2016 OF ADDITIONAL DISTRICT & SESSIONS COURT-VI,
THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO.5:

BINU @ KARI BINU
AGED 42 YEARS
S/O.THANKAPPAN, KUNNUMPURATHU VEEDU, TC 14/1420,
CHENNILODE PADINJATTIL LANE, ANAMUGHAM WARD,
KADAKAMPALLY VILLAGE.
BY ADV SRI.T.M.ABDUL LATHEEF

RESPONDENT/STATE/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031,(CRIME NO.1829/2015 OF MEDICAL COLLEGE
POLICE STATION, THIRUVANANTHAPURAM DISTRICT).
BY ADV. SRI. E.C. BINEESH, PUBLIC PROSECUTOR
ADDL.DIRECTOR GENERAL OF PROSECUTION

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14.02.2024, ALONG
WITH CRL.A. NOS. 895, 1009, AND 1500 OF 2018, THE COURT ON 27.03.2024
DELIVERED THE FOLLOWING:



CrI. Appeal No. 677/2018 & batch

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE JOHNSON JOHN
WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946
CRL.A NO. 895 OF 2018
CRIME NO.1829/2015 OF MEDICAL COLLEGE POLICE STATION,
THIRUVANANTHAPURAM
CP NOS.11 & 18 OF 2016 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
THIRUVANANTHAPURAM
S.C.NO. 901 OF 2016 OF ADDITIONAL DISTRICT & SESSIONS COURT-VI,
THIRUVANANTHAPURAM

APPELLANTS/ACCUSED NOS. 1 TO 4:

- 1 SIJITH @ RAJAN
S/O.SASEENDRAN, VIRNDAVANAM VEEDU, KINAVUR WARD,
MUTTADA, KUDAPPANAKUNNU (THOTTUVARAMBIL VEEDU,TC
13/27), PUTHANPALAM, KANNAMMOLA, VANCHIYOOR,
THIRUVANANTHAPURAM.
- 2 ARUN @ GABRI
S/O.AJIKUMAR, KALLUVARAMBIL VEEDU, TC 13/8,KOLLOOR,
KANNAMMOLA, VANCHIYOOR, THIRUVANANTHAPURAM.
- 3 ARUN MALI @ ANEESH
S/O.VINAYAKUMAR, THOTTUVARAMBIL VEEDU, TC 13/1,KOLLOOR,
KANNAMMOLA, VANCHIYOOR, THIRUVANANTHAPURAM.
BY ADVS.
SUMAN CHAKRAVARTHY
BABU S. NAIR
PRIYADA R MENON
SMITHA BABU
P.A.RAJESH
SHAMSEERA. C.ASHRAF
AMJATH A.R

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI-682 031, FOR THE CIRCLE
INSPECTOR OF POLICE, MEDICAL
COLLEGE,THIRUVANANTHAPURAM.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
14.03.2024, ALONG WITH CRL.A.677/2018 AND CONNECTED CASES, THE COURT
ON 27.03.2024, DELIVERED THE FOLLOWING:



CrI. Appeal No. 677/2018 & batch

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE JOHNSON JOHN
WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946
CRL.A NO. 1009 OF 2018
CRIME NO.1829/2015 OF MEDICAL COLLEGE POLICE STATION,
THIRUVANANTHAPURAM
CP NOS.11 & 18 OF 2016 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
THIRUVANANTHAPURAM
S.C.NO. 901 OF 2016 OF ADDITIONAL DISTRICT & SESSIONS COURT-VI,
THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO.3:

VINEETH @ PICHA
AGED 1 YEARS
KULAVARAMBIL VEEDU, TC 13/8, KOLLOOR, KANNAMMOOLA,
VANCHIYOOR, THIRUVANANTHAPURAM
THIRUVANANTHAPURAM
BY ADV BABU S. NAIR

RESPONDENT/STATE:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI-682 031, FOR THE CIRCLE
INSPECTOR OF POLICE, MEDICAL COLLEGE,
THIRUVANANTHAPURAM.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2024, ALONG
WITH CRL.A.677/2018 AND CONNECTED CASES, THE COURT ON 27.03.2024
DELIVERED THE FOLLOWING:



CrI. Appeal No. 677/2018 & batch

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE JOHNSON JOHN
WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946
CRL.A NO. 1500 OF 2018
CRIME NO.1829/2015 OF MEDICAL COLLEGE POLICE STATION,
THIRUVANANTHAPURAM
CP NOS.11 & 18 OF 2016 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
THIRUVANANTHAPURAM
S.C.NO. 901 OF 2016 OF ADDITIONAL DISTRICT & SESSIONS COURT-VI,
THIRUVANANTHAPURAM

APPELLANTS/A6 TO A8:

- 1 SAJU @ KALLAN SAJU
AGED 39 YEARS
S/O.RAJENDRAN, THOTTUVARAMBIL HOUSE, T.C.13/15, KOLLOOR,
KANNAMMOOLA, KANNAMMOOLA WARD, VANCHIYOOR VILLAGE,
THIRUVANANTHAPURAM.
- 2 SAJI @ PORI SAJI
AGED 42 YEARS
S/O.PAPPAN, KALLARA HOUSE, NEAR CHENNILODE GROUND,
ANAMUGHAM WARD, KADAKAMPALLY VILLAGE,
THIRUVANANTHAPURAM.
- 3 SURESH @ KOPRA SURESH
AGED 39 YEARS
S/O.APPUKUTTAN, KULAVARAMBIL HOUSE, KOLLOOR,
KANNAMMOOLA, KANNAMMOOLA WARD, VANCHIYOOR VILLAGE,
THIRUVANANTHAPURAM.
BY ADVS.
SRI. M.P.MADHAVANKUTTY
SRI. SHAJIN S.HAMEED
SMT. K. REMIYA RAMACHANDRAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE INSPECTOR OF POLICE, MEDICAL COLLEGE
CIRCLE, THIRUVANANTHAPURAM DISTRICT, REPRESENTED
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

SRI. E.C. BINEESH, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2024, ALONG
WITH CRL.A.677/2018 AND CONNECTED CASES, THE COURT ON 27.03.2024
DELIVERED THE FOLLOWING:



CrI. Appeal No. 677/2018 & batch

'C.R'

P.B. SURESH KUMAR & JOHNSON JOHN, JJ.

CrI. Appeal Nos. 677, 895, 1009 and 1500 of 2018

Dated this the 27th day of March, 2024.

JUDGMENT

Johnson John, J.

The appellants are accused Nos. 1 to 8 in S.C. No. 901 of 2016 on the file of the Additional District and Sessions Judge-VI, Thiruvananthapuram and accused Nos. 1 to 4 are challenging the conviction and sentence imposed on them for the offences punishable under Sections 120B, 302, 341, 326 r/w Section 34 IPC and accused Nos. 5 to 8 are challenging the conviction and sentence imposed on them under Section 120B IPC. CrI. Appeal No. 895 of 2018 is filed by accused Nos. 1, 2 and 4. CrI. Appeal No. 1009 of 2018 is filed by accused No. 3. CrI. Appeal No. 677 of 2018 is filed by accused No. 5 and CrI. Appeal No. 1500 of 2018 is filed by accused Nos. 6 to 8.

2. The prosecution case is that the accused persons and the deceased were members of rival gangs operating in Thiruvananthapuram and that the deceased and others attacked accused Nos. 2 and 3 in this case and that resulted in the registration of Crime No. 1271 of 2014 of Pettah Police Station and



CrI. Appeal No. 677/2018 & batch

because of the gang rivalry and previous enmity, accused Nos. 1 to 9 entered into a criminal conspiracy to murder the deceased Sunil Babu and in furtherance of their common intention, accused Nos. 1 to 4 travelled in two motorcycles and accused Nos. 5 to 8 travelled in an Innova car and accused Nos. 1 to 4 reached Kannammoola junction at about 7.45 p.m. on 13.12.2015 and attacked the deceased Sunil Babu, who was standing there in front of the State Bank of India, Kannammoola Branch.

3. It is alleged that the 2nd accused attacked the deceased with a sword and when the deceased attempted to ward off the attack, his little finger of the left hand was chopped and when the deceased attempted to escape towards the side of Kannammoola bridge, accused Nos. 1 to 4 chased him and when the deceased reached near the bus waiting shed, the 4th accused caught on the collar of his shirt from behind and after forcibly restraining him, banged his head towards the front side body of private bus bearing registration No. KL-01-AU-5353, which came from Kannammoola side and when the deceased fell down, the 2nd and 3rd accused persons inflicted cut injuries on his head with sword and chopper and the 1st accused inflicted cut injuries on various parts of the body of the deceased with chopper and thereafter, accused Nos. 1 to 4 left the place in their motorcycles and even though the deceased was taken to hospital, he succumbed to his injuries while



CrI. Appeal No. 677/2018 & batch

undergoing treatment in KIMS Hospital, Thiruvananthapuram at 7 p.m. on 15.12.2015.

4. As per the prosecution case, after the occurrence, accused Nos. 1 to 4 reached near the house of the 9th accused at Pullukadu and with the assistance of the 9th accused, they concealed the vehicles and the weapons used for committing the crime. But, as per the impugned judgment, the trial court found that the prosecution has not succeeded in proving the offence charged against the 9th accused and accordingly, the 9th accused was acquitted.

5. The Station House Officer of Medical College Police Station recorded Exhibit P1 First Information Statement of PW2, the father of the deceased, on 13.12.2015 at 11.15 p.m., and thereafter, registered Exhibit P63 FIR. PW49, the then Circle Inspector of Medical College Police Station, took charge of the investigation of this case on 14.12.2015 and thereafter, PW50 completed the investigation and filed the final report.

6. When the accused were produced before the trial court, after hearing both sides, charge was framed against accused Nos. 1 to 4 for the offences under Sections 115, 120B, 341, 324, 326 and 302 r/w Section 34 IPC and as against accused Nos. 5 to 8, charge was framed for the offence under Section 120B IPC and as against



CrI. Appeal No. 677/2018 & batch

the 9th accused, charge was framed for the offences under Sections 120B 115, and 201 IPC.

7. When the charge was read over and explained to the accused persons, they pleaded not guilty. Thereafter, the prosecution examined PWs 1 to 50 and marked Exhibits P1 to P114 and MOs 1 to 31 to prove the charge against the accused persons. Since it is found that the accused are not entitled for an acquittal under Section 232 Cr.P.C., they were called upon to enter on their defence. From the side of the accused, DWs 1 to 8 were examined and Exhibits D1 to D8 were marked.

8. After hearing both sides and considering the oral and documentary evidence on record, the learned Additional Sessions Judge, by the impugned judgment dated 13.04.2018, convicted and sentenced accused Nos. 1 to 4 to undergo rigorous imprisonment for life and to pay a fine of Rs.2,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year each for the offence under Section 302 r/w Section 34 IPC; simple imprisonment for one month each for the offence punishable under Section 341 r/w Section 34 IPC; and rigorous imprisonment for ten years each for the offence under Section 326 r/w Section 34 IPC. Accused Nos. 1 to 8 are sentenced to undergo rigorous imprisonment for life for the offence under Section 120B



CrI. Appeal No. 677/2018 & batch

IPC and the 9th accused was found not guilty of the offences under Sections 120B and 201 of IPC and accordingly, acquitted under Section 235(1) Cr.P.C.

9. Heard the learned counsel for the appellants, Sri. T.M. Abdul Latheef, Sri. Suman Chakravarthy, Sri. Shajin S. Hameed, Smt. Smitha Babu and Sri. M.P. Madhavankutty and the learned Public Prosecutor, Sri. E.C. Bineesh, and perused the records.

10. The point that arises for consideration in these appeals is whether the conviction entered and the sentence passed against the accused persons is legally sustainable.

11. It is argued on behalf of the appellants that the material witnesses who supported the prosecution, are members of a rival gang and their presence near the place of occurrence is not at all reliable and that there is delay in registering the FIR and that the Investigating Officer recorded the arrest of the accused persons even before recording the statements of the material witnesses. It is argued that there is no legally acceptable evidence to prove the conspiracy and that the prosecution failed to establish the elements of conspiracy against the appellants.

12. But, the learned Public Prosecutor argued that the evidence of PWs 1 and 3 regarding the occurrence is natural and reliable and their evidence regarding the occurrence is



CrI. Appeal No. 677/2018 & batch

corroborated by the evidence of PW6, who is the conductor of Attukal private bus. It is pointed out that the evidence of PWs 1 and 3 regarding the occurrence is supported by the evidence of PWs 33 and 48, who reached the place of occurrence on getting information from the police control room. It is further pointed out that the evidence of PWs 1 and 3 regarding the occurrence is also supported by medical and scientific evidence and the recovery of the material objects on the basis of the disclosure statements of the accused persons.

13. PW1 testified that the deceased Sunil Babu is the younger brother of his friend, Dini Babu, and that he saw the occurrence, when he reached KMS vegetable shop in between 7 and 7.30 p.m., on 13.12.2015. According to PW1, at that time, he saw a green Qualis car and that accused Nos. 5 to 8 were inside the car. Subsequently, he heard a cry and when he turned back, he saw the 2nd accused, Gabri Arun, attacking the deceased with a sword aiming his head and the deceased warding off the attack with his hand and running towards Kannammoola side.

14. According to PW1, the 3rd accused, Vineeth, yelled to catch the deceased and not to spare him and accused Nos. 1 to 4 chased the deceased and the 4th accused Mali Anish, who was just behind the deceased, caught on his shirt collar and then a bus came



CrI. Appeal No. 677/2018 & batch

through that way and suddenly applied brake and the 4th accused banged the head of the deceased against the front side of the bus and then the deceased fell on the road. PW1 deposed that the 2nd and 3rd accused attacked the deceased, who was lying on the road, with their weapons and inflicted cut injuries and the 1st accused also inflicted several cut injuries on the body of the deceased. Thereafter, accused Nos. 1 and 3 left the place in one motorcycle towards Kumarapuram side and accused Nos. 2 and 4 left the place in their motorcycle towards Gowreesapattom side. According to PW1, the injured was taken to the nearby bus waiting shed and subsequently, police came there and took the injured to the Medical College Hospital.

15. The evidence of PW1 shows that he informed the elder brother of the victim and thereafter, reached the Medical College Hospital and at that time, the victim was in an unconscious condition. PW1 stated that subsequently, the relatives took the victim to KIMS Hospital and according to PW1, the motive is the previous quarrel between the 2nd accused and the deceased and that there was also a case in Petta Police Station in that connection. PW1 also identified accused Nos. 1 to 4, who attacked the deceased and accused Nos. 5 to 8 who were seen inside the Qualis car before the occurrence. PW1 identified the sword used by the 2nd accused as MO1 and the chopper used by the 1st accused as MO2. The



CrI. Appeal No. 677/2018 & batch

chopper used by the 3rd accused is identified as MO3 by PW1 before the court. PW1 also identified the Qualis car in which accused Nos. 5 to 8 travelled as MO60.

16. The evidence of PW1, in cross examination, shows that he was the driver of a tipper lorry owned by the elder brother of the deceased during 2015. PW1 denied the suggestion that usually it is his mother-in-law who used to purchase vegetables from the shop. According to PW1, from his house, he can reach KMS vegetable shop at Kannammoola through Kalakaumudi road and that the shops there are facing Medical Colleg -Pettah road. He denied the suggestion that the vegetable shop will not be opened on Sundays. According to PW1, he was there in the vegetable shop for about 10 minutes and that he purchased a vegetable kit for Rs. 50/- and the incident occurred while he was paying the amount. PW1 would say that he saw the Qualis car, while he was entering the shop after parking his bike in front of the said shop. According to PW1, there was street light near the bank and there were also lights in the nearby shops. He denied the suggestion that the headlight of the bus was off and according to PW1, the police recorded his statement after three days of the occurrence.

17. PW3 deposed that he is residing at Kannammoola and that the deceased Sunil Babu was his friend. According to PW3, on



CrI. Appeal No. 677/2018 & batch

13.12.2015, in between 7 and 7.30 p.m., he reached Kannammoola junction for purchasing mobile recharge coupon and when he was in front of the shop, he saw accused Nos. 5 to 8 moving towards Kumarapuram side and shortly thereafter, accused Nos. 1 to 4 reached there in two motorcycles from Kumarapuram side and after parking the motorcycles in front of SBI, they approached the deceased Sunil Babu who was standing in front of the said Bank and the 2nd accused struck on the head of Sunil Babu with sword and Sunil Babu ward off the attack with his left hand and ran towards Pallimukku side. Then the 3rd accused, Vineeth, yelled to catch him and cut him and accused Nos. 1 to 4 chased the deceased and because of fear, the witness moved towards the other side of the shop and after some time, he saw accused Nos. 1 and 3 moving towards Kumarapuram side and accused Nos. 2 and 4 moving towards Gowreesapattom side in the motorcycles in which they came there.

18. According to PW3, after accused Nos. 1 to 4 left the place, he saw some persons carrying Sunil to the waiting shed at Kannammoola and at that time, there was cut injuries on various parts of his body and his shirt was also torn on several places. According to PW3, Sunil was in an unconscious condition and he also saw a private bus in front of the waiting shed and there was a dent in the front portion of the said private bus. PW3 stated that



CrI. Appeal No. 677/2018 & batch

the police officers from Pettah Police Station reached there and took the injured to Medical College Hospital. PW3 identified accused Nos. 1 to 4 as the persons who attacked the deceased and accused Nos. 6 to 8 as the persons seen inside the Qualis car. He also identified MOs 1 to 3 as the weapons used by the accused persons and the pants, shirt and belt of the deceased as Mos 4 to 6 respectively.

19. PW3 admitted in cross examination that he was also an accused along with the deceased Sunil Babu for attacking the 2nd accused, Gabri Arun, and that he was an accused in a murder case registered as Crime No. 1323 of 2016 and the deceased in the said case is the younger brother of the second accused, Gabri Arun.

20. PW6 was the conductor of the private bus bearing registration No. KL-01-AU-5353 conducting service from Kalady to Pulayanarkotta. According to PW6, on 13.12.2015, at about 7.30 p.m., the bus proceeded from Kizhakkekotta and when the bus reached before Kannammoola stop, he heard a sound and then the bus stopped suddenly and when he came out of the bus and reached in front of the bus, he saw 3-4 persons running towards Gowreesapattom side and another person lying in front of the bus soaked in blood and then the persons who gathered there took the injured to the nearby bus waiting shed and subsequently, police came there and directed him to produce the bus in the Police



CrI. Appeal No. 677/2018 & batch

Station. PW6 deposed that he was present when the police prepared Exhibit P4 mahazar and that there was a dent in the front side of the bus and he also saw blood and hair at that portion. PW6 also identified his signature in Exhibit P4 mahazar before the court.

21. According to PW6, the bus was taken to the Police Station on 13.12.2015 itself and the mahazar was prepared at 11 a.m., on 14.12.2015. He denied the suggestion that the bus reached Kannammoola only at 8 p.m. and stated that the bus reached Kannammoola at about 7.50 p.m.

22. PW2 is the father of the deceased Sunil Babu. He deposed that on getting information about the incident, he reached Medical College Hospital. According to PW2, he reached Medical College Police Station after 11 p.m. on 13.12.2015 and the police recorded his statement. PW2 identified his signature in Exhibit P1, First Information Statement.

23. PW33 was a Civil Police Officer attached to Pettah Police Station, who was on picket duty at Puthenpalam in connection with the clashes between the rival gangs of Puthenpalam Rajesh and Dini Babu. According to PW33, at about 7.45 p.m., on 13.12.2015, he got a wireless message from the control room regarding an accident at Kannammoola junction and when he reached Kannammoola in his motorcycle, he saw a private bus stopped



CrI. Appeal No. 677/2018 & batch

there and a person lying in the waiting shed soaked in blood. According to PW33, he enquired the matter to the driver of the said bus and came to know that 4 persons chased the injured from Kannammoola side and chopped him in front of the bus and immediately he informed the matter to the control room and thereafter, the Sub Inspector and party from Pettah Police Station reached there and took the injured to the hospital.

24. The then Sub Inspector of Pettah Police Station was examined as PW48 and he deposed that at about 7.45 p.m., on 13.12.2015, he got information from the control room about some problem near Kannammoola and accordingly, when he reached Kannammoola junction, he saw people gathered there and a private bus 'Attukal' stopped there and a person lying in the waiting shed soaked in blood. PW48 deposed that with the assistance of the people gathered there and the Civil Police Officer, who was on duty at Puthenpalam, the injured was taken to Medical College Hospital. Later, he came to know that the said person succumbed to his injuries and that he was the younger brother of the notorious gangster, Dini Babu.

25. In cross examination, PW48 deposed that it is not known to him whether the father of the deceased has filed a complaint in Pettah Police Station. According to PW48, the injured was taken to



CrI. Appeal No. 677/2018 & batch

Medical College Hospital in the police jeep and while he was in the Medical College Hospital, police officers from Medical College Police Station reached there. According to PW48, he has not given the name and address of the injured to the doctor and he is not aware as to who told the same to the doctor.

26. The learned counsel for the appellants argued that PWs 1 and 3 are interested witnesses and that admittedly, PW1 was working as the driver of the elder brother of the deceased and his evidence before the court that he witnessed the occurrence while purchasing vegetables from a shop at Kannammoola is highly artificial and the same cannot be relied upon. It is further argued that PW3 was a close associate of the deceased and that he was a co-accused along with the deceased in a previous crime registered for assaulting the 2nd accused and therefore, it can be seen that he is also an interested witness and that the prosecution has not examined the owner of the vegetable shop or any other independent witness to prove the occurrence.

27. It is true that the court must exercise extreme caution before accepting the testimony of interested witnesses. In **Jarnail Singh v. State of Punjab** [(2011) 3 SCC 521], it was held that the prevalent presumption is that a related witness would not testify falsely against an innocent person because they want to see the



CrI. Appeal No. 677/2018 & batch

true culprits punished.

28. In ***Alagupandi @ Alagupandian v. State of Tamil Nadu*** [AIR 2012 SC 2405], it was held that the evidence of a related witness cannot be immediately rejected and that the relationship of the witness cannot be utilized to determine the validity and reliability of the testimony.

29. It is well settled that the credibility of a related witness is unaffected by their affiliation with either party; but, the court should proceed with care while deciding the admissibility of the evidence of such a witness. In ***Madu v. State of Karnataka*** [AIR 2014 SC 394], it was held that the term 'witness' refers to a person who is capable of giving information about pertinent events through deposition, an oral statement in writing made or provided in court, or otherwise and unless he or she comes from tainted sources, a witness is often a deemed independent.

30. In ***Joginder Singh v. State of Panjab*** [2009 CrI. LJ 2805], the Honourable Supreme Court considered the reliability and credibility of an interested witness and held that a simple relationship cannot be used to invalidate an interested witness and it cannot be disputed that an interested witness is one who has a direct or indirect interest to see that the accused is convicted for reasons of animus or any other oblique motive.



CrI. Appeal No. 677/2018 & batch

31. It is true that the evidence of PW1 would show that he was the driver of the elder brother of the deceased and that PW3 was a co-accused along with the deceased in a previous crime registered for assaulting the 2nd accused in this case. But, that by itself is not sufficient to suspect the presence of PWs 1 and 3 at the time of occurrence and even though PWs 1 and 3 were seriously cross examined, nothing material was brought out to indicate that they have any direct stake in the outcome of the case so as to affect their credibility.

32. Further, the evidence of PWs 1 and 3 regarding the occurrence is also supported by the evidence of PWs 6, 33 and 48. It is in evidence that the place of occurrence is not far away from the residence of PWs 1 and 3 and therefore, the evidence of PW1 that he reached Kannammoola junction at the time of occurrence for purchasing vegetables from KMS vegetable shop and the evidence of PW3 that he reached Kannammoola junction for purchasing mobile recharge coupon from the mobile shop, appears to be natural and reliable and therefore, we find no merit in the contention of the appellants in this regard.

33. The learned counsel for the appellants argued that the prosecution has not succeeded in proving that the death of Sunil Babu was homicidal and that the available evidence in this case



CrI. Appeal No. 677/2018 & batch

would show that the deceased sustained fatal injuries in an accident. But, the learned Public Prosecutor pointed out that the evidence of PW6, the conductor of the bus, and PW8, the driver of the bus, would show that there occurred no accident involving the bus and the evidence of PW1 would show that the 4th accused banged the head of the deceased on the front side body of the bus and the said incident occurred immediately after the bus stopped in the bus stop at Kannammoola.

34. The evidence of PW6 shows that the bus was stopped suddenly just before the bus stop at Kannammoola and he also saw 3 or 4 persons running away from there towards Gowreesapattom side and saw another person lying soaked in blood in front of the bus. Even though PW8, who was the driver of the bus, turned hostile to the prosecution, and deposed that he is not aware as to why the bus was taken to custody, his evidence clearly shows that he stopped the bus at Kannammoola bus stop and he did not see anyone crossing the road before he stopped the bus.

35. According to PW8, he saw a person lying in front of the bus. However, he denied that he made a statement to the police that he saw 4 persons chasing another person and when the said persons attempted to cross the road, he suddenly applied the brake and the said portion in his statement under Section 161 Cr.P.C is



CrI. Appeal No. 677/2018 & batch

marked as Exhibit P8.

36. PW37 was the doctor who examined the deceased at Medical College Hospital, Thiruvananthapuram at 8.30 p.m., on 13.12.2015 and issued Exhibit P55 certificate. PW37 deposed that the patient was brought by police with the alleged history of assault on 13.12.2015 at 8.15 p.m. near Kannammoola junction. The evidence of PW37 and Exhibit P55 shows that the alleged history was stated by the bystanders. According to PW37, the patient was unconscious and on local examination, the following injuries were noted:

1. Laceration over (Rt) parietal scalp
2. Laceration over (Rt) occipital scalp
3. There was a stab wound over (Rt) flank of 3 x 2 cms dimension and the depth could not be assessed.
4. Another stab wound over the Lt Flank
5. Loss of distal phalanx of Rt small finger.

37. PW38 was the ICU Medical Officer at KIMS Hospital, Thiruvananthapuram on 15.12.2015 and his evidence shows that the deceased was admitted in KIMS Hospital on 13.12.2015 followed by assault with severe head injury, multiple stab wound and mutilation of finger of left hand and he expired at 7.01 p.m. on 15.12.2015. PW38 identified his signature in Exhibit P56 death



CrI. Appeal No. 677/2018 & batch

intimation issued to the police on 15.12.2015.

38. The Assistant Professor of Forensic Medicine at Medical College Hospital Thiruvananthapuram who conducted the postmortem examination on the body of the deceased on 16.12.2015 is examined as PW39 and the postmortem certificate is marked as Exhibit P57. The evidence of PW39 and Exhibit P57 shows that the following ante-mortem injuries were noted.

“1. Lacerated wound 2x0.5x1cm on inner aspect of upper lip across midline.

2. Multiple small abrasions over an area 9x5cm involving right side of face and adjoining areas of upper and lower eyelids, lower extent was 2cm outer to right angle of mouth.

3. Multiple small abrasions over an area 4.5x2cm on bridge, tip and left ala of nose.

4. Lacerated wound 1.5x0.5x0.2cm on left side of bridge of nose with a linear abrasion of length 4cm extending to right across midline.

5. Lacerated wound 1.3x0.5cm, bone deep, on root of nose with fracture of nasal bone underneath.

6. Abrasion 3x0.2cm on forehead across midline 2cm above root of nose with area of contusion 6x5x0.4cm underneath and around.

7. Abrasion 5x3cm on right side of forehead, its lower extent was at the level of eyebrow 4cm to right of midline.



8. Stapled wound 6cm long, bone deep, oblique on left side of back of head, its lower inner end was in the midline and 9cm above occiput. Skull (left parietal bone) underneath showed a clean cut involving its outer table (4cm long)

9. Stapled wound 5cm long, bone deep, oblique, on right side of head, its lower back end was 6cm above and 4cm behind right ear. Skull (right parietal bone) underneath showed a clean cut involving its full thickness (4.5cm long) with multiple fissured fractures extending in varying directions from both ends. Dura matter underneath was cleanly cut.

Skull showed fissured fracture on right side of anterior cranial fossa. Brain stem showed multiple small haemorrhages. Brain was soft with thick subdural and diffuse subarachnoid haemorrhages on right hemisphere. Sulci narrowed and gyri flattened.

10. Abrasion 1.5x0.1 to 0.2cm, oblique, on back of trunk in midline 16cm below root of neck.

11. Abrasion 3x0.8cm, horizontal on left side of back of trunk, its inner end was 11.4cm outer to midline and 19.5cm below top of shoulder.

12. Incised wound 2.5x0.2 to 0.7x0.2cm horizontal on left side of back of trunk, its inner end was just below the outer end of injury no. (11)

13. Incised punctured wound 4x0.5x4.1cm, horizontal on left side of back of trunk, its inner sharp end was 11cm outer to midline and 12cm above top of hip bone, the other end was rounded. The wound was directed downwards, forwards and ended in the muscle plane.



14. Incised wound 15x0.1x0.1cm, oblique, on right side of back of trunk, its upper inner end was in the midline 24cm below root of neck.

15. Abrasion 14x0.1cm, horizontal on back of trunk across midline 25.5cm below root of neck, covered with reddish brown adherent scab.

16. incised punctured wound 2.5x0.3x2.7cm, oblique on back of trunk, in the midline with tailing 0.8cm long, directed downwards and to left from its lower left sharpened. The other end was rounded and was 1cm to right of midline and 18cm above the level of natal cleft. The wound was directed downwards forwards and to left and ended in the subcutaneous plane.

17. Abrasion 3.5x0.2 to 0.5cm, oblique, on left buttock, its upper inner was 8cm outer to midline and 5cm below top of hip bone with area of contusion 4x1.5x1cm underneath and around.

18. Incised wound 2.5x0.5x2cm, oblique on right side of trunk, its lower back end was 15cm outer to midline and 4cm above top of hip bone.

19. Linear abrasion 11cm long, oblique on top of right shoulder and adjoining areas of back of trunk, its back inner end was 3.5cm outer to midline and 3cm below root of neck, covered with reddish brown adherent scab.

20. Abrasion 8x4cm on outer aspect of right arm just above elbow.

21. Abrasion 2x0.3cm, vertical on outer aspect of right arm, 10cm below tip of shoulder.



22. Abrasion 5x3cm on outer aspect and back of right forearm, 2cm below elbow.
23. Abrasion 4x1cm on back of right forearm, 3cm below elbow.
24. Abrasion 1x0.5cm on back of right hand 6cm below wrist.
25. Contusion 1.5x1x0.2cm on front of right index finger, 4cm above its tip.
26. Linear abrasion 9cm long, horizontal on inner aspect of right thigh 11cm above knee.
27. Multiple small abrasions over an area 8x4cm on front of right knee.
28. Linear abrasion 6cm long, oblique on back of right leg 24cm below knee.
- 29 . Incised wound 2x0.5x0.3cm, oblique on back of left hand with tailing 2x0.1cm directed upwards and inwards from its upper inner end which was 3cm below wrist.
30. Abraded contusion 5x3x0.5cm on back of left hand, 3cm below wrist.
31. Incised amputating wound 3x1.5cm, oblique on left little finger, its upper inner extent was 9.5cm below wrist (distal portion was missing).
32. Incised wound 3.5x1.5cm, bone deep, oblique on back and sides of left ring finger, bone underneath was cleanly cut and separated, its upper extent was 10cm below wrist (proximal and distal portions were attached only by skin and subcutaneous tissue).



33. Incised wound 3.5x1.5cm, bone deep, oblique on back and sides of left middle finger, its upper extent was 10cm below wrist, the bone underneath was found partly cut obliquely.

Injury numbers (31) to (33) were in the same horizontal plane.

34. Healing wound 2.7x0.1 to 0.5cm, oblique on left side of front of chest, 15cm outer to midline and 12cm below top of shoulder.

35. Infected wound 2x0.5x0.5cm, oblique on left side of abdomen, with an abrasion 9x0.2cm extending downwards and forwards from its front lower end, upper outer end of the wound was 3cm above top of hip bone in the mid axillary line.

36. Abrasion 1x1cm on left side of front of abdomen 2.5cm outer to midline and 4cm above pubic bone.

Edges of stapled wounds were adherent. Injury numbers 20 to 24, 26 to 28, 30 and 34 were covered with brown adherent scab. Contusions and haemorrhages were dark red in colour."

39. According to PW39, death was due to injury sustained to the head and that injury Nos. 1 to 7 are blunt force injuries. PW39 testified that injury Nos. 8 and 9 are sharp force injuries possible with sharp objects and the said injuries could be produced with weapons like MOs 1 to 3. According to PW39, injury Nos. 8 and 9 are sufficient in the ordinary course of nature to cause death. In cross examination, PW39 deposed that injuries 1 to 7 are not minor



CrI. Appeal No. 677/2018 & batch

injuries and in combination with their effect on brain, those are sufficient to cause death in the ordinary course of nature.

40. On a careful re-appreciation of the evidence of PWs 1 and 3 with the evidence of PWs 6 and 8, who are the conductor and driver of the bus and the nature of the injury sustained by the deceased as disclosed from the evidence of PWs 37 to 39 and Exhibits P55 to P57, we find no merit in the arguments of the appellants that the death of the deceased, Sunil Babu, was accidental and not homicidal. It is pertinent to note that the medical evidence tallies with the evidence of PWs 1 and 3 on all material particulars and therefore, we find that the prosecution has succeeded in proving beyond reasonable doubt that the death of the deceased Sunil Babu is homicidal.

41. PW41 was the Station House Officer of Medical College Police Station on 13.12.2015. He testified that on the basis of the statement of the father of the deceased, he registered Exhibit P63 FIR in this case. According to PW41, while he was attending law and order duty in connection with the death of a pregnant lady in SAT Pattom Hospital, he got information about the incident through handset at about 7.45 p.m. and thereupon, he deputed Sub Inspector Jayaraj who was on patrolling duty to the place of occurrence and subsequently, the Sub Inspector informed him that



CrI. Appeal No. 677/2018 & batch

4 persons inflicted cut injuries on a person at Kannammoola junction and the injured was taken to the Medical College Hospital by the Sub Inspector of Pettah Police Station and party.

42. The evidence of PW41 shows that subsequently when he reached Medical College Hospital, the injured was in the casualty and since there was a crowd in connection with the incident, he deputed 2 police officers for guarding the crime scene and also requested the control room for more police force for controlling the traffic and subsequently, when he again reached the Medical College Hospital, the injured was already taken to KIMS Hospital by his relatives and when he reached the KIMS Hospital, the injured was in the ICU and thereafter, when he reached the Medical College Police Station, the father of the deceased was there and hence, he recorded his statement at 11.15 p.m.

43. The learned counsel for the appellants pointed out that in Exhibit P63 FIR, the date and time shown in columns relating to system date and time and the original date and time are the same i.e., 14.12.2015 at 12.27. In column No. 3 of Exhibit P63, the date of occurrence is shown as 19.45 hours on 13.12.2015 and therefore, it can be seen that even though Exhibit P1, First Information Statement, was recorded at 11.15 p.m., on 13.12.2015, the FIR was registered only at 12.27 p.m. on



CrI. Appeal No. 677/2018 & batch

14.12.2015 and the prosecution has not explained the delay.

44. In cross examination, PW41 stated that the entry in column No. 4 of Exhibit P63 that the information is written, is a mistake that occurred while making entries in the computer. The learned counsel for the appellants pointed out that Exhibit P63 reached the ACJM court only at 11 hours on 15.12.2015 and the prosecution has not furnished any explanation regarding the delay in registering the FIR and producing the same before the jurisdictional Magistrate.

45. The learned Public Prosecutor argued that column No. 14 in Exhibit P63 would show that the FIR was despatched to the court at 22.45 hours on 13.12.2015 and the delay in making the necessary entries in the computer and the mistake in the system date and time by itself is not sufficient to establish that any prejudice is caused to the accused persons. It is also pointed out that PW41 has deposed the sequence of events after he received information about the incident through the handset at 7.45 p.m. on 13.12.2015 and the evidence of PW41 in this regard sufficiently explains the reasons for the delay.

46. It is true that FIR is the most immediate and first version of the incident and has great value in ascertaining the truth as it reduces the chances of improvement in the prosecution story.



But, at the same time, it is not a piece of substantive evidence. It is pertinent to note that in this case, Exhibit P63 FIR is registered on the basis of the statement of PW2, who is not a witness to the occurrence and when PW2 was examined before the court, he has no case that he witnessed the occurrence in this case.

47. Therefore, in the facts and circumstances of this case, it cannot be held that the prosecution delayed the registration of the FIR for tutoring the informant or improving the prosecution story so as to falsely implicate any of the accused and therefore, we find that the contention of the appellants in this regard cannot be accepted.

48. It is argued on behalf of the appellants that the evidence of the material witnesses regarding the exact time of occurrence does not tally and according to PWs 1 and 3, the incident had occurred in between 7 p.m. and 7.30 p.m. But, the evidence of PW6, the conductor of the bus, would show that the bus started from East Fort at 7.30 p.m. and reached at Kannammoola at 7.50 p.m. and as per Exhibit P63 FIR, the occurrence was at 7.45 p.m. and therefore, it can be seen that the prosecution has failed to prove the exact time of occurrence.

49. But, we find force in the argument of the learned Public Prosecutor that PWs 1, 3 and 6 has deposed only the approximate



CrI. Appeal No. 677/2018 & batch

time according to their memory and the variations in their evidence regarding the time of occurrence is only due to normal errors of observations and memory due to lapse of time and the same cannot be accepted as material discrepancies touching the core of the case.

50. PW4 is the cousin brother of the deceased who reached the Medical College Hospital on getting information about the incident and saw the victim in the casualty in an unconscious condition. The evidence of PW4 shows that he came to know about the occurrence from PW1 Shibu and that he also witnessed the preparation of Exhibit P2 scene mahazar by the police on the next day. PW4 identified his signature in Exhibit P2 scene mahazar before the court. According to PW4, after postmortem examination, he received the body of the deceased by executing Exhibit P3 receipt.

51. PW49, the then Circle Inspector of Medical College Police Station, deposed that he prepared Exhibit P2 scene mahazar on 14.12.2015 in the presence of the scientific expert and also seized the samples collected by the scientific expert from the place of occurrence as per Exhibit P2 mahazar. According to PW49, he also prepared Exhibit P4 mahazar after inspecting the bus involved. The report of the scientific expert regarding the collection of evidence is marked as Exhibits P61 and P62. PW49 testified that he got reliable



CrI. Appeal No. 677/2018 & batch

information regarding the presence of the accused persons at Pullukadu within the jurisdiction of the Thumba Police Station and while he was searching for the accused persons with the assistance of shadow police, they saw a green Qualis car bearing registration No. KL-01-AE-1229 and a blue Innova car bearing registration No. KL-19-A- 6472 and when the police party attempted to block the said vehicles near Techno Park, all others except the driver of the Innova car attempted to run away; but they were chased and detained and the vehicles were also removed to the Police Station. After questioning the detained persons, PW49 recorded the arrest of accused Nos. 1 to 9 at 4. 30 p.m., on 14.12.2015. The mobile phones, ATM cards and the currency notes recovered from the possession of the accused persons as per Exhibit P50, seizure mahazar, were identified as MOs 7 to 15 and the arrest memo and inspection memo of accused Nos.1 to 9 are marked as Exhibits P77 to P93.

52. PW49 testified that when blood stains were seen in the jeans worn by accused Nos. 2 and 3, he recovered the same as per Exhibit P54 mahazar and the same were identified as MOs 17 and 18. According to PW49, on the basis of Exhibit P42(a) disclosure statement of the 1st accused that he discarded the used sword at a place near Pullukadu junction and as led by the 1st accused, he reached the said place along with the 1st accused and the 1st



CrI. Appeal No. 677/2018 & batch

accused took out MO2 chopper from inside the shrubs there and he seized the same as per Exhibit P42 mahazar. PW49 deposed that on the basis of the disclosure statement of the 1st accused that he kept the motorcycle on the side of a house near to the house of Praveen and as led by the accused, he reached the said house and recovered Yamaha F2 Model motorcycle bearing registration No. KL-01-VP-1301 as per Exhibit P11 mahazar and the relevant portion of the confession statement of the 1st accused is marked as Exhibit P11(a). The motorcycle recovered as per Ext P11 mahazar is identified as MO26.

53. According to PW49, in the disclosure statement of the 2nd accused, it is stated that the sword used by him is kept inside the motorcycle of the 4th accused and that he will point out the place where the motorcycle is kept and in the disclosure statement of the 4th accused, he stated that the motor cycle and its key are kept near a temple at Pullukadu and he reached the said place as led by accused Nos. 2 and 4 and as pointed out by them, motorcycle bearing registration No.KL-01-BC-8772 was recovered from the northern side of Sree Bhadrakali Devi temple Pullukadu and the 4th accused also took out the key of the motorcycle and by using the said key the 2nd accused opened the seat of the motor cycle and took out a sword and the same was seized as per Exhibit P43 mahazar.



CrI. Appeal No. 677/2018 & batch

54. The sword recovered on the basis of the disclosure statement of the 2nd accused is identified as MO1 and the relevant portion of the confession statement of the 2nd accused is marked as Exhibit P43(a). The relevant portion of the disclosure statement of the 4th accused for the recovery of the pulsar motorcycle and its key is marked as Exhibit P43(b).

55. PW49 stated that on the basis of the disclosure statement of the 3rd accused that he kept the chopper in a place near Pullukadu junction and as led by the accused, they reached the compound of Sree Bhadrakali temple, Pullukadu and from inside the shrubs there, the 3rd accused took out the chopper and the same was recovered as per Exhibit P44 mahazar. The relevant portion of the confession statement of the 3rd accused is marked as Exhibit P44(a) and the chopper recovered as per Exhibit P44 mahazar is identified as MO3.

56. The learned counsel for the appellants pointed out that PWs 27 and 28 are the witnesses examined from the side of the prosecution to prove the recovery as per Exhibits P42 and P43 mahazars and they turned hostile to the prosecution and deposed that they have not witnessed the recovery. It is also argued that the Investigating Officer has prepared a joint mahazar for the recovery of MO1 sword on the basis of the disclosure statement of



CrI. Appeal No. 677/2018 & batch

the 2nd accused and for the recovery of the motorcycle and key on the basis of the disclosure statement of the 4th accused and therefore, the same being a joint recovery is not admissible under Section 27 of the Indian Evidence Act.

57. But, the evidence of PW49 and Exhibits P43(a) and P43(b), the relevant portion of the confession statement of the 2nd and 4th accused extracted in Exhibit P43 mahazar, would clearly show that the recovery was effected on the basis of separate disclosure statements made by the 2nd and 4th accused persons to PW49. From Exhibit P43(a), it can be seen that the 2nd accused has disclosed his knowledge regarding the place where he concealed MO1 sword to the Investigating Officer and Exhibit P43(b) would show that the 4th accused has disclosed his knowledge regarding the place where he kept the motorcycle and its key to the Investigating Officer and only because MO1 was kept locked under the seat of the motorcycle, it cannot be held that there was a joint confession or joint recovery.

58. Even though PWs 27 and 28 turned hostile to the prosecution they admitted their signature in the recovery mahazar. In **State, Government of NTC of Delhi v. Sunil** [2001 CrI. L. J 504], it was held that when the recovery of an object is made pursuant to the information given by the accused, there is no



CrI. Appeal No. 677/2018 & batch

obligation on the Investigating Officer to call independent witness from the locality to witness the recovery or to attest the recovery mahazar. Therefore, merely because PWs 27 and 28 turned hostile to the prosecution, the evidence of the Investigating Officer regarding the recovery of the material objects on the basis of the disclosure statements of accused Nos. 2 and 4 cannot be rejected and hence, we do not find any merit in the argument of the appellants in this regard.

59. PW44 was the Assistant Director of Serology in the Forensic Science Laboratory, Thiruvananthapuram, who issued Exhibit P65 report after scientific examination of the material objects and the evidence of PW44 and Exhibit P65 shows that human blood belonging to the group O was detected in MO1 sword recovered as per Exhibit P43(a) disclosure statement of the 2nd accused and that human blood belonging to Group O was also detected in MO18, blue jeans of the 3rd accused, and that the blood contained in MO17, jeans of the 2nd accused, was insufficient to determine the origin and group. The report further shows that the blood sample of the deceased was found to be belonging to group O. The evidence of PW44 and Exhibit P65 report shows that blood was not detected in MO2 chopper recovered on the basis of the disclosure statement of the 1st accused.



CrI. Appeal No. 677/2018 & batch

60. PW45 was the Assistant Director of DNA, Forensic Science Laboratory, Thiruvananthapuram who issued Exhibit P60 report after scientific examination of the material objects. The evidence of PW45 and Exhibit P60 shows that the blood stains in MO1 sword used by the 2nd accused and blood stains in MO18 jeans of the 3rd accused belong to the deceased.

61. The learned counsel for the appellants argued that blood was not detected in MO2 chopper allegedly used by the 1st accused and therefore, MO2 cannot be linked to the 1st accused. It is also argued that no weapon is attributed to the 4th accused and therefore, the evidence of PWs 1 and 3 regarding the involvement of the 1st and 4th accused is not corroborated by any scientific evidence. The learned counsel for the appellants also argued that there is delay in producing the seized articles before the court.

62. In ***R. Shaji v. State of Kerala*** [AIR 2013 SC 651], it was held that once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of the blood group loses significance and that no advantage can be conferred upon the accused because of the failure to detect the origin of the blood due to disintegration of the serum because of the lapse of time and that the report of disintegration of blood etc. cannot be termed as a missing link, on the basis of which



CrI. Appeal No. 677/2018 & batch

the chain of circumstances may be presumed to be broken. In the said decision the Honourable Supreme Court also held that sometimes it is possible, either because the stain is insufficient in itself, or due to hematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question.

63. On a careful re-appreciation of the facts and circumstances, we do not find any merit in the submission of the appellants that there was an inordinate delay in producing the seized articles before the court and we find that the accused are not entitled for the benefit of any reasonable doubt in this regard. The evidence of PWs 1 and 3 regarding the direct involvement of accused Nos. 1 to 4 is supported by medical evidence and the recovery of the material objects on the basis of the disclosure statement of the accused persons and we find no reason to interfere with the finding of the trial court that the prosecution has proved the charge for the offences under Sections 341 and 302 r/w Section 34 IPC against accused Nos. 1 to 4.

64. The specific case of the prosecution is that accused Nos. 1 to 9 entered into a criminal conspiracy to murder the deceased and in order to prove the criminal conspiracy, the prosecution is relying on the evidence of PWs 1 and 3, who deposed before the



CrI. Appeal No. 677/2018 & batch

court regarding the presence of accused Nos. 5 to 8 in a green Qualis car which passed through the road immediately before the occurrence. But, it is pertinent to note that PWs 1 and 3 have no case that accused Nos. 5 to 8 have given any signal to accused Nos. 1 to 4 at the time of occurrence or immediately before the occurrence. It is in evidence that there is heavy traffic through the said road and there is no satisfactory evidence to show that there was light inside the Qualis car so as to enable PWs 1 and 3 to properly identify accused Nos. 5 to 8.

65. Another circumstance relied on by the prosecution is the arrest of accused Nos. 1 to 8 on 14.12.2015, while they were travelling in two vehicles. The evidence of PW49 regarding the arrest of the accused persons is that when the police party blocked the vehicles of the accused persons, except the driver of the Innova car, all other persons who travelled in the said two vehicles attempted to run away and they were chased and apprehended.

66. The prosecution is also relying on the call records of the accused persons to prove the criminal conspiracy. Even though the prosecution examined PW7, an autorickshaw driver, to prove that the accused persons assembled near the house of the 7th accused at 6.15 p.m., on 13.12.2015, the said witness turned hostile to the prosecution and denied that he made statement to the police as per



CrI. Appeal No. 677/2018 & batch

Exhibit P6. According to PW7, he has not recharged the mobile phone of the 7th accused and his evidence in cross examination also shows that the police threatened to implicate him in this case.

67. PW10 is a friend of the 2nd and 4th accused and his evidence shows that the 4th accused, Anish, is using mobile No. 9633697717 and that the said SIM card was subscribed by him using his ID proof. According to PW10, he had given the said SIM card to the 4th accused, as the 4th accused was not having an ID card to subscribe a SIM card at that time.

68. PW5 deposed that Innova car bearing registration No.KL-19-A-6472 belongs to his brother, Renjith Rajan, and that on 14.12.2015, at 12.30 a.m., he received a call from mobile No. 9061810662 requesting the vehicle for a three day trip and the person who first talked to him informed him that he is handing over the phone one Kari Binu said to be the 5th accused in this case and after talking to the said person, PW5 exchanged the phone number of Vishnu, who is the driver of the vehicle to the said person and the mobile number from which he received the call to Vishnu. The evidence of PW5 in cross examination shows that he is not sure whether it was the 5th accused, Kari Binu, who talked to him in the mobile phone, as he was not able to recognize his sound.



CrI. Appeal No. 677/2018 & batch

69. PW21 is the younger brother of the 8th accused and his evidence shows that he is the subscriber of mobile number, 9605441627, and that he used to call the accused persons in this case in connection with his work and he denied the suggestion that he made statement to the police as per Exhibit P22. PW21 turned hostile to the prosecution and he categorically deposed before the court that he never told the police that he entrusted mobile SIM card No. 9605441627 subscribed by him for the use of the 8th accused in this case.

70. PW22 also turned hostile to the prosecution and deposed that she is the subscriber of mobile SIM Card No.9497268787 and she is using the said SIM. According to PW22, the accused persons are known to her and she had called the accused persons from her mobile number and she also denied the suggestion that she has given statement to the police as per Exhibit P23.

71. From the evidence of PWs 7, 21, 22 and 26, it can be seen that the prosecution has not succeeded in proving the use of mobile numbers, 9061810662, 9605441627, 9497268787 or 9895493805, by any of the accused persons and therefore, it can be seen that the evidence of PWs 24, 25, 29 and 30, Nodal Officers, regarding the call details of the above said mobile numbers are not sufficient to establish any conspiracy in between the accused



persons.

72. It is also pointed out by the appellants that the trial court has drawn an inference against the accused persons for the reason that the testimony of PW22 has a taste of untrustworthiness and improbabilities and the said approach is not legally sustainable, as it is for the prosecution to prove the alleged criminal conspiracy between the accused persons. It is true that criminal conspiracy is generally hatched in secrecy and therefore, it is difficult to obtain direct evidence and therefore, criminal conspiracy can be proved either by adducing circumstantial evidence or by way of necessary implication. But it cannot be disputed that inference can be drawn only from established facts and when the circumstantial evidence is incomplete or vague, it becomes necessary for the prosecution to provide adequate proof regarding the meeting of minds, which is essential in order to hatch a criminal conspiracy. But, in this case, we find that the prosecution has not adduced any reliable evidence in this regard.

73. Apart from the alleged conspiracy, there is no other evidence in this case to connect accused Nos. 5 to 8 with the murder of Sunil Babu and therefore, we find that the conviction and sentence against accused Nos. 5 to 8 under Section 120B IPC is liable to be set aside. Since the prosecution has failed to prove the



CrI. Appeal No. 677/2018 & batch

alleged conspiracy, the conviction and sentence against accused Nos. 1 to 4 under Section 120B IPC is also liable to be set aside.

74. As per the impugned judgment, the trial court has also found accused nos. 1 to 4 guilty of the offence punishable under Section 326 IPC. But, in view of Section 71 of IPC, which provides that where an offence is made up of parts, each of which constitutes an offence, the offender should not be punished for more than one offence, unless expressly provided and that when an offence falls within two or more separate definitions of offences or when several acts, of which one or more than one would, by itself or themselves, constitute an offence constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences, we find that conviction and sentence for offences punishable under Sections 302 and 326 IPC together will be double conviction and sentencing for the same acts committed against the same person and therefore, the trial court is not justified in imposing separate conviction and sentence for the offence under Section 326 IPC, when they are already convicted and sentenced for the offence under Section 302 IPC.

75. Therefore, while confirming the conviction and sentence imposed against accused Nos. 1 to 4 for the offences punishable



Crl. Appeal No. 677/2018 & batch

under Sections 341 and 302 r/w Section 34 IPC, the conviction and sentence passed against them for the offences under Sections 120B and 326 IPC are set aside. The conviction and sentence passed against accused Nos. 5 to 8 under Section 120B IPC is also set aside and they are acquitted under Section 235(1) Cr.P.C. They shall be set at liberty forthwith, if not required in any other cases.

In the result, Crl. Appeal Nos. 677 and 1500 of 2018 are allowed and Crl. Appeal Nos. 895 and 1009 of 2018 are allowed in part. Interlocutory applications, if any, pending shall stand closed.

Registry shall send a copy of this judgment to the Superintendent of jail concerned where accused Nos. 5 to 8 are now detained.

sd/-
P.B. SURESH KUMAR,
JUDGE.

sd/-
JOHNSON JOHN,
JUDGE.

Rv



CrI. Appeal No. 677/2018 & batch

APPENDIX OF CRL.A NO. 677 OF 2018

APPELLANT'S ANNEXURES:

- | | |
|----------------------------|---|
| ANNEXURE A1 | TRUE COPY OF THE MEDICAL RECORDS OF PETITIONER'S FATHER'S PREVIOUS ANGIOPLASTY. |
| ANNEXURE A2 | TRUE COPY OF THE MEDICAL PRESCRIPTION ISSUED BY THE DOCTOR OR GENERAL HOSPITAL, THIRUVANANTHAPURAM DATED 23.06.2020. |
| ANNEXURE A3 | TRUE COPY OF THE DOPPLER STUDY REPORT OF THE PETITIONER'S FATHER. |
| ANNEXURE A4
ANNEXURE A5 | TRUE COPY OF THE ATTACHMENT NOTICE
TRUE COPY OF THE PRESCRIPTION ISSUED BY THE DOCTOR OF GENERAL HOSPITAL,
THIRUVANANTHAPURAM DATED 25.06.2020. |
| ANNEXURE A6 | TRUE COPY OF THE REGISTRATION CERTIFICATE NO. KL-01-BG-6578. |
| ANNEXURE A7 | TRUE COPY OF THE ORDER DATED 06.07.2020. |
| ANNEXURE A-1 | TRUE COPY OF THE AFFIDAVIT DATED 26.09.2020. |
| ANNEXURE A1 | TRUE COPY OF THE NOTICE ISSUED BY KADAKAMPILLY SERVICE CO-OPERATIVE BANK LTD. NO. 3515 OF PETTA BRANCH, THIRUVANANTHAPURAM DATED 24.12.2020. |
| ANNEXURE A2 | TRUE COPY OF THE LETTER ISSUED BY KADAKAMPILLY SERVICE CO-OPERATIVE BANK LTD. NO. 3515 OF PETTA BRNACH, THIRUVANANTHAPURAM DATED 04.01.2021. |
| ANNEXURE A1 | TRUE COPY OF THE DEATH CERTIFICATE DATED 01.03.2023. |

RESPONDENTS' ANNEXURES: NIL

/True Copy/

PS To Judge.



CrI. Appeal No. 677/2018 & batch

APPENDIX OF CRL.A. NO. 895 OF 2018

APPELLANTS' ANNEXURES:

- | | |
|-------------|---|
| ANNEXURE A | TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE ASSISTANT SURGEON, GOVERNMENT DISPENSARY, JAGATHI, THIRUVANANTHAPURAM DATED 22.06.2020. |
| ANNEXUSRE A | TRUE COPY OF THE TREATMENT RECORDS/DISCHARGE SUMMARY ISSUED FROM THE DEPARTMENT OF CARDIOLOGY, MEDICAL COLLEGE HOSPITAL, TRIVANDRUM DATED 06.11.2018. |
| ANNEXURE I | TRUE COPIES OF THE MEDICAL RECORDS AND LAB REPORTS OF THE MOTHER OF THE PETITIONER. |

RESPONDENTS' ANNEXURS: NIL

/True Copy/

PS To Judge.

Rv

