"C.R."

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J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

> *Democracy thrives on the peaceful exchange of ideas, not the violent imposition of beliefs. Political violence is the poison that corrodes the roots of democratic principles.*
>
> \- *Amartya Sen*

On the morning of 05.05.2012, the people of Kerala woke up to the grim news of a gruesome political murder. T.P. Chandrasekharan, the leader of the Revolutionary Marxist Party (*hereinafter referred to as 'RMP' for brevity*), had been hacked to death the night before by a group of assassins. The wounds inflicted on him were so brutal and numerous that PW136 Dr.Sujith Sreenivas, the Assistant Professor and Assistant Police Surgeon at the Forensic Medicine department of the Kozhikode Medical College, who conducted the post-mortem examination, opined that it was indicative of the aggressive and hostile nature of the assailants. The question that loomed large, however, was, “Who would commit such a barbaric act and why?”

2. The prosecution would have us believe that the public opinion at

the time was that it was the political rivalry between leaders of the Communist Party of India (Marxist) (CPI (M)) and the victim that led to the commission of the crime. T.P. Chandrasekharan, who was once an active member and local leader of the CPI (M), fell out with the party and formed a new party called the Revolutionary Marxist Party (RMP). The RMP posed a big challenge to the election fortunes of the CPI (M), and this was evident when, in the 2009 Lok Sabha Elections, the CPI (M) lost the Vadakara Constituency, which had been its stronghold till then. Although it was the Congress candidate who was returned from the Constituency that year, T.P. Chandrasekharan's candidacy under the RMP banner was perceived as instrumental in the CPI (M)'s loss. The rivalry between the parties and the *inter se* attacks between members of the two parties only served to fuel the animosity of the CPI(M) leaders towards the victim.

The prosecution case:

3. The case of the prosecution, in brief, is that, pursuant to a criminal conspiracy hatched by accused No’s.8 to 14, with the assistance of accused No’s.1,3,5,7,15 to 18, 20 to 25 and 27 to 30, at about 22.10 hours on 04.05.2012, accused No’s.1 to 7 came in an Innova Car bearing a false registration number, driven by the accused no.1, and rammed the car into the motorbike driven by T.P. Chandrasekharan. After causing the latter to be

thrown onto the road, they hacked him to death on the public road at a place called Vallikkad by striking him with swords. Accused No.3 also used a country bomb to cause an explosion that would prevent witnesses from approaching the scene of the crime. Accused No's.1 to 7 then fled the scene of the crime and were assisted by the other accused, who either harboured them or destroyed valuable evidence that pointed to them.

The investigation:

4. PW4, the Sub-Inspector of Vatakara Police Station, *suo motu,* registered Ext.P2 FIR on the night of 04.05.2012 itself. The local police headed by the Dy.SP, Vatakara, initially conducted the investigation of the crime that was numbered as Crime No.433/2012 of the Vatakara Police Station. PW154, the Circle Inspector, completed the inquest proceedings on the morning of 05.05.2012. PW136, Dr. Sujith Sreenivas, conducted autopsy shortly thereafter. PW163 Circle Inspector inspected the scene of the incident and prepared Ext.P20 scene mahazar. In the meanwhile, PW165 Dy.SP Vatakara received information that an Innova Car bearing Registration No.KL-58D-8144 was found abandoned at Punathilmukku in Chokli, and he promptly reached there along with PW1 Praseed and CW2 Ramachandran, who claimed to be eyewitnesses to the incident. They identified the vehicle as the one used by the assailants, and after the

forensic experts examined the vehicle, PW165 seized the vehicle and the articles in it.

4.1. The investigation of the case was then transferred to the Crime Branch, where the case was re-registered as CBCID Crime No.406/CR/HHW-III/KKD/2012, and a Special Investigation Team was constituted. The first arrest was on 15.05.2012 of A31 Pradeepan M. K @ Lambu, and based on the information furnished by the said accused PW164 Dy.SP recovered five swords (MO1 Series) from a well. Later, the accused who had allegedly committed the murder, the conspirators and the persons who aided, abetted, and harboured the main accused were all arrested. The investigation was thereafter completed, and PW166 Dy.SP Crime Branch CID, HHW-III, Kozhikode laid the final report before the Judicial First Class Magistrate Court, Vatakara, against 76 accused, under Sections 143, 147, 148, 302 read with 149 IPC and Sections 465, 471, 118, 201, 212, 120B, 109 IPC and also under Sections 3 and 5 of the Explosive Substances Act, 1908.

<u>The Trial Court Proceedings:</u>

5. The case was taken on file by the JFMC, Vatakara as C.P.111/12. Out of the 76 accused in the case, accused 24 and 52 were absconding. After completing the necessary formalities, the Magistrate committed the

case against the remaining 74 accused to the Sessions Court, Kozhikode, where the case was numbered as S.C.867/12. The case was then made over to the Special Additional Sessions Court (Marad Cases), Kozhikode for trial.

5.1. After hearing the prosecution and the defence, the trial court vide its order dated 19.12.2012 discharged accused nos.54 and 61 under Section 227 Crl.P.C after finding that there was no sufficient ground for proceeding against them. Charges were thereafter framed against the remaining 72 accused under Sections 143, 147, 148, 302 read with 149 IPC and Sections 465, 471, 118, 201, 212, 120B, 109 IPC and also under Sections 3 and 5 of the Explosive Substances Act, 1908. All the accused pleaded not guilty to the charges.

5.2. As the High Court had in certain Criminal Revision Petitions stayed all further proceedings in the trial against accused nos.53, 58, 60, 62 to 69 and 71 to 74, and further, there was a direction from the High Court to dispose the Sessions case before 31.07.2013, the trial court proceeded with the trial against the remaining 57 accused.

5.3. The prosecution examined 166 witnesses as PW1 to PW166 and marked Exts.P1 to P579, Exts.C1 to C18 and D1 to D31 on its side. MO1 to

MO105 were identified. Accused no.9 C.H. Ashokan died during the period of the trial. After closure of the prosecution evidence, 56 accused were examined under Section 313 Cr.P.C. They denied all the incriminating circumstances that appeared in the evidence and that they were put to them. Some of them also filed statements in writing explaining the incriminating circumstances against them. The trial court then acquitted twenty accused persons viz. A15, A23, A26, A32, A34, A35, A38, A40, A43, A44, A45, A46, A47, A51, A55, A56, A57, A59, A75 and A76 under Section 232 Cr.P.C. The remaining 36 accused who had faced trial were then called upon to adduce evidence in their defence.

5.4. The defence examined ten witnesses as DW1 to DW10 and marked Exts.D32 to D66 and Exts.P580 to P582 on its side. After hearing the prosecution and the defence at length, the trial court found as follows:

1. A10 K.K Krishnan, A12 Geothi Babu and A14 P. Mohanan were found not guilty of the offences punishable under Section 120B IPC and under Section 302 read with Section 109 IPC and were accordingly acquitted under Section 235 Cr.P.C.

2. A16 Shibu P.C., A17 Sreejith K., A22 Sanoop M.P., A28 P.M. Rameesh and A30 Raveendran M.K. were found not guilty of the offences punishable under Section 302 read with 115 IPC and

under Section 118 IPC and were accordingly acquitted under Section 235 Cr.P.C.

3. A19 Aswanth C.K. was found not guilty of the offences punishable under Section 465 and 118 IPC and under Section 302 read with 109 IPC and was accordingly acquitted under Section 235 Cr.P.C.

4. A20 K.P. Dilshad, A21 P.K. Muhammed Fasalu and A29 K.P. Dipin were found not guilty of the offences punishable under Section 302 read with 109 IPC and 118 IPC and were accordingly acquitted under Section 235 Cr.P.C.

5. A25 C.K. Rajikanth was found not guilty of the offence punishable under Section 302 read with 109 IPC and was accordingly acquitted under Section 235 Cr.P.C.

6. A27 Rajith C. was found not guilty of the offences punishable under Section 302 read with 109 and 115 IPC and was accordingly acquitted under Section 235 Cr.P.C.

7. A37 Shaju N.M. was found not guilty of the offences punishable under Sections 201 and 212 IPC and was accordingly acquitted under Section 235 Cr.P.C.

8. A36 Jijesh Kumar was found not guilty of the offence punishable under Section 201 IPC and was accordingly acquitted under Section 235 Cr.P.C.

9. A33 Shanoj @ Kelan, A39 M. Abhinesh, A41 Saneesh M., A42 C. Babu, A48 Sreejith K., A49 Sudheesh M., A50 P. Jigesh, and A70 K. Dhananjayan were found not guilty of the offence punishable under Section 212 IPC and were accordingly acquitted under Section 235 Cr.P.C.

10. A1 Anoop was found guilty of the offences punishable under Sections 143, 147 and 302 read with 149 IPC and he was convicted there under. He was found not guilty of the offences punishable under Sections 120B, 148, 465 and 471 IPC and he was accordingly acquitted under Section 235 Cr.PC in respect of those offences.

11. A2 Manoj @ Kirmani Manoj was found guilty of the offences punishable under Sections 143, 147, 148 and 302 read with 149 IPC and under Section 5 of the Explosive Substances Act, 1908 and was accordingly convicted there under. He was found not guilty of the offence punishable under Section 120B IPC and was accordingly acquitted under Section 235 Cr.PC in respect of that offence.

12. A3 Sunil Kumar @ Kodi Suni was found guilty of the offences punishable under Sections 143, 147, 148 and 302 IPC and under Section 3 of the Explosive Substances Act, 1908 and was accordingly convicted there under. He was found not guilty of the offences punishable under Section 120B and 201 IPC and was accordingly acquitted under Section 235 Cr.PC in respect of those offences.

13. A4 T.K. Rajeesh, A5 Muhammed Shafi, A6 Sijith and A7 Shinoj were found guilty of the offences punishable under Sections 143, 147, 148 and 302 IPC and were accordingly convicted there under. They were found not guilty of the offence punishable under Section 120B IPC and were accordingly acquitted under Section 235 Cr.PC in respect of that offence.

14. A8 K.C. Ramachandran, A11 Manojan and A13 Kunhanandan were found guilty of the offence punishable under Section 120B read with 302 IPC and they were accordingly convicted there under. They were found not guilty of the offence punishable under Section 302 read with 109 IPC and were accordingly acquitted under Section 235 Cr.PC in respect of that offence. A8 K.C. Ramachandran was found not guilty of the offence punishable under Section 201 IPC and he was acquitted under Section 235 in respect of that offence.

15. A18 Rafeek was found guilty of the offence punishable under Section 302 read with 109 IPC and he was convicted there under. He was found not guilty of the offences punishable under Sections 465, 471 and 118 IPC and he was accordingly acquitted under Section 235 Cr.PC in respect of those offences.

16. A31 Pradeepan was found guilty of the offence punishable under Section 201 IPC and he was convicted there under. He was found not guilty of the offence punishable under Section 212 IPC and he was accordingly acquitted under Section 235 Cr.PC in respect of

that offence.

5.5. The trial court then heard the accused on sentence under Section 235(2) of the Cr.P.C. The Special Prosecutors and the defence counsel were also heard in detail. The sentence awarded to each of the accused found guilty of the offences charged against them is as follows:

1. A1 Anoop – Sentenced to imprisonment for life and to pay fine of Rs.50,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 302 read with 149 IPC. He was also sentenced to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 143 IPC and rigorous imprisonment for a period of one year for the offence punishable under Section 147 IPC.

2. A2 Manoj Kumar - Sentenced to imprisonment for life and to pay fine of Rs.50,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 302 read with 149 IPC. He was also sentenced to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 143 IPC and rigorous imprisonment for a period of one year for the offence punishable under Section 147 IPC and rigorous imprisonment for a period of two years for the offence punishable under Section 148 IPC. He was also sentenced to undergo rigorous imprisonment for

a period of five years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 5 of the Explosive Substances Act, 1908.

3. A3 Sunil Kumar - Sentenced to imprisonment for life and to pay fine of Rs.50,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 302 read with 149 IPC. He was also sentenced to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 143 IPC and rigorous imprisonment for a period of one year for the offence punishable under Section 147 IPC and rigorous imprisonment for a period of two years for the offence punishable under Section 148 IPC. He was also sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 3 of the Explosive Substances Act, 1908.

4. A4 T.K. Rajeesh, A5 Muhammed Shafi, A6 Sijith and A7 Shinoj - Sentenced to imprisonment for life and to pay fine of Rs.50,000/- each and in default of payment of fine to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 302 read with 149 IPC. They were also each sentenced to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 143 IPC and rigorous imprisonment for a period of one year for the offence

punishable under Section 147 IPC and rigorous imprisonment for a period of two years for the offence punishable under Section 148 IPC.

5. A8 K.C. Ramachandran, A11 Manojan and A13 Kunhanandan – Sentenced to imprisonment for life and to pay fine of Rs.100,000/- each and in default of payment of fine to undergo rigorous imprisonment for a period of two years each for the offence punishable under Section 120B read with Section 302 IPC.

6. A18 Rafeek – Sentenced to imprisonment for life and to pay a fine of Rs.100,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of two years for the offence punishable under Section 302 read with 109 IPC.

7. A31 Pradeepan – Sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 201 IPC. The period of detention undergone by him from 16.05.2012 to 23.08.2012 was permitted to be set off against the substantive sentence of imprisonment awarded to him.

8. The sentence of life imprisonment awarded to the accused was for the whole of their remaining life subject to the remission granted by the appropriate government under Section 432 Cr.P.C which was in turn subject to the provisions of Section 433A Cr.P.C. From out of the fine amount realised an amount of Rs.300,000/- was

directed to be paid to PW5 Rema, the wife of the deceased and Rs.200,000/- to CW13 Abhinand the son of the deceased as compensation under Section 357 Cr.P.C. The charge against A9 C.H. Asokan, who was no more, was declared abated.

The appeals before us:

6. Appeals have been preferred by the persons convicted, the State, and the deceased's wife. The details of the said appeals are as follows:

Appeal No.	**Party Name**	**Relief Sought**
Crl.A.172/2014	A8 K.C. Ramachandran v. State	To set aside conviction and sentence
Crl.A.174/2014	A18 P.V. Rafeek @ Vazhapappadachi Rafeek v. State	To set aside conviction and sentence
Crl.A.176/2014	A13 Padinjare Kunhikkattil Kunhanandan v. State	To set aside conviction and sentence
Crl.A.177/2014	A1 Anoop v. State A2 Manoj Kumar v. State A3 Kodi Suni v. State	To set aside conviction and sentence
Crl.A.178/2014	A4 Rajeesh Thundikkandi @ T.K. v. State A5 K.K Mohammed Shafi v. State A6 Sijith @ Annan Sijith v. State A7 Shinoj v. State	To set aside conviction and sentence
Crl.A.179/2014	A31 Pradeepan M.K. @ Lambu v. State	To set aside conviction and sentence
Crl.A.180/2014	A11 Manojan @ Trouser Manojan v. State	To set aside conviction and sentence
Crl.A.339/2014	State v. A1 Anoop & Ors.	Seeking death sentence to: • A1 to A7 u/s 302 r/w 149 IPC • A8, A11 & A13 u/s 302 r/w 120B IPC • A18 u/s 302 r/w 109 IPC and

		Maximum Punishment to: • A2 and A3 u/s 5 & 3 of the Explosive Substances Act • A31 u/s 201 IPC
Crl.A.403/2014	State v. A10 KK Krishnan & 23 Others	Seeking Conviction of the 24 acquitted accused
Crl.A.(V).571/2015	K.K.Rema v. State	• Seeking conviction of acquitted accused; and • Enhanced punishment for A31 u/s 120B r/w 302 IPC; and Enhanced compensation

6.1. The appellants/convicted accused were represented by Senior Counsel Sri.B.Raman Pillai and Sri.P.Vijayabhanu, duly assisted by Adv.Sri.Gilbert George Correya, Adv.Sri.K.Viswan, Adv.Sri.K.M.Ramadas, Adv.Sri.D.Arun Bose and the respondent State was represented by the Special Public Prosecutor Sri.P.Kumarankutty and Assistant Special Public Prosecutor Sri.Saphal.K., Adv.Sri.S.Rajeev appeared on behalf of Smt.K.K.Rema, the widow of T.P. Chandrasekharan, and supported the arguments of the learned Special Prosecutor. As the learned counsel on either side took us through the entire evidence on record and re-iterated the arguments made before the trial court before emphasising on new perspectives at the time of hearing of these appeals, we feel it would be in the interests of easy comprehension that we deal with their arguments in the course of our discussion of the different issues and the evidence relating thereto. As regards consideration of the precedents cited before us by the

learned counsel, we might clarify that we have gone through all of them to cull out and state the broad legal position that obtains on the various issues that arise for consideration in these appeals. However, we have chosen to avoid a specific reference in the footnotes to those precedents that merely restate a legal point already dealt with.

Discussions and Findings

Preliminary objection regarding the maintainability of the State Appeals:

7. Before embarking upon a discussion of the merits of these appeals, we may quickly deal with a preliminary objection raised by the appellants/convicted accused as regards the maintainability of the State appeals preferred against the orders of acquittal passed by the trial court. It is contended, based on the order dated 08.02.2021 of a Division Bench of this Court in *Saji @ Dada Saji*[1] that an appeal against an order of acquittal cannot be preferred before the High Court by the Public Prosecutor unless it is first shown that there was a direction from the State Government to file such an appeal. The said decision was one that interpreted the provisions of Section 378 (1) of the Cr.P.C and literally so. However, a closer reading of the Division Bench order reveals that it was one that was passed in circumstances that were entirely different from what obtains in the instant

1 State of Kerala v. Saji @ Dada Saji & Ors – [2021 (2) KLJ 204]

appeals. Firstly, the objection as regards maintainability was raised at a time when the appeals came up for admission before the court. Secondly, the court found that while the Public Prosecutor who conducted the trial, as well as the Investigating Officer in that case, had given opinions in favour of filing an appeal from the order of acquittal, there was no specific order from the State Government directing the filing of the appeal. Reliance was also placed on the Rules of Business of the Government of Kerala to find that so long as there was no order or instrument executed by or on behalf of the Government in the name of the Governor, and signed by an authorised/empowered Officer, the existence of the necessary direction from the State Government could not be inferred.

8. As against the facts in the said case, we find from the records before us that the State appeals against the acquittal of various accused were admitted and numbered as early as 2014, and the present objection as regards their maintainability is raised only at the time of hearing. Considering a belated objection regarding maintainability becomes problematic when the documents necessary to determine the merits of the objection cannot be obtained by the court owing to the passage of time. Not surprisingly, the Special Prosecutor now appearing before us was not able to produce any Government Order pertaining to the period when the appeals

were filed as he does not have access to the files that were maintained by the earlier Prosecutor who had filed the appeals. However, we find from the records that there is a specific Government Order authorising the present Special Prosecutor to pursue all appeals arising from the judgment of the trial court before this Court. This latter Government Order was passed in 2021 when the Special Prosecutor, who was originally appointed to prosecute the matter before the trial court, had resigned during the pendency of these appeals. In our view, the latter Government Order can be seen as ratifying any earlier decision taken by the State Government to prefer appeals against the orders of acquittal of the trial court and can operate as the direction of the State Government for the purposes of Section 378 (1) of the Cr.P.C.

Discussion on Merits:

9. Moving now to the merits of these appeals, we find from a reading of the charges framed against the various accused that the case of the prosecution, broadly stated, is that there was a conspiracy hatched by certain members of the CPI (M) to murder T.P. Chandrasekharan and that in furtherance of the said conspiracy, certain assassins were hired to carry out the crime and others instructed to destroy the evidence and shield the perpetrators of the crime from the law enforcement agencies. In a matter of

this magnitude, where on account of the sheer volume of oral and documentary evidence that had to be traversed, the submissions of the learned counsel on either side spanned a period of almost sixty days, we feel it would be apposite to discuss the evidence in chronological sequence. Such a discussion has the benefit of arranging and aligning our thought process to the same sequence, as the prosecution alleges the events to have unfolded, and also helps us understand the manner in which the investigating agency pursued the investigation. The latter aspect gains importance when we find that it is the case of the appellants/convicted accused before us that the investigation of the case was in itself faulty and unfair to the accused and that, therefore, the inadequacies thereof should operate in favour of the accused.

9.1. As the case before us involves both direct and circumstantial evidence, we might notice the principles that have to guide us in the analysis of such evidence. As is well settled, it is a cardinal principle in our criminal justice system that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by the production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is on the prosecution, and unless it relieves itself of that burden, the courts cannot

record a finding of guilt against an accused. Even in cases where the Statute raises a presumption regarding the guilt of an accused, the burden is on the prosecution to prove the existence of facts which must be present before the presumption can be drawn. It is only thereafter that the accused would be called upon to rebut the presumption. Another principle in our criminal justice system is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view favourable to the accused should be adopted. This principle has special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Accordingly, unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. As a corollary, if the court entertains a reasonable doubt regarding the guilt of the accused, the benefit of that doubt must go to the accused. At the same time, the court should not reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures.[2] As was observed by the Supreme Court in *Shivaji Sahebrao Bobade*[3], "Certainly it is a primary principle that the accused "must be" and not merely "may be" guilty before a court can convict, and the mental distance between "may be" and "must

2 Kali Ram v. State of Himachal Pradesh – [(1973) 2 SCC 808]
3 Shivaji Sahebrao Bobade v. State of Maharashtra – [(1973) 2 SCC 793]

be" is long and divides vague conjectures from sure conclusions". Mere suspicion, however strong or probable it may be, is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and the graver the charge is, the greater the standard of proof required.[4]

9.2. That said, we must also bear in mind that proof beyond reasonable doubt is a guideline and not a fetish, and a guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. The credibility of testimony, oral or circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect.[5]

9.3. Keeping the above aspects in mind, we choose to arrange the following discussion under three heads, namely (i) The conspiracy, (ii) The incident and (iii) The abetment and harbouring of the various accused. Under each head, we proceed to deal with the gist of the prosecution case, followed by the findings of the trial court, the arguments in appeal and our specific findings. While entering our findings under each head, we have

4 Ashish Batham v. State of MP – [(2002) 7 SCC 317]
5 Inder Singh & Another v. State (Delhi Administration) – [(1978) 4 SCC 161]

chosen not to elaborate too much on those issues on which we concur with the reasoning and finding of the trial court. Even on issues where we felt, based on our appreciation of the evidence, that an alternate view was possible, we have taken into consideration the fact that the trial court had the benefit of observing the demeanour of the witnesses before it and, therefore, deferring to the views of the trial court, we have chosen not to interfere with the finding of the trial court. It is only in those situations where we felt that the trial court's finding was not legally sustainable based on the evidence on record that we have chosen to differ therefrom.

The Conspiracy

10. The trial court has convicted only three persons - A8 K.C. Ramachandran, A11 Manojan and A13 Kunhanandan for the offence punishable under Section 120B read with 302 IPC. The said finding was entered into after analysing the evidence on record that pointed to their presence at A13’s house on a particular day. Although the prosecution had alleged the involvement of other accused in the conspiracy and adduced evidence to suggest that they had met at various locations to carry forward the plan of murder, the trial court found that only the meeting involving the above three accused stood proved and hence only three of them could be

convicted for the offence punishable under Section 120B read with Section 302 IPC. For the reasons that are to follow, we find ourselves at variance with the trial court as regards the manner in which the evidence is to be appreciated while entering a finding of conspiracy, and, consequently, we do not accept the findings of the trial court on this issue.

10.1. The gist of the offence of conspiracy lies not in doing the act or effecting the purpose for which the conspiracy is formed, attempting to do them, or inciting others to do them, but in forming the scheme or agreement between the parties. The existence of an agreement is essential to a finding of conspiracy. In fact the word "conspiracy" derives from the Latin words "con" and "spirare" meaning "to breathe together". Thus, for an arrangement to constitute an agreement, the parties to it must share the same design or purpose so it can be said that they truly breathe together[6]. Mere knowledge, or even discussion, of the plan is not *per se* enough[7].

10.2. Generally, a conspiracy is hatched in secrecy, and it may be difficult to adduce direct evidence of the same. As was observed by the Supreme Court on several occasions, in the case of offences that are committed in secrecy, it will be extremely difficult for the prosecution to lead

6 Paul Jarvis & Michael Bisgrove, "*The Use and Abuse of Conspiracy*", (2014) Crim.L.R., Issue 4, 259
7 Russel on Crime (12th Edn, Vol.1, p.202)

evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. He also presides to see that a guilty man does not escape the clutches of the law. The law does not, therefore, enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case.[8]

10.3. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial, but the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor is the actual meeting

8 Wazir Khan v. State of Uttarakhand – [(2023) 8 SCC 597]; Trimukh Maroti Kirkan v. State of Maharashtra – [(2006) 10 SCC 681]

of two persons necessary. Nor is it necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.[9] In other words, it will suffice if there is a tacit understanding between conspirators as to what should be done so long as the relative acts or conduct of the parties are conscientious and clear to mark their concurrence as to what should be done.

10.4. It cannot also be forgotten that a criminal conspiracy is a partnership in agreement, and there is in each conspiracy a joint or mutual agency for the execution of a common object, which is an offence or an actionable wrong. When two or more persons enter a conspiracy, any act done by any one of them pursuant to the agreement is, in the contemplation of the law, the act of each of them, and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in the execution of or reference to their common intention is deemed to have been said, done or written by each of them. This is so whether the conspirators are enrolled in a chain where 'A' enrols 'B', 'B' enrols 'C' and so on, or if the enrolment is of a wheel-and-hub nature where a single person at the centre does the enrolling and all other members are unknown to each other, though they know that there are other members. Persons may be members of a single conspiracy even though each is ignorant of the identity

9 Mohd. Naushad v. State (NCT of Delhi) – [(2023) SCC Online SC 784]

of many others who may have diverse roles to play. It is not part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.[10] This doctrine of agency, that is often referred to as "the prosecutors darling"[11] because it recognises an exception to the hearsay rule and allows the prosecution to adduce as evidence against every conspirator's acts or declarations made by one or more of their number in furtherance of their common design, finds statutory recognition in India under Section 10 of the Indian Evidence Act that reads:

> "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purposes of proving the existence of the conspiracy as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

10.5. As per the above statutory provision (i) there has to be *prima facie* evidence affording a reasonable ground for the court to believe that two or more persons are members of a conspiracy (ii) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other (iii) anything said, done or written by him should have been said, done or written by him after

10 State through Superintendent of Police CBI/SIT v. Nalini – [(1999) 5 SCC 253]
11 The expression was first coined by S.A.Klein in "*Conspiracy – The Prosecutor's Darling*", (1957) 24 Brooklyn L.Rev.1

the intention was formed by any one of them (iv) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it, and (v) it can only be used against a co-conspirator and not in his favour.[12]

10.6. Broadly stated, the circumstances in a case, when taken together at face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted, and illegal acts done were in furtherance of the object of the conspiracy hatched. Further, the circumstances relied on for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.[13]

10.7. The principles governing the law of conspiracy in India have been succinctly summarised in *Nalini*[14] and *Navjot Sandhu*[15] as follows:

12 Sardar Sardul Singh Caveeshar v. State of Maharashtra – [AIR 1965 SC 682]
13 Esher Singh v. State of A.P. – [(2004) 11 SCC 585]
14 State through Superintendent of Police CBI/SIT v. Nalini – [(1999) 5 SCC 253]
15 State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru – [(2005) 11 SCC 600]

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain – *A* enrolling *B*, *B* enrolling *C*, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy, the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other

conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

11. The cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt.

12. In regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.

Analysis of the evidence.

11. In the instant case, the prosecution would contend that the conspiracy that was hatched to murder T.P. Chandrasekharan cannot be appreciated save in the backdrop of the series of events that unfolded in the past pursuant to the souring of relations between the members of the CPI (M) and those of the RMP. We gather from the evidence on record, especially the testimony of PW5 Rema, the widow of T.P. Chandrasekharan, that T.P. Chandrasekharan, who was an active member and local leader of the CPI (M), had apparently left the CPI (M), along with a few other disgruntled members of the party to form a new party called the 'Revolutionary Marxist Party' (RMP). While the new political outfit presented a strong challenge to

the CPI (M) in Onchiyam, Chorode, Azhiyoor and Eramala Panchayats, the decision of the RMP to field T.P. Chandrasekharan as a candidate from the Vatakara Lok Sabha constituency proved fatal for the CPI (M) candidate in the election that followed for the latter lost to a Congress candidate. This had infuriated the CPI (M) leadership, who felt that T.P. Chandrasekharan was responsible for the split in the party. It is pointed out that even before the said election, and in the run-up to it, there had been a scuffle between the workers of the RMP party and those of the CPI (M), in which A14 P. Mohanan, who was then the Chief election agent of the CPI (M) candidate, had sustained injuries. A14 had then filed an FIR (Ext.P567) against some of the RMP workers, although the said proceedings were later withdrawn. Reference is also made to Exts.P424 report, Ext.P425 FIR and Ext.P426 final report filed in 2012 in connection with a conspiracy hatched to take Chandrasekharan’s life in 2009. The said conspiracy allegedly involved persons arrayed as accused in the present case, such as A2 Manoj Kumar @ Kirmani Manoj, A4 Rajeesh Thundikandi @ TK, A6 Sijith @ Annan Sijith, A8 K.C. Ramachandran, A9 C.H. Ashokan, A10 K.K. Krishnan, A15 Ajesh P. @ Kajoor and A39 M. Abhineet. Exts.P570 and P568 FIRs are relied upon to show that there were attacks on members of the RMP by members of the CPI (M) in 2009 and 2010, respectively, and that the *modus operandi* for those attacks bear close resemblance to the *modus operandi* adopted in the

instant case. Further, an attack was mounted on an RMP worker, Balan, on 21.02.2012, as evident from Ext.P569 FIR and in the case registered thereafter, A8 K.C. Ramachandran was cited as an accused and had undergone incarceration for some time. When he was released from prison, the CPI (M) organised a public meeting to glorify him for his actions and in that meeting, A10 K.K. Krishnan made a fiery speech threatening to kill T.P. Chandrasekharan if he persisted with his anti-CPI (M) campaign. In the words of PW6 Achuthan "ചന്ദ്രശേഖരനെ വെള്ള പുതപ്പിച്ച് കിടത്തുമെന്നും ചന്ദ്രശേഖരന്റെ തലച്ചോറ് തെങ്ങിൻ പൂക്കുല പോലെ റോഡിൽ തെറിക്കുന്നത് കാണേണ്ടിവരും എന്നും കെ. കെ കൃഷ്ണൻ പ്രസംഗിച്ചു." The making of the speech stands proved through the deposition of PW6 Achuthan and PW5 Rema, the wife of T.P. Chandrasekharan, who deposed about the statements made to her by her late husband. PW6 also deposed that A8 K.C. Ramachandran was also present at the venue where the speech was made and was seen along with A10 K.K. Krishnan in the vicinity shortly thereafter. Although the defence tried to discredit the testimony of PW6 by pointing out that in the absence of any evidence to show that there was a microphone through which the speech was delivered, he could not have heard the speech, we find that the testimony of PW6 was that the speech was delivered from a place very near to his shop and therefore he could hear the speech even if there was no microphone. We don't see any reason to doubt

the correctness of this testimony of a person who deposed that he actually heard the speech. Further, this testimony is corroborated by the evidence of PW5 Rema, whose deposition that she heard about the said speech from her husband is admissible in terms of Section 32 (1) of the Indian Evidence Act. It may not be out of place at this juncture to also refer to her testimony that her husband had told her about one week prior to his assassination that if something were to happen to him at the instance of the CPI (M), that could only happen with the knowledge of A8 K.C. Ramachandran, A9 C.H. Ashokan, A10 K.K. Krishnan and A14 Mohanan Master. We might also refer to Exts.P160-167 Police Intelligence Reports, marked through PW128 the ASI, CBCID, HHW-III and proved through PW139 to PW141, who are all Dy.SP's SB, CID (Rural), Kozhikode. Viewed against the backdrop of the above Intelligence Reports that suggested the existence of a threat to the life of T.P. Chandrasekharan at the instance of members of the CPI (M) and also recommended police protection to the life of T.P. Chandrasekharan, the above speech of A10 K.K. Krishnan can, in our view, be seen as providing not only the motive but also the necessary incitement for the series of steps then taken by others in furtherance of the common design to murder T.P. Chandrasekharan.

11.1. The furtherance of the conspiracy through separate meetings of

the various conspirators on 2.4.2012, 10.4.2012, 20.4.2012, 24.4.2012 and 25.4.2012 respectively is sought to be proved through witnesses who deposed to having seen the respective accused in the area where the meetings are said to have taken place at or about the relevant time, as also through an analysis of the Call Data Records (CDR) pertaining to the phones stated to be used by the said accused, and the procurement and use by the various accused of an Innova vehicle in connection with the commission of the offences alleged against them.

11.2. It is the definite case of the prosecution that there were four phones, referred to by the prosecution as Operation Phones (OP) 1, 2, 3 and 4, respectively, that were specifically procured by the accused for use in connection with the conspiracy and the murder that followed. The details of the said phones, together with the reference to them in the evidence adduced on behalf of the prosecution are as shown in the table annexed as **Appendix I** to this judgment.

11.3. An analysis is attempted by the prosecution of the details shown in the CDR's pertaining to the Operational Phones and the details in the CDR's pertaining to the phones normally used by the accused to suggest that some of the accused actually used the Operational Phones for committing

the crimes, and the analytical reasoning put forth by the prosecution, in its attempt to connect the accused with the crime through the call data records pertaining to the phones, is as follows:

a. The Operational Phones, although activated variously on 19.04.2012, 25.04.2012 and 01.05.2012 respectively, were not used beyond 04.05.2012, the night of the murder.

b. Several calls were made between the Operational Phones, as well as between the Operational Phones and the regular phones of the accused, with heightened call activity during the time frames associated with the events alleged against the accused in this case.

c. The tower locations of the phones in question coincided with the tower locations specific to the places where the conspiracies/murder took place and within the time frames during which they are stated to have occurred.

d. The unusual nature of the calls stems from the fact that they were made between persons who were not, under normal circumstances, obliged to speak to each other at all or so frequently since there was no necessity to do so while going about their daily activities. In particular, the prosecution points to the hierarchical structure that informs the administration of the CPI(M) party with the Central Committee at the National level, the State Committee at the State level, the District Committee, the Area committee, the Local committee, and branches within each

district in the State. It is argued that office bearers at the local committee level do not normally discuss official matters with office bearers higher up in the hierarchy outside their district, and if there are a large number of calls between such persons, then the presumption that the discussion pertained to the official matters cannot be invoked.

e. That A8 K.C. Ramachandran was the mastermind behind effectuating the conspiracy, and it is he who contacted the other accused at various stages and roped them in as co-conspirators to achieve the object of murdering T.P. Chandrasekharan.

11.4. The arguments of the prosecution have been seriously contested by the learned counsel for the appellants/convicted accused, who point to the dangers of relying on the CDR data, which, according to them, fail the test of admissibility under the Indian Evidence Act. It is contended that the trial court erred in placing reliance on the CDR data while entering the findings against them regarding the commission of the various offences for which they were convicted. It is their submission that the CDRs were not properly proved since the Section 65B certification required to establish their admissibility in evidence was not separately proved by marking the certificate through its maker. The learned counsel places reliance on the decisions in *Anvar*[16] and *Arjun Panditrao*[17] in support of his contention. Per

16 Anvar PV v. P.K Basheer & Ors – [(2014) 10 SCC 473]
17 Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors – [(2020) 7 SCC 1]

contra, the learned special prosecutor would refer to the deposition of the various nodal officers of the mobile telephone operators concerned to demonstrate that the CDRs were marked variously as ‘certified copy of the CDR’ or separately as ‘CDR’ and ‘Certificate’ under Section 65B of the Indian Evidence Act. It is his contention, therefore, that the requirements of Section 65B of the Indian Evidence Act were duly complied with, and the CDR and certificate were marked through the nodal officer who was also the officer in charge of the computer in which the data was stored and therefore the certifying authority under the Act. On a consideration of the rival contentions, we are inclined to agree with the special prosecutor that the CDR data was duly proved through the examination of the nodal officer concerned. Merely because the CDR and its certification were contained in one document that was marked as a ‘certified copy of the CDR’, it cannot be said that the issuance of the certificate was not duly proved. The use of the word ‘certified’ denotes that the document was certified in accordance with the provision of a law that provided for its certification. That law in the present context is Section 65B of the Indian Evidence Act. So long as the certificate that formed part of the CDR as a single document contained the certification required in terms of Section 65B of the Indian Evidence Act, in the manner clarified in *Anvar* and *Arjun Panditrao (supra)*, and it was marked through the nodal officer concerned who was its author, it had to be

seen as properly proved.

11.5. We do find force, however, in the objections raised by the learned counsel for the appellants/convicted accused that in respect of many of the phones, their use by the accused has not been proved, and further, the incriminating circumstance as regards the use of the phone by the various accused was never put to the accused concerned during their examination under Section 313 Cr.P.C. This is a serious omission on the part of the prosecution and one that forces us to discard such evidence. The stated object of examination of an accused under Section 313 Cr.P.C is to enable the accused personally to explain any inculpatory material against him in the evidence adduced by the prosecution. The attention of the accused has to be drawn to such material, and he should be given an opportunity to explain it.[18] That said, it is not necessary to ask him to explain any inference that a court may be asked to draw and be prepared to draw from the evidence on record.[19] The questions by the court must be fair and framed in such a way that it would enable even an ignorant or illiterate accused to know what he is to explain and what the circumstances against him are, for which an explanation is needed. He should be questioned separately about each material fact which is intended to be used against him.[20] It follows,

18 Asraf Ali v. State of Assam – [(2008) 16 SCC 328]

19 R.K.Dalmia & Ors v. Delhi Administration – [AIR 1962 SC 1821]

20 Hate Singh Bhagat Singh v. State of Madhya Bharat – [AIR 1953 SC 468]; Jai Prakash Tiwari v. State of Madhya Pradesh – [AIR 2022 SC 3601]; Raj Kumar v. State (NCT of Delhi) – [(2023) 5 SCR 754]

therefore, that if the incriminating circumstances arising against the accused in the evidence adduced by the prosecution are not put to the accused, the evidence in that regard cannot be used against the said accused.

11.6. When we exclude those phones that have not been proved as used by any of the accused and apply the filter of Section 313 Cr.P.C examination to the CDR data adduced as evidence against the various accused, we find that only the CDR data in respect of the phones relatable to the following accused can be accepted as admissible evidence.

Name of Accused	**Phone Number**	**Service Provider**	**Call Data Records**	**Nodal Officer**
Manoj Kumar @ Kirmani Manoj (A2)	9947212020	Idea	Ext.P252	PW151
T.K. Rajeesh (A4)	9544785375	Idea	Ext.P248	PW151
Muhammed Shafi (A5)	9562681111	Idea	Ext.P244	PW151
K.C.Ramachandran (A8)	9447543963 8547348707	B.S.N.L.	Ext.P310 Ext.P311	PW158
V. Manojan (A11)	9495260673	B.S.N.L.	Ext.P317	PW158
Geothi Babu (A12)	9447688670	B.S.N.L.	Ext.P314	PW158
Kunhanandan (A13)	9447642688	B.S.N.L.	Ext.P304	PW158
P. Mohanan (A14)	9495804804	B.S.N.L.	Ext.P329	PW158
P.V. Rafeek (A18)	9645193160	Vodafone	Ext.P295	PW152

11.7. The CDR data pertaining to the above-mentioned phones, covering the period shown therein, would reveal that several calls were

made between the above accused between 05.04.2012 and 17.05.2012 as seen from the table annexed as **Appendix II** to this judgment. While the defence does not dispute the making of these calls, they would argue that the calls had no nexus with the commission of any of the offences charged against them.

The meeting on 02.04.2012:

12. It is the case of the prosecution that sometime between 3 and 3.30 pm on 02.04.2012, A8 K.C. Ramachandran, A9 C.H. Asokan, A10 K.K. Krishnan and A14 P. Mohanan met at the flower shop owned by A30 Raveendran at Orkatteri and conspired to take the life of T.P. Chandrasekharan. The principal witness cited by the prosecution to prove this meeting is PW126 Suresh Babu, who worked as a milk plant operator at a dairy co-operative in the area and who deposed that between 3 and 3.25 pm on 02.04.2012, while he was on his way to a neighbouring studio, along with his friend, to get some prints of his daughter's photograph, he saw A8, A9, A10 and A14 who were active members of the CPI (M) enter the flower shop of A30. Later, while he was returning from the studio, he heard the conversation between the aforementioned accused, whereby they suggested that T.P. Chandrasekharan must not be spared for his actions against the interests of their party. In cross-examination, however, the defence has

pointed to certain material inconsistencies with his previous statement under Section 161 (3) of Cr.P.C., such as with regard to the time that he had gone to the studio (in his previous statement, he had stated that he went to the studio at 3.15 pm whereas, in his deposition before the court, he stated the time to be 3 pm). The time assumes importance while appreciating the evidence of PW126 because the defence has a case, relying on the deposition of DW5, P.M. Bhaskaran, a professional photographer, that the aforementioned accused were at a function in Onchiyam Martyr's Square, some distance away from the flower shop around the same time. DW5 Bhaskaran deposed that he had been hired to take photographs of the function at the square and that he had reached the square by 2.30 pm on 02.04.2012, and he was there till 4 pm taking photographs of the event. He has also deposed that he saw the aforementioned accused at the square while taking the photographs, although he does not remember the exact time the accused arrived at the square. Although the defence marked certain photographs taken by DW5 at the square to show that the accused were at the square during the time when PW126 deposed to having seen them at the flower shop, it is the specific case of the prosecution that the said photographs, and the time stamp shown on them, cannot be admitted in evidence since the necessary certification in terms of Section 65B of the Indian Evidence Act was not produced by the defence.

12.1. The trial court, at paragraphs 408 to 430 of the impugned judgment, found that there was no improbability in the evidence of PW126 Suresh Babu that at about 3 pm or 3.15 pm on 2.4.2012 he had gone to the studio there to take prints of his daughter’s photograph and that the variation of time in his testimony had no effect on the plea of *alibi* raised by the accused (which the court found had not been established). It also believed him to be a person who could identify the voice of A8 K.C. Ramachandran and A14 P. Mohanan as he was a local leader of the CPI (M) as were A8 and A14. It found that A8 and A14 had admitted in their statements filed under Section 313 Cr.P.C that they had previous acquaintance with PW126. His testimony that his duty time at the milk society ended at 1400 hrs that day was also found acceptable. Despite that, however, his testimony was found unreliable on account of the fact that he was a partisan witness who had reasons to be inimical towards the leaders of CPI (M) and also because the court found it highly improbable that the conspirators would talk in a loud voice about a sensitive issue and that too in a shop where anybody could have entered without notice.

12.2. We concur with the trial court's finding that it was highly improbable that the conspirators would talk loudly about a sensitive issue

and that it was unbelievable that PW126 would have overheard their conversation. That apart, the oral evidence of DW5 P.M. Bhaskaran, the professional photographer, also establishes the presence of A8 and A14 at the Onchiyam Martyr's Square during the relevant time. Axiomatically, the alleged meeting of 02.04.2012 has to be seen as not proved.

Events between 02/04/2012 and 10/04/2012:

13. The prosecution relies on the CDR details of the phones allegedly used by A1 Anoop, A8 K.C. Ramachandran, A9 C.H. Asokan, A10 K.K. Krishnan, A11 Manojan and A12 Geothi Babu to show that there were a series of phone calls between the said accused on the days between 02.04.2012 when the first meeting took place at the flower shop at Orkatteri and 10.04.2012 when the next meeting took place at Sameera Quarters, Chokli. However, for the reasons already stated above while discussing the admissibility of CDR data, we can consider only the 11 calls made between A8, A11 and A12 during the said period, the details of which are shown in Appendix II.

The meeting on 10.04.2012:

14. The prosecution alleges that on 10.04.2012, between 4 and 5 pm, A1 Anoop, A3 Kodi Suni, A8 K.C. Ramachandran, A11 Manojan and A12

Geothi Babu met at a room in Sameera Quarters, Chokli with a view to carry forward their plans to eliminate Chandrasekharan. One of the witnesses relied on by the prosecution to prove the said meeting is PW86 Kattil Pushparaj, a contract worker who supposedly went to Sameera Quarters to find migrant labourers to employ them for some contract work. He deposed that he had political affiliation with the RSS and that when he had gone to the quarters on that day, he saw all the aforementioned accused, except A12 Geothi Babu, in a room on the first floor of the building. The prosecution also relies on the CDR pertaining to the phones used by the said accused to demonstrate that although many calls were made between the said accused during the day on 10.04.2012, there were hardly any calls between them from 4.10 pm to 5 pm on that day. The prosecution uses this evidence to suggest that the aforesaid accused were, in fact, present in the room in Sameera Quarters on the said date in connection with the conspiracy. The defence argument is that PW86's testimony has to be seen as that of a partisan witness since he is an office bearer of the RSS, and he was an accused in a murder case involving a CPI (M) worker. They also place reliance on Ext.P357 mahazar to demonstrate that while PW86 had deposed that he saw the various accused through a window to the room where they were present, there was, in fact, no window to the said room. His identification of A8 on 15.06.2012 at the office of the Dy.SP is also

challenged by pointing out that A8 was in judicial custody that day. They also highlight certain omissions and contradictions in the evidence of this witness.

14.1. The other witness on whom reliance is placed by the prosecution is PW162 Sajeendran Meethal, a coolie worker, who deposed to having seen all the above accused at the balcony on the first floor of Sameera Quarters at about 5 pm on 10.04.2012. He went on to identify the said accused in court at the time of his examination. In cross-examination, it was brought out by the defence that he is affiliated with the RSS and was involved in a case for the attempted murder of a CPI (M) worker. It was also brought out that in his previous statement, he had stated that it was because he saw the other accused along with A3 Kodi Suni and A5 Mohammed Shafi that his attention was drawn to their presence on the first floor of Sameera Quarters, whereas in his deposition in court, he stated that he had seen the other accused along with A3 Kodi Suni and that A5 Mohammed Shafi was not there. Here too, the defence argument is that the witness has to be seen as a partisan witness owing to his association with the RSS. It is also pointed out that he was involved as an accused in a case of attempted murder of a CPI (M) worker. They also highlighted certain omissions and contradictions in the evidence of this witness, especially his erroneous identification of A5

Mohammed Shafi and his statement that he did not know anything about A12 Geothi Babu or his family members.

14.2. The trial court, at paragraphs 431 to 437 of the impugned judgment, found the evidence of PW86 and PW162 unreliable because they were partisan witnesses and were likely to falsely implicate CPI (M) workers because of their political enmity with the latter. On an appreciation of the evidence on record, however, we are inclined to take a different view. It is trite that the credibility of a witness is not to be disbelieved solely because his political affiliation is opposed to that of the accused. As noted above, barring their political affiliation, there is no material contradiction or omission pointed out by the defence in the testimonies of the said witnesses in court. PW86 clearly deposed that he saw A1 Anoop, A3 Kodi Suni and A8 K.C. Ramachandran in a room on the first floor of Sameera Quarters, and PW162 deposed that he saw A1 Anoop, A3 Kodi Suni, A8 K.C. Ramachandran, A11 Manojan and A12 Geothi Babu at the balcony on the first floor of the said building. It is true that in Ext.P357 mahazar, there is no mention of a window to the building, but PW163, who prepared Ext.P357 mahazar, gave a valid explanation that the non-mentioning of the window therein was a *bona fide* omission. Further, the misdescription of the name of one of the accused as Shafi in the 161 statement of PW162 cannot be seen

as vitiating the entire testimony of the said witness, especially when the deposition as a whole inspires confidence in the court. When minor discrepancies or variations are pointed out in the statements of witnesses, the court has to see whether these discrepancies and variations are material and affect the prosecution's case substantially. Every variation may not be enough to adversely affect the case of the prosecution. Similarly, the court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without adverting to the statement as a whole.[21]

14.3. We find nothing to doubt the evidence of PWs 86 and 162 that they saw A1, A3, A8, A11, and A12 at Sameera Quarters between 4 pm and 5 pm on 10.04.2012. Their evidence in this regard is consistent and credible and inspires confidence, more so when we find that there is corroborative electronic evidence in the form of CDR data (Exts.P310, P311, P317 & P314) that proves that A8, A11 and A12 were within the coverage of the Chokli Telecommunication tower during the relevant time. While it is significant that the said accused were not residents of Chokli, the call records indicate that although there were several calls between A8, A11 and A12 on that day, there were no calls between them from 4 pm to 5 pm on that day although they were within the range of the Chokli tower. This would suggest that they were all together within the range of the Chokli Telecommunication tower

21 Shyamal Ghosh v. State of West Bengal – [(2012) 7 SCC 646]

during the said period. We are therefore of the definite view that the prosecution version that A1 Anoop, A3 Kodi Suni, A8 K.C. Ramachandran, A11 Manojan and A12 Geothi Babi met at Sameera Quarters between 4 pm and 5 pm on 10.04.2012 stands proved.

Events between 10/04/2012 and 20/04/2012:

15. The prosecution relies on the CDR details of the phones belonging to A1 Anoop, A5 Mohammed Shafi, A8 K.C. Ramachandran, A10 Krishnan, A11 Manojan, A12 Geothi Babu, A13 Kunhanandan to demonstrate that on 11.04.2012 there were calls between A13 Kunhanandan and A1 Anoop and A12 Geothi Babu and A13 Kunhanandan. Similarly, on 13.04.2012, there were calls between A8 Ramachandran and A10 Krishnan, A12 Geothi Babu and A13 Kunhanandan. On 14.04.2012, there were calls between A8 Ramachandran and A10 Krishnan. On 15.04.2012, there were calls between A12 Geothi Babu and A13 Kunhanandan, A12 Geothi Babu and A11 Manojan. On 16.04.2012, there were calls between A12 Geothi Babu and A13 Kunhanandan. On 17.04.2012, there were calls between A1 Anoop and A11 Manojan as well as between A8 Ramachandran and A10 Krishnan. On 18.04.2012, there were calls between A12 Geothi Babu and A13 Kunjanandan, as well as between A1 Anoop and A11 Manojan and A1 Anoop

and A5 Mohammed Shafi. On 19.04.2012, there were calls between A1 Anoop and A11 Manojan as well as between A12 Geothi Babu and A13 Kunhanandan. It is the case of the prosecution that while under normal circumstances, calls between the accused who are members/leaders of the CPI (M) can probably be explained as routine in nature; it is the proximity of these calls with the calls made between party members such as A13 Kunhanandan and persons with known criminal background such as A1 Anoop, who is not a party member, that suggest that the calls between the party members/leaders too were made in connection with the conspiracy in the instant case.

15.1. In this context, we have to bear in mind that we have earlier dealt with the admissibility of electronic evidence as against the various accused and have found that only the CDR data pertaining to those phones mentioned in Appendix II will count as admissible evidence. Taking into account only those phones for the present purposes, we find that there were 21 calls between A8 K.C. Ramachandran, A11 Manojan, A12 Geothi Babu and A13 Kunhanandan. While the defence points out that it could well be that the calls made between the above accused were routine ones to discuss party matters or personal matters, we have to appreciate this evidence in the light of the totality of the evidence regarding the conspiracy. The

relevance of the above phone calls can be appreciated only at the stage of analysing the evidence for the purposes of Section 10 of the Indian Evidence Act. For the present, all that can be stated as proved is the making of the calls by the above accused.

The meeting on 20.04.2012:

16. It is the prosecution case that on the morning of 20.04.2012, between 7.30 and 8 am, A8 Ramachandran, A11 Manojan and A13 Kunjhnandan met at the last mentioned person's house at Parattu to discuss the steps to be taken in furtherance of the conspiracy to murder T.P. Chandrasekharan. Reliance is placed on the testimony of PW19 Babu E, a carpenter, who deposed that while he was going to Thiruvangad temple to conduct a *Santhanagopala Puja* in the name of his wife at about 7.45 am that morning, he saw A8 Ramachandran and A11 Manojan going into A13 Kunhanandan's house. His testimony has been believed by the trial court at paragraphs 438-448 of the impugned judgment, although the defence sought to discredit him by producing DW4 Manoharan, the Executive Officer of Thiruvangad temple, to depose that there was no Puja under the name of *Santhanagopala Puja* offered at the temple.

16.1. The learned counsel for the convicted accused would point out

that the testimony of PW19 if believed, would only establish that A8 and A11 were proceeding to the house of A13 on a motorcycle and not that they had, in fact, gone into the house. Further, nothing in the testimony pointed to the presence of A13 in the house or their meeting with A13 therein. We find ourselves unable to accept the submissions of the learned counsel. The trial court, on the basis of the material considered by it, was justified in finding that the testimony of PW19 effectively proved the presence of A8 and A11 at the house of A13 and that A8, A11 and A13 had a meeting therein. We have come across corroborative electronic evidence that places A8, A11 and A13 within the range of the Paratt telecommunication tower during the relevant time. Further, A13, in his written statement under Section 313, categorically states that A8 and A11 did not come to his house that morning and not that he was not there that morning. Considering the above evidence, we feel that the presence of A8 and A11 in the house of A13 and the meeting between them can be safely inferred. As regards the submission of the learned counsel for the defence based on the testimony of DW4, we find that in his cross-examination, DW4 admitted that a person who pays for a *Vazhipadu* (offering) can get the *Santhanagopala* mantra chanted by the Pujari.

16.2. We also note that a comparison of the CDR data (Exts.P304, P314 & P317) pertaining to the admissible phones relating to the respective

accused indicates that there were 4 calls between A12 Geothi Babu, A13 Kunhanandan and A11 Manojan on that day as indicated in Appendix II. While on the electronic evidence pertaining to this day, we might also notice that the prosecution had a case that while having the meeting at the house of A13, the latter had made a call to A14 Mohanan Master using one of the Operational Phones that A8 was using. The prosecution relied upon this evidence to connect A14 with the conspiracy. The trial court, however, rejected this evidence, and in our view, rightly so, since there was no admissible evidence regarding the use of the Operational Phone by A8.

Events between 20.04.2012 and 24.04.2012:

17. The prosecution has adduced evidence in the form of CDR data to show that there were calls between A1 Anoop, A2 Kirmani Manoj, A5 Mohammed Shafi, A8 Ramachandran, A10 Krishnan, A11 Manojan, A12 Geothi Babu and A13 Kunhanandan during the aforesaid period. After excluding those calls that were made from phones whose use by the accused has not been proved, we find that there were 12 calls made between A2, A5, A8, A11, A12 and A13, as indicated in Appendix II. Further, as already discussed above, the relevance of the above phone calls can be appreciated only at the stage of analysing the evidence for the purposes of S.10 of the Indian Evidence Act. For the present, all that can be stated as proved is the

making of the calls by the above accused.

The meetings on 24.04.2012:

18. The prosecution alleges that A2 Kirmani Manoj, A3 Kodi Suni, A5 Mohammed Shafi, A7 Shinoj and A18 Rafeek met at the residence of A13 Kunjanandan in Parattu in connection with the conspiracy. It is their case that A3, A5 and A7 had gone to the house of A13 in a Sumo vehicle that A18 drove. They rely on the oral testimony of PW20 Valsan, a fish vendor, who lives close to the residence of A13 Kunhanandan and who deposed to seeing the other accused there. His evidence does not, however, inspire confidence because he wrongly identified A1 Anoop as one of the accused he saw on that date when even the prosecution does not have such a case. There are also material contradictions from his previous statement brought out by the defence while cross-examining him. Further, the defence also adduced evidence through DW1 Prasadan, a workshop owner who deposed that no motorbike was brought to his workshop for repair as deposed by PW20 Valsan. PW20's deposition was, in our view, rightly disbelieved by the trial judge at paragraphs 449-452 of the impugned judgment.

18.1. A comparison of the CDR data (Exts.P252, P244, P310, P311, P317, P314 & P304) of the respective accused, however, reveals that there

were four calls between A2 Kirmani Manoj, A5 Mohammed Shafi, A8 K.C. Ramachandran, A11 Manojan, A12 Geothi Babu and A13 Kunhanandan. The specific details of the calls made and their duration are as indicated in Appendix II. Here again, the relevance of the above phone calls can be appreciated only at the stage of analysing the evidence for the purposes of Section 10 of the Indian Evidence Act. For the present, all that can be stated as proved is the making of the calls by the above accused.

18.2. The prosecution also alleged that A8 Ramachandran and A1 Anoop were at Chokli at about 7.20 pm on 24.04.2012 for the purposes of A8 handing over an amount of Rs.10000/- to A1 in front of Sameera quarters. As no evidence was adduced to prove the said fact, the trial court found this allegation unsubstantiated in paragraph 453 of the impugned judgment. We see no reason to interfere with the said finding of the trial court.

Events on 25.04.2012:

19. The prosecution alleges that at about 6.30 am on 25.04.2012, A8 Ramachandran met A1 Anoop at Pallikkunnu and handed over Rs.40,000/- to him. To prove this, they rely on the testimony of PW48 Prakasan, who deposed that he saw A8 Ramachandran handing over a package of currency notes to A1 Anoop at Pallikkunnu junction and that Anoop had counted the

same before leaving the place. He also deposed that he happened to be in Pallikkunnu that day because of a call he had received at 6 am from one Bhaskaran, who wanted to see his property at Karyad that he had put up for sale. While the testimony of PW48 Prakasan, to the extent it states that he saw A1 Anoop counting the money and that it was around Rs.40,000/- in notes of Rs.500/- and Rs.1000/- denomination, does seem incredible, the defence has also produced Ext.D28 CDR marked through PW158 to show that there was no call made to PW48's phone at 6 am on that day. It was for this reason that the trial court disbelieved the evidence of PW48 and, in our view, rightly so. This aspect of the prosecution case cannot be seen as proved.

19.1. The prosecution also relies on the testimony of PW7 Naveendas, a software employee, who is the owner of the Innova Vehicle bearing Registration Number KL-58D-8144, and PW8 Harris, a person doing business in ready-made garments, to prove that PW7 Naveendas had leased out the Innova vehicle to A18 Rafeek through CW18 Rajeesh and that PW8 Harris had acted as the middleman in the transaction. The latter deposed to seeing the handover of the vehicle by Rajeesh to A18 Rafeek and Rafeek handing over a blank cheque as security to Rajeesh. The learned counsel for the defence raised an argument that without the examination of CW18

Rajeesh, the transaction regarding the Innova vehicle cannot be seen as proved. We find, however, that the transaction stands proved through the evidence of PW7 and PW8, and hence the mere non-examination of CW18 cannot be seen as fatal to the case of the prosecution. There is also evidence to show that CW18 Rajeesh purchased the stamp paper in the name of A18 Rafeek and that PW8 Harris saw Rafeek handing over the same to Rajeesh. Although the defence seeks to discredit the said witnesses by pointing to inconsistencies in their version with that recorded in C9 and C11 remand reports and by relying on the decisions in *Raman Velu*[22]and *Ushaben*[23], we are of the view that the purpose of a remand report is merely to safeguard the accused against arbitrary detention and cannot be used for the purpose of contradicting the oral testimony of a witness in court.

19.2. We might, in this context, refer to the general submission made by the learned counsel for the defence that in many of the remand reports filed in connection with the arrest of the various accused, the details of the physical meetings that formed part of the allegation of conspiracy were not specifically mentioned and it was mentioned for the first time only in the final report. We don't see any merit in the said submission. It is a well-settled legal position that remand applications are to be filed by the

22 In Re: Raman Velu – [1972 KLT 922]
23 Manubhai Ratilal Patel through Ushaben v. State of Gujarat & Others – [(2013) 1 SCC 314]

investigating agency only to satisfy the court that there are justifiable grounds to detain an accused already arrested in police or judicial custody. The investigating agency is not required to state in such an application the materials, if any, collected against an accused during the investigation.[24]

19.3. It is also significant that A18 Rafeek's signature as appears on the cheque tallies with his signature on the Section 313 statement recorded by the court. Further, although the defence tries to establish with reference to the cheque issue register maintained by the bank that the cheque in question was actually obtained on 24.04.2012 and not on 25.04.2012, PW70 Rugmini, the Secretary-in-charge of the Kodiyeri Co-operative Bank has deposed that someone had obtained a cheque leaf in relation to the account standing in the name of A25 Rajikanth on 25.04.2012 and that the mention of the date 24.04.2012 in the cheque issue register was a clerical mistake. There was no cross-examination by A25 Rajikanth on this aspect. Similarly, while the stamp vendor PW75 T. Raveendran clearly deposed that he sold the stamp paper to A18 Rafeek, there was no cross-examination by A18 on that aspect. Further, a perusal of the CDR data of the phone used by A18 Rafeek (Ext.P295) reveals that six calls were made between A18 and PW8 Harris on 24.04.2012 and seven calls between them on 25.04.2012. The details of these calls are also mentioned in Appendix II.

24 State of Maharashtra v. Ramesh Taurani – [(1998) 1 SCC 41]

19.4. The above evidence would, in our view, suffice to find that the Innova car was entrusted to A18 Rafeek by PW7 through PW8. We, therefore, concur with the finding of the trial court on the said aspect.

Events on 26.04.2012:

20. PW22 Pramod, a carpenter, deposed that he saw A4 Rajeesh and A22 Sanoop in the Innova car near the party office at Nadapuram at around 4 pm on 26.04.2012. While A4 was arrested on 07.06.2012 and A22 was arrested on 18.06.2012, PW22 Pramod's statement to the police was only on 13.07.2012. Besides, the deposition of PW151, the nodal officer of Idea Mobile, is to the effect that A4's phone was not in any tower location in Kozhikode district (whereunder Nadapuram is situated) on that day. It has also come out through Ext.P297 CDR data pertaining to the phone used by A22 Sanoop that he was in Karyad/Vellikulangara during the relevant time. Probably on account of the said inconsistencies, the trial court did not believe the deposition of PW22, and in our view, rightly so.

20.1. The CDR data analysis on the said date (Exts.P252, P244, P317, P314, P304 & P329), however, reveals and proves that there were seven calls between A2 Kirmani Manoj, A5 Mohammed Shafi, A11 Manojan, A12

Geothi Babu, A13 Kunhanandan and A14 Mohanan Master as detailed in Appendix II.

Events on 27.04.2012:

21. PW16, a coolie worker, deposed that he saw A16, A17 and certain others in an Innova car that was parked at Chombala fishing harbour at around 9 am on 26.04.2012. He also identified A16, A17 and the car in court. The charge against A16 and A17, however, was that they were in the car along with A3 Kodi Suni, A4 Rajeesh, A5 Mohammed Shafi and A15. PW16 did not identify the said persons. The CDR data of the phone used by A4 Rajeesh, Ext.P248, showed that during the relevant time, he was at Karyadupuram near Koothuparamba. Similarly, Ext.P244, the CDR data pertaining to the phone used by A5 Mohammed Shafi showed that he was at Pallur near Chokli at the relevant time. This testimony was, therefore, rightly disbelieved by the trial court.

21.1. The CDR data analysis on the said date reveals a call between A11 Manojan and A12 Geothi Babu on that day, as detailed in Appendix II.

Events between 28.04.2012 and 01.05.2012:

22. The CDR data analysis on the said dates reveals that there were

three calls made between A11 Manojan, A12 Geothi Babu and A13 Kunhanandan as detailed in Appendix II.

Events on 02.05.2012:

23. The prosecution relies on two incidents that took place on 02.05.2012 at 7.30 pm in Orkatteri and 9.30 pm at Koroth Road, respectively, to suggest the involvement of A2 Kirmani Manoj, A5 Mohammed Shafi, A8 Ramachandran, A27 Rajith, A28 Rameesh, A29 Dipin and A30 Raveendran in the murder of T.P. Chandrasekharan. PW11 Shivji EK, a mason, deposed to seeing A27 Rajith and A28 Rameesh coming on a motorbike and talking to A8 Ramachandran at about 7.30 pm. After that, they stood at the bus stand nearby, on the opposite side of which T.P. Chandrasekharan was seen standing. PW11 deposed to seeing A30 Raveendran walk up to T.P. Chandrasekharan and hand over Ext.P3 invitation letter to him. After that, A27 and A28 allegedly left the place, and A30 went to his flower shop nearby. Although PW11 deposed that he saw the incident along with CW23 Sinish, the prosecution did not examine Sinish. At any rate, the trial court found the testimony of PW11 to be believable to the extent it proved that on the evening of 02.05.2012, A27 Ranjith found out the identity of T.P. Chandrasekharan with the assistance of A30 Raveendran, but that the said testimony was not sufficient to prove the charge against

A27 that he used that knowledge or information for facilitating the murder of T.P. Chandrasekharan. As rightly found by the trial court, there is no evidence to find that A27 Rajith had pointed out T.P. Chandrasekharan to any of the assailants.

23.1. Similarly, PW15 Rajeevan deposed to seeing A28 Rameesh, A29 Dipin, A2 Kirmani Manoj and A5 Mohammed Shafi at Koroth Road, about 4 km from the bus stand at Orkatteri, at about 9.30 pm. According to him, he saw the aforementioned accused taking a gunny bag containing some articles from some bushes nearby and putting it inside the Innova vehicle. He went on to state the number of the vehicle and also identified the vehicle in court. The defence merely pointed to contradictions in the testimony of PW15 in that he had not stated the number of the vehicle or the fact that it was a moonlit night in his previous statement to the police. The trial court did not see the said contradictions as material and rightly went on to believe the said testimony in paragraphs 297 and 298 of the impugned judgment. However, the trial court found that merely because it was proved that A28 and A29 had contact with some members of the gang of assailants, it could not be found that they were aware of the plot to murder T.P. Chandrasekharan and that they concealed the existence of such plot. When considered against the backdrop of the charges levelled against A28

Rameesh and A29 Dipin, which did not include involvement in the conspiracy to murder T.P. Chandrasekharan, the finding of the trial court appears to us to be legally unassailable.

23.2. The CDR data analysis (Exts.P317 & P314) reveals that there was a call between A11 Manojan and A12 Geothi Babu on 02.05.2012, and another call between them on the next day, as detailed in Appendix II.

Events on 04.05.2012:

24. The prosecution relies on three incidents that happened at 1600 hrs, 2100 hrs and 2115 hrs on 04.05.2012 at Chokli taxi stand, Koroth Road and Orkatteri Jeep stand respectively to prove the involvement of A1 Anoop, A2 Kirmani Manoj, A3 Kodi Suni, A5 Mohammed Shafi, A6 Sijith, A7 Shinoj, A20 Dilshad, A21 Fasalu and A31 Pradeepan M.K in the murder of T.P. Chandrasekharan that took place at Orkatteri at 2213 hrs on the same day.

24.1. PW18 Santhosh deposed that at 1600 hrs, when he and some of his friends had arrived at Chokli taxi stand, A1 Anoop, A3 Kodi Suni, A5 Mohammed Shafi, A7 Shinoj and A31 Pradeepan came there in an Innova car and had an altercation with them. That he reported the matter to the Panoor police station, where he filed a written complaint (Ext.P17), which

was then forwarded to the Chokli police station for follow up action. He also identified the vehicle as the same one as was seen in the court compound on the date of giving his testimony. The defence, on the other hand, seeks to discredit the witness by suggesting that he was an RSS supporter with criminal antecedents and by relying on Ext.P208 register maintained at the Chokli police station and pointing out that there are signs of a page having been torn out of the said register for the purpose of inserting the details recorded of the incident cited by PW18 Santhosh. It was also pointed out that although the statement of PW18 was recorded on 11.05.2012, Ext.P17 complaint was recovered only on 19.07.2012 under cover of Ext.P539 seizure mahazar, along with Ext.P208 complaint register. Further, CW 250, the ASI, Chokli, who was cited to prove the seizure; CW273, the attester to the mahazar; and CW242, the Chokli SI, who enquired into Ext.P17 complaint, were not examined as a witness by the prosecution. We fail to see how the mere fact of non-examination of the above witnesses can affect the oral testimony of PW18 when PW149 Dominic, CI of Police, Panoor has clearly spoken on the enquiry made into P17 complaint and the action taken thereon.

24.2. The trial court found that merely because PW18 was an RSS supporter and had criminal antecedents, his testimony did not have to be

discarded (paras 301-303 of the impugned judgment). It relied on the said evidence to hold as proved the fact that at about 1600 hrs on 04.05.2012, A3 Kodi Suni and A5 Mohammed Shafi were found in Chokli taxi stand in the Innova car bearing registration number KL-58D-8144. We see no reason to interfere with the above finding of the trial court. However, we find that the trial court did not specifically find the presence of A31 Pradeepan to have been proved through the acceptance of the evidence of PW18. While this may have been on account of the trial court having discussed the evidence of PW18 in the context of circumstantial evidence against A1 to A7, we are of the view that the evidence of PW18 Santhosh that was believed by the trial court, and that proved the presence of A31 along with A3 and A5 at Chokli taxi stand, can also be examined in the context of Charge No.49 under Section 201 IPC against A31 Pradeepan that is discussed later on.

24.3. PW17 Subodh, a small-time businessman, deposed that while he was on his way to his house on his motorbike at about 2100 hrs on 04.05.2012, he saw A4 Rajeesh, A6 Sijith, A20 Dilshad and A21 Fasalu along with some others standing near the Innova car KL-58D-8144 at Koroth road, and loading something that looked like swords into the car. He deposed that he could identify A20 and A21, whom he knew from before, and also described the identifying features of A4 and A6. He also deposed to seeing a

sticker with Arabic script on the Innova car that he later identified in court and that the accused, on seeing him, got into the car and drove away. Although the defence tries to cite omissions with his previous statement, such as the mention of his friend Murugan's name, the time of his travel, and the number of people he saw near the Innova vehicle, we cannot get ourselves to view the above as material omissions amounting to contradictions that would warrant the discarding of his testimony. The trial court, too, found his evidence to be worthy of acceptance at paras 299 and 300 of the impugned judgment.

24.4. PW35 E.Radhakrishnan who runs a book and stationery store at Orkatteri, deposed seeing A2 Kirmani Manoj and A5 Mohammed Shafi get out of the Innova car KL-58D-8144 and talk to each other near the Orkatteri Jeep stand at 2115 hrs. He claimed to have seen them in the light provided through a streetlamp. The defence countered his testimony through the evidence of DW7 Pramod, an Assistant Engineer at KSEB through whom the load shedding details in Orkatteri was marked as Ext.D59, to suggest that there was a power cut in Orkatteri town between 9 and 9.30 pm that evening. The defence also relied on the evidence of DW10 AK Pavithran, an Assistant Engineer at KSEB, who corroborated the evidence of DW7 that there was a power cut in Orkatteri during the relevant time. On account of

the evidence adduced by the defence and based on the inconsistencies found during cross-examination of the said witness, the trial court felt it unsafe to rely on his testimony as regards seeing the Innova car and A2 and A5 on 04.05.2012 (paras 306-311 of the impugned judgment). We see no reason to take a different view on this aspect.

24.5. The CDR data analysis on the said date reveals one call between A11 and A12 at 2309 hrs that evening. It is also the prosecution's case that the absence of any calls made from their own phones during the period after 2003 hrs is suggestive of the fact that after the said time, the accused were using the Operational Phones (OP's 1 to 4). There is, however, no evidence to prove the latter aspect.

Our Finding on Conspiracy:

25. On going through the impugned judgment of the trial court, in the light of the evidence discussed above, we find that the discussions on conspiracy therein proceed on the assumption that the physical act of murder will have no relevance to a finding of conspiracy. In fact, the discussions in the impugned judgment have focused only on the five or six physical meetings that were alleged to have taken place between the various accused and the incidental phone calls between them during the said period

to arrive at a finding of conspiracy. While doing so, the trial court considered the evidence in that regard up to the date of the murder by apparently assuming that the act of murder and the people involved directly in the said act would have no relevance to a finding of conspiracy. This, in our view, is where the trial court misdirected itself on this issue, for it is well settled that all means adopted, and illegal acts done in furtherance of the object of the conspiracy hatched can be used to prove the existence of the conspiracy under Section 120B of the IPC. Section 10 of the Indian Evidence Act clearly envisages a situation where if there is reasonable ground to believe that two or more persons have conspired together to commit an offence, and one of them actually commits that offence, the latter's act, if proved, can be used for the purposes of proving both the existence of the conspiracy as well as that he was a party to it. In *Kehar Singh,*[25] for instance, the fact that the accused and the person who shot dead the deceased were together at a social gathering sometime before the shooting and, having isolated themselves at the housetop, were seen talking and avoided questions as to what they were talking about, was seen as sufficient by the Supreme Court to create a reason to believe that they might be conspiring about something. The accused was accordingly sentenced to death along with those who actually caused death, though he was nowhere there at the place of the shooting. Thus, we have to look at the sequence of

25 Kehar Singh v. State (Delhi Admn) – [(1988) 3 SCC 609]

proven facts/circumstances commencing from those that led to the animosity between the members of the CPI (M) and T.P. Chandrasekharan in 2009 and culminating with his murder on the night of 4.5.2012 to determine whether there was, in fact, a conspiracy to murder him that emerged at any stage.

25.1. An agreement to pursue an illegal object being the essence of the offence of conspiracy, and the formation of an agreement between two or more persons being a mental state that is difficult to establish through direct evidence, we have to resort to circumstantial evidence duly analysed in the manner prescribed under Section 10 of the Indian Evidence Act to infer the existence of such an agreement. As is clear from the earlier discussion on the mode of establishing conspiracy, the provisions of Section 10 of the Indian Evidence Act mandate that (i) there has to be *prima facie* evidence affording a reasonable ground for the court to believe that two or more persons are members of a conspiracy (ii) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other (iii) anything said, done or written by him should have been said, done or written by him <u>after the intention was formed by any one of them</u> (iv) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it, and

(v) it can only be used against a co-conspirator and not in his favour.

25.2. Keeping the above principles in mind, when we look at the circumstances that have been proved beyond reasonable doubt in the instant case, the picture that emerges is as follows:

- There was an air of hostility between members of the CPI (M) and RMP ever since T.P. Chandrasekharan broke away from the CPI (M) and floated the new party viz. RMP.

- That hostility took a turn for the worse when T.P. Chandrasekharan contested as a candidate from the Vatakara constituency in the Lok Sabha elections in 2009, and the CPI (M) candidate lost the election and its long-held seat that year to a Congress candidate.

- The hostility was taken note of by the police authorities in the state, who had also circulated intelligence reports warning T.P. Chandrasekharan of threats to his life and recommended the grant of police protection to his person.

- The threat perception was felt by T.P. Chandrasekharan, who told his wife Rema (PW5) that if something untoward were to happen to him at the instance of the CPI (M), it could happen only with the knowledge of A8 K.C. Ramachandran, A9 Ashokan, A10 Krishnan and A14 Mohanan Master.

- A10 Krishnan had made a fiery and threatening public speech in February 2012 warning T.P. Chandrasekharan of dire consequences if he persisted with his anti-CPI (M) campaigns. A8 K.C. Ramachandran was also present at the venue of the speech and was seen discussing something with A10 Krishnan in the vicinity of the venue shortly thereafter.

- During the period between 02.04.2012 and 20.04.2012 there were 32 phone calls between A8 K.C. Ramachandran, A11 Manojan, A12 Geothi Babu, and A13 Kunhanandan. They are all persons with active membership in the CPI(M).

- On 10.04.2012 A1 Anoop, A3 Kodi Suni, A8 KC Ramachandran, A11 Manojan and A12 Geothi Babu were seen holding discussions at Sameera Quarters in Chokli. A1 and A3 not being persons with any known association with the CPI (M) and being persons against whom we have found reliable evidence (discussed later in this judgment) that connects them with the murder of T.P. Chandrasekharan, their meeting with A8, A11 and A12 points towards their involvement in the conspiracy to murder as well.

- On 20.04.2012 A8 K.C. Ramachandran and A11 Manojan met A13 Kunhanandan at his house in Paraattu.

- During the period between 20.04.2012 and 24.04.2012 there were 16 calls between A2 Kirmani Manoj, A5 Mohammed Shafi, A8 K.C. Ramachandran, A11 Manojan, A12 Geothi Babu and A13 Kunhanandan. A2 and A5 not being persons with any known association with the CPI

(M) and being persons against whom we have found reliable evidence (discussed later in this judgment) that connects them with the murder of T.P. Chandrasekharan, their phone calls to A8, A11, A12 or A13 point to their involvement in the conspiracy to murder as well.

- On 25.04.2012, the Innova car bearing Registration No.KL-58D-8144 was entrusted to A18 Rafeek by its owner, PW7 Naveendas, through PW8 Harris.

- Between 26.04.2012 and 01.05.2012 there were 11 calls between A2 Kirmani Manoj, A5 Mohammed Shafi, A11 Manojan, A12 Geothi Babu, A13 Kunhanandan and A14 Mohanan Master. There were calls between A11 and A12 on 02.05.2012 and 03.05.2012 as well.

- A2 Kirmani Manoj and A5 Mohammed Shafi were seen along with A28 Rameesh and A29 Dipin at about 9.30 pm on 02.05.2012 at a place situated about 4 km from the bus stand at Orkatteri. They were seen taking a gunny bag containing some articles from the bushes nearby and putting the same inside the Innova vehicle.

- At about 1600 hrs on 04.05.2012, the day of the murder, A1 Anoop, A3 Kodi Suni, A5 Mohammed Shafi, A7 Shinoj and A31 Pradeepan were seen along with the Innova vehicle at the Chokli taxi stand.

- At about 2100 hrs on the same day (04.05.2012), A4 Rajeesh TK, A6 Sijith, A20 Dilshad and A21 Fasalu were seen at Koroth road loading something that looked like swords into the Innova vehicle.

- At about 2213 hrs on the same day (04.05.2012), T.P. Chandrasekharan was murdered by the gang of assailants comprising A1 to A7.

25.3. As already discussed, in order to enter a finding of conspiracy, we are required to have a 'birds eye view' of the individual circumstances that have been proved beyond reasonable doubt and look for a pattern therein that would afford a reasonable ground for us to believe, not just that there may have been a conspiracy, but that there must have been a conspiracy. To attract the provisions of Section 10 of the Indian Evidence Act, we have to look at the proved facts and circumstances to see whether they offer *prima facie* evidence affording a reasonable ground for the court to believe that A1 to A7, A8, A10, A11, A12 & A13 were members of the conspiracy to murder T.P. Chandrasekharan. In doing so, we find that while there is direct and circumstantial evidence to connect A1 to A7 with the act of murder of T.P. Chandrasekharan, there is also evidence of interaction between the said accused and A8, A11, A12 and A13, both through physical meetings and telephone calls. Viewed in the context of the public speech of A10, which was found to provide the motive for the murder even by the trial court, we feel there are reasonable grounds for us to believe that all the said accused were members of the conspiracy. Although there is evidence to connect A6 also to the conspiracy, we find that the prosecution has not raised a charge of conspiracy against A6. As regards A9 and A14, there are

no facts and circumstances proved against them to sustain a finding of conspiracy against them. Further, when we look to the above evidence to see whether there is a tacit understanding between the conspirators as to what should be done or whether the relative acts or conduct of the parties are conscientious and clear to mark their concurrence as to what should be done, we find that the individual acts of A1 to A5, A7, A8, A10, A11, A12 and A13 having been done with reference to their common intention of murdering T.P. Chandrasekharan, which intention was first formed through the public speech of A10 Krishnan and the steps taken by A8 K.C. Ramachandran to recruit the other accused immediately thereafter, all things said, done or written by any one of them in reference to their common intention will operate as evidence against the other. The cumulative evidence against all the accused is, in our view, sufficient to find the accused A1 to A7, A8, A10, A11, A12 and A13 guilty of the offence under Section 120B of the IPC.

25.4. Before parting with this issue, we might hasten to add that we are conscious of the fact that a finding of guilt under Section 120B against A1 to A5, A7, A10, and A12 will have to be sustained by applying the principles that would come into play when an appellate court reverses a finding of acquittal by the trial court. This is because all of the above

accused were acquitted of the charge under Section 120B of the IPC by the trial court. As already noticed above, our finding of guilt against the said accused is based on evidence that was adduced before the trial court but not considered by it, owing to the particular perspective that that court held with regard to the manner in which the offence of conspiracy had to be established. We find that the trial court virtually proceeded on the assumption that the making of the instigating speech by A10 and the commission of the act of murder by A1 to A7 would not fall within the scope of the offence of conspiracy and that it was only the actual meetings between the various accused and the phone calls between them that would be relevant for a finding of conspiracy. The evidence on record clearly establishes that A1 to A7, A10 and A12 were also members of the conspiracy to murder T.P. Chandrasekharan, along with A8, A11 and A13. While appreciating the prosecution evidence, the trial court ignored the evidence of conspiracy available against A1 to A7. The trial court also failed to appreciate in the correct legal perspective the material piece of evidence relating to conspiracy available against A10 and A12, such as PW6's evidence regarding the public speech made by A10, the evidence of PW5 regarding the statement made to her by her late husband T.P. Chandrasekharan, the physical meeting between A1, A3, A8, A11 and A12 at Sameera quarters in Chokli on 10.04.2012 and the electronic evidence

showing the several calls made between A12 and the remaining accused. A finding of acquittal that is based on an erroneous appreciation or non-appreciation of the evidence on record renders the finding of the trial court perverse in the legal sense of the term and provides justification for the appellate court to reverse that finding.[26] We are of the definite view that the finding of the trial court, as regards the complicity of the above accused in the commission of an offence, under Section 120B of the IPC was not a possible view in the light of the overwhelming evidence discussed above. It is, therefore, that we reverse the finding of acquittal under Section 120B of the IPC in respect of A1 to A5, A7, A10 and A12. The said accused are found guilty of the offence under Section 120B of the IPC.

The Incident

26. The prosecution alleges that A1 Anoop drove the Innova vehicle bearing Registration No.KL-58D-8144 (bearing fake Registration No.KL-18A-5964) in which A2 Kirmani Manoj, A3 Kodi Suni, A4 Rajeesh, A5 Mohammed Shafi, A6 Sijith and A7 Shinoj were travelling, and hit the Motor Cycle bearing Registration No.KL-18A-6395 driven by T.P. Chandrasekharan at about 10.13 pm on 04.05.2012 at the margin of the Kainatti-Orkatteri public

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26 Sheo Swarup v. King Emperor – [AIR 1934 PC 227]; Nur Mohammed v. King Emperor – [AIR 1945 PC 151]; State of Uttar Pradesh v. Banne @ Baijnath & Ors – [(2009) 4 SCC 271]; Babu v. State of Kerala- [(2010) 9 SCC 189]

road near the CWSA office building in Vallikkad town, and after T.P. Chandrasekharan had fallen down, A3 to A7 repeatedly struck him with swords and caused him grievous injuries to the head and other parts of his body with the intention of causing his death. That A3 Kodi Suni also used a country bomb kept by A2 Kirmani Manoj to cause an explosion that was likely to endanger persons who had reached the scene of the incident. It is not in dispute that T.P. Chandrasekharan succumbed to his injuries.

26.1. The evidence relied upon by the prosecution to connect the various accused with the commission of the crime under Section 302 IPC comprises of **direct evidence** - (i) ocular evidence of three witnesses and **circumstantial evidence** - (ii) oral evidence of other witnesses (iii) evidence regarding recovery of the vehicle and swords used in connection with the crime (iv) medical evidence in the form of post mortem report and wound certificates (v) scientific evidence in the form of forensic reports and human hair and DNA analysis reports (vi) electronic evidence in the form of CDR data. It is on the basis of the facts and circumstances proved through the analysis of the above evidence that we have to determine whether taken together, they point clearly and unambiguously to the guilt of the various accused.

The First Information Report:

27. The learned counsel for the appellants/convicted accused have raised objections to the reliance placed by the trial court on the evidence adduced under each of the aforementioned categories, and we propose to deal with all those objections in the discussion that is to follow. Before that, however, we may refer to the objection raised by the learned counsel to the manner in which the FIR was registered in this case. They point to the testimony of the investigating officers who were in charge of the investigation at the various stages to contend that there was a delay in lodging the FIR, as also in the matter of forwarding the same to the Magistrate concerned. They also point to the details of the incident as recorded in the FIR to argue that there is an inconsistency in the version of the incident as recorded in the FIR and later in the final report. We certainly appreciate the concern of the learned counsel in as much as the importance of registering a First Information Report (FIR) in a criminal case cannot be understated. It is an extremely vital and valuable piece of evidence for the purposes of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances under which the crime was committed, the names of the actual culprits and the part played by them, as well as the names of

eyewitnesses present at the scene of occurrence. Delay in lodging the FIR quite often results in embellishment, which is a creature of afterthought. On account of the delay, the report not only gets bereft of the advantage of spontaneity but also there is the danger of the introduction of a coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay, if any, in lodging the FIR is satisfactorily explained.[27] It is also necessary that the FIR is forwarded to the magistrate concerned expeditiously for any delay occasioned could give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded.[28]

27.1. In the instant case, the FIR (Ext.P2) was registered by PW4 Manoj, the Sub-Inspector of Police, at 23.20 hrs on 04.05.2012 as Crime No. 433/12 of Vatakara Police Station, and it was forwarded to the Magistrate concerned at 10.30 hrs on 05.05.2012. PW4 was the person who first received information about the incident through a phone call from an unknown person and he immediately rushed to the scene of the crime. He has deposed that on reaching the crime scene, he lifted the victim from under the fallen motorcycle and put him in the police jeep with the help of two persons who he later identified as PW1 Praseeth and CW2

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27 Thulia Kali v. State of TN – [(1972) 3 SCC 393]; Marudanal Augusti v. State of Kerala – [(1980) 4 SCC 425]
28 Meharaj Singh v. State of UP & Ors – [(1994) 5 SCC 188]

Ramachandran. The jeep was then driven to the general hospital at Vadakara where PW137 Dr. C.K. Anandan, who was the doctor on duty examined the body and certified that the body of the victim was brought dead to the hospital, and opined that the body should be taken to the Medical College Hospital, Kozhikode for postmortem examination. After making the necessary arrangements for taking the body to Kozhikode, PW4 came back to the police station and registered the FIR.

27.2. The learned counsel for the appellants/convicted accused would argue that there was a delay in registering the FIR since PW4 had obtained information regarding the crime through the phone call, and he ought to have proceeded to the scene of the crime only after registering the FIR. They also contend that it was a serious omission on the part of PW4 to not ascertain the identity of the persons who allegedly helped him carry the victim to the police jeep. This is stated to be especially so because the defence has a definite case that PW1 and CW2 were not there at the scene of the crime when PW4 reached there. They also point to the fact that in both Ext.P181 certificate and Ext.P182 intimation given by the doctor at Vatakara (PW137) the name of the deceased person was shown as ‘unknown’, thereby suggesting that, contrary to his testimony in court, PW4 was not actually aware of the identity of the deceased at that time.

27.3. The trial court has dealt with the issue at paragraphs 359 to 369 of the impugned judgment. It found by relying on the decisions in *Tapinder Singh*[29] and *Damodar*[30] that there was no illegality or irregularity occasioned by PW4 in not registering the FIR based on the information received over the telephone from an unknown caller. We are in complete agreement with the said finding of the trial court. Merely because PW4 received information regarding the incident without any details regarding the perpetrators of the offence or the victim thereof, the information received cannot be taken as the first information for the purposes of the Cr.P.C. As observed by the Supreme Court in *V.V. Panduranga Rao*[31] some cryptic or anonymous oral message which in terms did not clearly specify a cognizable offence cannot be treated as FIR. PW4 registered the FIR as soon as he got back to the police station after ensuring that the formalities in the hospital were over. There was, therefore, no delay in registering the FIR in the instant case. We also find that the FIR was forwarded to the Magistrate without any delay by 10.30 hrs the next morning. That apart, a minor variation in the narration of the events in the FIR as regards whether the assailants had hurled the bomb first before hacking the victim with the swords or whether the bomb was hurled after the hacking of the victim to

29 Tapinder Singh v. State of Punjab – [AIR 1970 SC 1566]
30 Damodar v. State of Rajasthan – [AIR 2003 SC 4414]
31 State of Andhra Pradesh v. V.V. Panduranga Rao – [(2009) 15 SCC 211]

scare away the people in the vicinity, cannot be a reason to doubt either the ocular evidence given by an eye-witness in court or the authenticity of the FIR itself. We have to bear in mind that PW4 was not an eyewitness to the event, and his knowledge at the time of registering the FIR was purely based on information that he had gathered from the scene of the crime. If, during the course of the investigation and after recording eye-witness statements, the final report recorded a different sequence of events, it cannot be seen as improper or illegal.

27.4. PW4 Manoj deposed that two persons had helped him to get the fallen motorcycle into an upright position and also to carry the body of T.P. Chandrasekharan into the jeep in which he was taken to the hospital. He also deposed that on the next day, when he went to the office of the Dy.S.P. to give his statement, he identified PW1 and PW2, who were there at that time, as the persons who had helped him the previous day. The said evidence has not been contradicted in cross-examination. Since PW4 P.M. Manoj is a Sub-Inspector of Police and a public servant, and his deposition is with respect to his actions in the line of duty, and further, his presence at the scene of the crime on the night of the murder is not disputed, we can safely hold that PW1 K.K. Praseeth and CW2 Ramachandran were indeed present at the crime scene when PW4 had reached there on hearing of the incident.

We might, in this context, refer to the decision of the Supreme Court in *Sunil,*[32] where the court had the following observation to make about the evidentiary value of the actions of police officers:

> "We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature."

Direct Evidence against A1 to A7:

28. The sheet anchor of the prosecution case is the ocular testimony of three eye-witnesses to the incident, namely, PW1 K.K Praseeth, PW2 T.P. Ramesan @ Dinesan and PW3 T.P. Maneesh Kumar, all of whose presence at the scene of the crime was stated to be on account of their involvement in decoration activities by the roadside in connection with an annual programme, styled as a *gramotsav*, organised by the Brothers Club. To establish the presence of the said eyewitnesses at the crime scene, the prosecution relies on the testimony of PW10 Suraj Kumar, the then Secretary of the Brothers Club, who deposed that while it was initially decided to organise the *gramotsav* on 21.04.2012, the event was later postponed to a date between 5th and 10th of May, 2012. He also deposed that

32 State, Govt. of NCT of Delhi v. Sunil – [(2001) 1 SCC 652]

the club had obtained the necessary mike permission (Ext.P10) from the police authorities to use the microphone for the programme on 05.05.2012. The decisions taken at the different meetings of the club were sought to be proved through the production of the minutes book of the club (Ext.P11 & P11(a)). Although the defence would argue that the deposition of PW1 that he had gone to the Vallikkad junction to tie a banner is an omission in his previous statement, we find that the evidence on record proves that he was engaged in decoration activities, which would take in the tying of a banner as well, and therefore the failure to specifically mention that it was to tie the banner that he went to the junction is not a material omission. Further, the evidence of PW10 Suraj Kumar in this regard has not been shaken in cross-examination. His oral testimony, coupled with Exts.P10, P11 and P11(a), are sufficient to prove the fact that there was indeed a programme scheduled for 05.05.2012.

28.1. PW1 K.K. Praseeth, a coolie worker, deposed to seeing the incident and later identified A1 Anoop and A2 Kirmani Manoj as the persons who were seated in front of the Innova vehicle and the other accused viz. A3 to A7 as the persons who alighted from the vehicle to assault T.P. Chandrasekharan on that fateful night. He further deposed to having helped PW4 P.M. Manoj, the Sub-Inspector of Police who visited the crime scene

shortly thereafter, to carry the body of T.P. Chandrasekharan into the police jeep for transporting it to the hospital. He also deposed that he had volunteered to identify the Innova vehicle if he was taken to the place where the vehicle was discovered the next day and that he went along with CW2 Ramachandran and the Dy.SP and identified the vehicle. He went on to state that on 15.05.2012, he went along with CW2 to the Dy.SP office and from there to the place where the swords were recovered, and he identified the swords (MO1 series), although he did not sign the seizure mahazar that was drawn up in connection therewith. Although in his testimony, he stated that the Innova vehicle he saw bore the Registration No.KL-18A-5964 and not KL-58D-8144, which was the number on the vehicle at the time of its discovery on 05.05.2012; it has come out through the evidence of PW13 K.P.Rafeek, the registered owner of the Bajaj Tempo Trax vehicle bearing Registration No.KL-18A-5964, that the said number used on the Innova vehicle at the time of commission of the crime was a fake one.

28.2. The defence has attempted to shake the credibility of PW1 Praseeth’s testimony by pointing to contradictions/omissions from his previous statement to the police as regards his having proceeded to the Vallikkad junction for decorating the place in connection with the *gramotsav* planned for the next day as also to the manner in which he identified A1

Anoop who was driving the car and who, admittedly, did not get out of the car during the entire episode. However, we do not find them to be material contradictions/omissions since they vary only in minor and insignificant details from the earlier statement given by the said witness. In particular, the identification of A1 in the light that was available in the locality cannot be seen as improbable given the available evidence regarding the sources of light that evening. For instance, while the defence let in evidence through DW6 N.K. Nanu, a construction worker, to prove that the rooms on the upper floor of the CWSA building did not have electricity and that, therefore, PW1 Praseeth could not have seen the incident, DW6 admitted in cross-examination that there was indeed an electricity connection to the rooms in the ground floor of the building. That apart, there is evidence on record to prove that there was sufficient natural and artificial light that would have enabled the witnesses to identify the accused.

28.3. As regards PW1's presence at the scene of the crime, we find that apart from his testimony that speaks to the said fact, his presence at the crime scene immediately after the incident is also proved through the deposition of PW4 PM Manoj, the Sub-Inspector of Police who deposed that it was PW1 and CW2 Ramachandran who helped him carry the body of T.P. Chandrasekharan into the Jeep. It is also significant that on the very next

day, when PW4 gave his statement to the Dy.SP at the latter's office, he identified PW1 and CW2 who were there at the time, as the persons who had helped him the previous evening. That apart, the presence of PW1 was also deposed to by PW125 Manoj Kumar, the police constable who was deputed by PW4 to guard the crime scene that night. Although the defence would point to a part of PW125's deposition that the two persons he saw that night at the crime scene were with him till the next morning, we do not think that the said statement contradicts his statement regarding the presence of PW1 at the crime scene that night in any manner. As regards the identification of A1 Anoop, apart from what was stated regarding his identification at the time when the vehicle took the turn on the road, there is also evidence on record that points to the possibility of PW1 having noticed A1 when he was sitting in the vehicle while the other accused were assaulting the victim. We do not find any material omission in this regard in his previous statement.

28.4. The main thrust of the defence, however, is with reference to the CDR data (Ext.D24) pertaining to the phone that was in the name of PW1 Praseeth's wife but which he admitted to having used, along with his wife, during the relevant time. The said data suggests that on 05.05.2012, the user of the phone travelled from Orkatteri to Kozhikode in the morning and then returned to Orkatteri by the evening. It is the case of the defence that if

the phone was being used by PW1, then it shows that he had not gone along with CW2 Ramachandran and the Dy.SP to identify the vehicle or to give a statement to the Dy.SP at Vatakara on that day. We are not, however, impressed with the said argument. PW1 had clearly deposed that the phone was in his wife's name and that he also used it. The possibility of the phone being used by his wife on 05.05.2012 cannot be overruled since there is nothing in the evidence to suggest that the phone was used by PW1 on that day. We find the evidence of PW1 Praseeth to be of sterling quality and sufficient to prove the presence and actions of A1 to A7 in connection with the murder of T.P. Chandrasekharan. We, therefore, concur with the finding of the trial court on this aspect.

28.5. The other eyewitness cited by the prosecution is PW2 T.P. Ramesan @ Dinesan, a mason, who deposed that he saw the incident and identified A1 to A7, except A3 Kodi Suni, before the police on 22.06.2012 and 13.07.2012 respectively. The defence sought to discredit the witness by showing his affiliation to the RMP through the testimony of DW8 Dolly and DW9 Vasu and Exts.D61 and D64 marked through them that showed that he had functioned as a booth polling agent of the RMP candidate at the local panchayat election, as also his conduct in not reporting the incident to the police or anyone else for almost five days after the incident. Further, while

his explanation for the delay in reporting the matter to the police was that he had gone to his uncle's place on the next day after the incident, the CDR data (Ext.D26) pertaining to the phone that was admittedly used by him showed that he was present in the Vellikulangara area during the aforesaid five days. The testimony of PW2 does not inspire confidence and hence cannot be accepted. We, therefore, concur with the finding of the trial court on this aspect.

28.6. The third eyewitness cited by the prosecution is PW3 T.P. Maneesh Kumar, a gold appraiser at the Indian Bank. His testimony inspires confidence inasmuch as it goes into particulars regarding the happenings of that night, including details of comments that he had made on seeing the Innova vehicle being driven on the wrong side of the road and regarding the manner in which he, along with PW2 and CW2, was attempting to put up the banner near the roadside. He deposes to having recognised A3 Kodi Suni and A5 Mohammed Shafi, whom he knew from before, and also identified the other four accused who were in the vehicle at the police station. His explanation for not reporting the incident to the police immediately thereafter was that he was afraid of doing so. In fact, he states that he had stayed away from the area for three or four days. Although the defence sought to discredit his testimony by pointing to inconsistencies in his version

as regards his involvement as a witness against a CPI (M) worker in another case (S.C.595/2012) as evidenced in Exts.D1 and D2 documents produced by the defence, we are of the view that his testimony is believable especially because he did not choose to hide the fact that he was an active worker of the RMP and that he had attended the inquest of T.P. Chandrasekharan's body at Kozhikode on 5.5.2012, and the cremation at Orkatteri later that evening.

28.7. As already noticed above, the trial court, at paragraphs 116-161 of the impugned judgment, found that while the evidence of PW1 K.K. Praseeth can be believed, the evidence of PW2 T.P. Ramesan and PW3 T.P. Maneesh Kumar cannot be believed. The evidence of PW2 was not believed because he had stated that immediately after the incident, he had gone to his uncle's place at Karthikapally and had returned only on 09.05.2012. However, the CDR data pertaining to the phone stated to have been used by him showed the tower location as Vellikulangara. That apart, he was also found to be a partisan and interested witness who had political enmity towards the local leaders of CPI (M). The court disbelieved the evidence of PW3 on finding that he was a red volunteer of RMP and, therefore, a partisan witness and, further because he had not disclosed the fact of having seen the incident either to the police or to other members of the RMP till

09.05.2012 on which date he went to the office of the Dy.SP Vatakara and gave his statement. The court also found that it was improbable that he had had an occasion to see A1 Anoop on that night since he stated that the driver of the vehicle never got out of it at all.

28.8. For the reasons already stated above, we concur with the trial court's findings regarding the evidence of PW1 that was believed and the evidence of PW2 that was disbelieved. However, we cannot accept the trial court's finding that disbelieved the evidence of PW3 T.P. Maneesh Kumar. The mere fact that his political affiliation was not aligned with that of the accused is no reason to discredit his testimony. So also, his conduct after the incident, of not disclosing to the police or to anybody else for four days that he had witnessed the crime, cannot be said to be unnatural. This is more so when he deposed that he was overcome with fear. As was observed by the Supreme Court in *Rana Partap*:[33]

> "Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Everyone reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

33 Rana Partap & Ors v. State of Haryana – [(1983) 3 SCC 327]

28.9. In the instant case, the conduct of PW1 and PW3 have to be appreciated in the backdrop of the above observation. PW1, it will be recalled, went home immediately after helping PW4 carry the victim into the jeep and did not speak about the incident to anyone else till the next day when he volunteered, along with CW2, to help the police identify the Innova vehicle that had been found abandoned at a nearby place. This cannot be seen as an unusual conduct on the part of PW1 so as to cast any doubt on his testimony. As for PW3, he has deposed that he did not disclose the particulars of the incident to anyone for over four days because he was afraid to do so. We find that his fear cannot be seen as unrealistic. He resides in a neighbourhood where political rivalry often takes violent turns and visits any police informant with dire and unimaginable consequences. If he took some time to reflect on whether or not to inform the police of the fact that he was an eyewitness to the incident, he cannot be faulted because fear operates in myriad ways in the human mind. His detailed statement of the events of that fateful night, as also his truthful disclosure of the fact that he had attended the post-mortem examination of his slain leader the next day, leads us to accept his eye-witness testimony as proved. We are also not convinced that the delay in disclosing the particulars of the incident to the police vitiated his testimony in any manner. It is trite that a delay in the examination of a witness by the investigating agency cannot be a ground to

condemn the witness and discredit his testimony. The court can rely on such testimony if it is cogent and credible.[34]

28.10. The key to appreciating the evidence of PW1 and PW3 is to look at it holistically and see whether it is accurate in most particulars so as to inspire the confidence of the court in it. In this connection, it is significant that both PW1 and PW3 had identified A1 to A7 who have no known political affiliation and, therefore, were not persons against whom either PW1 or PW3 could have had any animosity. That apart, PW1 had also identified A1 Anoop, A4 Rajeesh and A7 Shinoj at the TI parade conducted under the supervision of the Magistrate. Both of them clearly and consistently deposed about the manner in which each of the accused attacked the deceased, the nature of the weapons used and the parts of the body of the deceased whereupon the injuries were inflicted by the accused. They also identified A1 to A7, as also the Innova car, in court. The testimony of PW1 and PW3 is undoubtedly of sterling quality.

28.11. The quality of the evidence that would qualify as "sterling" has been expatiated in *Rai Sandeep*[35] as follows:

> "The sterling witness should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version

34 Sidharth Vashisht @ Manu Sharma v. State (NCT of Delhi) – [AIR 2010 SC 2352]
35 Rai Sandeep v. State (NCT of Delhi) – [(2012) 8 SCC 21]; followed in Naresh v. State of Haryana – [(2023) 10 SCC 134]

> of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and how so ever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied can it be held that such a witness can be called a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to seive the other supporting materials for holding the offender guilty of the charge alleged."

28.12. The above test has been consistently followed by our courts in identifying sterling witnesses in criminal trials. In our view, the testimony of PW1 Praseeth and PW3 Maneesh Kumar satisfy the above test since their version is consistent with the supporting material such as recoveries made of the Innova vehicle, the swords and the findings in the DNA and forensic analysis. Although it is a fact that PW3 gave his statement to the police only four days after the incident, he has given a valid explanation for the delay and, at any rate, his version was consistent with the version of PWI as

regards the manner in which the offence was perpetrated. Further, merely because his political affiliation was opposed to that of the accused, his testimony could not be rejected as was done by the trial court. The court ought to have appreciated that in a case of political murder, it was inevitable that the witnesses who volunteered to give evidence would likely have affiliation with the political party to which the victim belonged. At any rate, the political affiliation of the witness alone could not have weighed with the court while appreciating his evidence; it should have viewed the evidence holistically to see whether it was truthful.

Circumstantial Evidence against A1 to A7:

29. In this section of the judgment, we choose to analyse the circumstantial evidence against A1 to A7 alone. The circumstantial evidence against the other accused in relation to the offences alleged against them, such as aiding and abetting of the crime under Section 302 IPC, harbouring of the main accused, destruction of the evidence so as to shield the main accused, etc., is dealt with in the next part of this judgment.

29.1. The circumstantial evidence available against A1 to A7 to prove their complicity in the offence under Section 302 IPC consists of their sightings at various locations in connection with the conspiracy hatched to

murder T.P. Chandrasekharan, the recovery of material objects based on the statements of other accused and hair and blood samples obtained from some of them that matched with like samples obtained from the vehicle used for the crime. The trial court has dealt with this evidence at paragraphs 297 to 390 of the impugned judgment.

29.2. We might, at this stage, refer to the general arguments advanced before us by the defence counsel while attempting to bring out contradictions and omissions in the previous statements given by the various witnesses before the investigating officers. A consideration of the same requires us to examine the circumstances under which the statement of a witness in court can be said to be contradictory to or an improvement upon his earlier statement given to the investigative agency. It is trite that the previous statement of a witness is not and cannot be treated as substantive evidence except when falling within the provisions of Section 27 (1) of the Evidence Act. It can be used only to contradict his deposition before the court. As noticed in *Pakala Narayana Swami*[36], the provisions of Section 161 Cr.PC strikes a happy via media between the requirement that statements given to police officers should not be used in evidence and the requirement that the accused should be able to contradict a witness in the manner provided by Section 145 of the Evidence Act. Statements given under

36 Pakala Narayana Swami v. King Emperor – [AIR 1939 PC 47]

Section 161 cannot be used for corroboration of prosecution/defence/court witnesses. Nor can it be used for contradicting a defence or court witness. There is thus a general bar against the use of the statement subject to the limited exception in the interest of the accused.

29.3. While prior to the amendment of the Cr.P.C and the insertion of the Explanation to Section 162, the contradiction established had to be between what the witness asserted in the witness box and what he stated before the police officer and not what he said he had stated before a police officer and what was reduced into writing by the officer, the Explanation now makes it clear that omissions in the earlier statement can also be treated as contradictions for the purposes of the Section. That said, it is only if the statement of the witness <u>on material particulars or vital points</u> differs from his testimony on oath before the court that it can be urged by the defence that his testimony is at variance with his earlier statement made before the IO and therefore cannot be believed because he is making the statement for the first time at the time of the trial, and that it has to be viewed as an afterthought. In other words, simply because there is a variance between the statement made in court and what is stated or omitted to be stated before the IO, the credibility of the witness cannot be impeached. The contradiction or omission must be on material particulars or

vital points, and they have to be proved by examining the IO who recorded their statements under Section 161 Cr.P.C.[37] Every omission cannot take the place of a contradiction in law and, therefore, be the foundation for doubting the case of the prosecution. Omissions of a trivial nature or of minor particulars cannot be cited to discredit a witness.

29.4. Keeping the aforesaid principles in mind while appreciating the evidence before us in these cases, we note that apart from the eyewitness testimony of PW1 and PW3 that point to the involvement of A1 to A7 in the crime committed on 04.05.2012, and which testimony we have found to be credible, there is oral testimony of few others that implicate A1 to A7.

Witness testimony that implicates A1 to A7:

30. The evidence of PW15 Rajeevan suggests that he had seen A2 Manoj Kumar and A5 Mohammed Shafi by the side of the Innova vehicle KL-58D-8144 near the Industrial Estate at Koroth Road at about 2100 hrs on 02.05.2012. While he did not know A2 and A5, he recognised A28 Rameesh and A29 Dipin who were there along with them and who were putting a sack bundle into the vehicle. PW15 identified A2 and A5 in court and also deposed that he had seen their pictures on television news channels, and

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37 State of Karnataka v. Bhaskar Kushali – [(2004) 7 SCC 487]; Shyamal Ghosh v. State of WB – [(2012) 7 SCC 646]; Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra – [(2010) 13 SCC 657]; Subhash v. State of Haryana – [(2011) 2 SCC 715]

that is how he came to know of their names. He also deposed to having read in the newspapers about their arrest and about the seizure of the Innova vehicle. As the investigation officer had recorded his statements on 12.05.2012 and thereafter on 24.06.2012, the trial court found his deposition to be credible. The defence tries to discredit the witness by pointing to contradictions/omissions in his previous statement as regards the presence of moonlight on that day and the time at which he allegedly saw the accused. We do not see much merit in the defence's contention since the contradictions/omissions pointed out are trivial and not so material that they can be relied upon to discredit the witness.

30.1. PW18 Santhosh has testified in court that on 04.05.2012 at about 16.00 hrs, he had reached the taxi stand in Chokli along with his friend Ramesan (CW35) in a jeep that was driven by him. They were apparently going to Kaviyoor in connection with a marriage proposal that had come for Ramesan. While they were waiting at the taxi stand for the marriage broker to arrive, about seven persons alighted from an Innova vehicle in front of their jeep and stood near the jeep. Of the said persons, A3 Kodi Suni, A5 Mohammed Shafi and A31 Pradeepan, who were known to him for two to three years, came up to them and asked them why they were there. Apparently, A5 Mohammed Shafi pulled his shirt and threw away his

mobile phone. In the meanwhile, A3 Kodi Suni and others inspected the rear portion of the jeep and after ascertaining whether they were from Poyiloor, asked them to leave the place immediately. They then left the place in the Innova vehicle KL-58D-8144. PW18 and CW35 thereafter went to the office of the Circle Inspector of Police, Panoor and preferred Ext.P17 complaint. Later, PW18 identified A3 Kodi Suni, A5 Mohammed Shafi and A1 Anoop in court. A1 Anoop was apparently one of the persons who threatened them that evening.

30.2. The defence argument against relying on this evidence is that PW18 Santhosh has known affiliation with the RSS, and the general animosity between the RSS and CPI (M) is well known in the locality. They also place reliance on the fact that PW18 chose to lodge his complaint at the office of the CI of Police at Panoor, rather than at the nearby police station at Chokli, to allege that the lodging of the complaint was a fabricated piece of evidence and in fact no such complaint was lodged. It was also pointed out that although the statement of PW18 was recorded on 11.05.2012, Ext.P17 complaint was recovered only on 19.07.2012 under cover of Ext.P539 seizure mahazar, along with Ext.P208 complaint register. Further, CW250, the ASI, Chokli, who was cited to prove the seizure; CW273, the attester to the mahazar; and CW242, the Chokli SI, who enquired into Ext.P17

complaint, were not examined as a witness by the prosecution. The trial court, however, found that merely because PW18 was affiliated to the RSS, his testimony did not have to be disbelieved. It also found that it was a fact that he had given Ext.P17 complaint before the office of the CI of Police at Panoor for the CI (PW149) deposed that he had forwarded Ext.P17 complaint to the Chokli police station and Ext.P208 petition register of Chokli police station showed that the complaint had been entered in it. The contention of the defence that the complaint had been fabricated subsequently was rejected by the trial court.

30.3. We see no reason to differ from the view taken by the trial court. Apart from the fact that the political affiliation of the witness did not have to be a reason to disbelieve his testimony if it was otherwise credible and worthy of acceptance, we fail to see how the mere fact of non-examination of CW250, CW273 and CW242 can affect the oral testimony of PW18 when PW149 Dominic, CI of Police, Panoor had clearly spoken on the enquiry made into Ext.P17 complaint and the action taken thereon.

30.4. The evidence of PW17 Subodh, that was also found credible by the trial court, is to the effect that on 04.05.2012, at about 2100 hrs, when he was returning on his motorcycle from a shop near Mahe railway station,

along with his friend Sreejith Kumar (CW37), he saw an Innova vehicle parked near the old age home at Koroth Road and six or seven persons standing around the car. He recognised Dilshad A20 and Fasalu A21 from among them as he knew them from before. They were talking to the other persons while three or four of them were taking what looked like swords into the vehicle. Among the strangers he saw that night, one was a fat, bald person, and another was a fat dark-complexioned person. He later identified those persons in court as A4 T.K. Rajeesh and A6 Sijith. He also deposed to seeing something written in Arabic language on the front and rear glasses of the Innova vehicle which he later identified at the Edacherry police station as also in court. Although the defence tries to discredit his testimony by alleging that he was an RMP worker/follower and pointing to omissions in his previous statement as regards the finer details of his trip to the shop near Mahe railway station, we do not see the said omissions or his alleged affiliation to the RMP as material that would lead us to disbelieve his evidence.

Forensic/DNA Evidence against A6:

31. As one of the main accused persons implicated through PW17's testimony is A6 Sijith, we might, at this juncture, also deal with the forensic/medical evidence available against him. After the Innova vehicle

was discovered on 05.04.2012, experts from the forensic department inspected the vehicle and collected hair and blood samples found thereon/therein. The said samples were packed and handed over to the Investigation Officer PW165 at 4 pm on the same day. It was received in the court on 08.05.2012. Thereafter, the IO prepared the forwarding note on 14.05.2012, and the samples in court were sent along with the forwarding note of the IO and other samples received by the court on 23.05.2012, under cover of Ext.P466, to the Forensic Sciences Laboratory (FSL). The samples were received at the FSL on 26.05.2012, and the ones intended for DNA testing were sent to the DNA division on 20.07.2012. The test report dated 14.08.2012 is produced as Ext.P571. At p.28 of Ext.P571 test report, the result of the DNA profiling of the sample of blood obtained from inside the vehicle is stated, and it shows that it was a mixture of blood belonging to T.P. Chandrasekharan and A6 Sijith.

31.1. It deserves to be mentioned that A6 Sijith was arrested on 22.05.2012 (Ext.P458 arrest memo; Ext.P459 Inspection memo), and his blood and hair samples were taken on the same day by PW107 Dr. Shalina Padman as evidenced by Ext.P112 wound certificate. It was then sent directly to the FSL by the IO on 13.06.2012 (Ext.P487). However, the FSL returned the sealed sample to the IO on the same date, pointing out that the

parcel did not contain a forwarding note with instructions as regards the nature of testing required. The IO, therefore, forwarded the sealed sample along with a forwarding note to the court (Ext.P489) on the very next day, i.e. 14.06.2012, after preparing Ext.P168 maha zar. The sample was thereafter sent from court on 19.06.2012, and the testing was done at the DNA department of the FSL, which resulted in Ext.P571 test report dated 14.08.2012. Although the defence tried to suggest that the irregularity occasioned by the IO in sending the blood sample of A6 Sijith directly to the FSL without routing it through the court vitiated the testing of the sample, we are not impressed with the said argument. It is not in dispute that the blood sample from the Innova vehicle, that contained mixed blood, was sent to the court earlier in point of time (08.05.2012) and before the arrest of A6 Sijith on 22.05.2012. The testing of A6 Sijith's blood against the said mixed blood obtained from the Innova vehicle was much thereafter, and the test result showed that the mixture of blood was that of the deceased T.P. Chandrasekharan and A6 Sijith. Thus, any irregularity/delay occasioned in sending A5's blood sample to the FSL was inconsequential since ultimately the sample matched with the sample of mixed blood found in the Innova vehicle.

31.2. It is also relevant that PW107 Dr. Shalina Padman has given

evidence that on 23.05.2012 at 14.15 hrs, she had examined A6 Sijith and that, on examination, she found a healing wound on his right hand near the base of the thumb. There were markings of four sutures and two of them had been removed by the patient himself. She opined that the age of the wound was more than five days. Similarly, PW105 Dr. Cyriac Job, before whom A6 Sijith was produced for examination, also noted the presence of a V-shaped healing wound on his right hand at the base of the thumb. He also deposed that A6 Sijith had told him that the injury was caused on May 4th by the impact of the sword of another person while entering the vehicle. The trial court found that this statement of A6 Sijith to the doctor virtually amounted to an admission and not a confession hit by Section 26 of the Indian Evidence Act. Reliance was placed on the decision of the Privy Council in *Narayana Swami*[38] and the decisions of the Supreme Court in *Kanda Padayachi*[39] and *Ammini*[40] to hold so. We find no reason to interfere with the trial court's findings. Further, as there are no vitiating circumstances to doubt the doctor's evidence, we are of the view that this evidence unambiguously points to the presence of A6 Sijith in the Innova vehicle at the crime scene on 04.05.2012.

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38 Pakala Narayana Swami v. King Emperor – [AIR 1939 PC 47]
39 Kanda Padayachi v. State of Tamil Nadu – [AIR 1972 SC 66]
40 Ammini & Ors. v. State of Kerala – [AIR 1998 SC 260]

Recovery of the Innova vehicle:

32. With specific reference to the Innova vehicle, we find that while the prosecution case is that PW1 Praseeth and CW2 Ramachandran had accompanied the IO PW165 Jossy Cherian to the place Punathilmukku where the Innova vehicle was found abandoned on 05.05.2012 and had helped to identify the vehicle as the one that was used for the crime the previous night, the defence points to the non-mentioning of the fact that PW1 and CW2 were eye-witnesses to the incident in Ext.P1 seizure mahazar drawn up that day to suggest that PW1 and CW2 did not actually witness the incident the previous day. We note, however, that PW1 and CW2 had signed the seizure mahazar as witnesses, and hence their presence at the time of the seizure of the vehicle cannot be doubted. Besides, merely because they were not described in the seizure mahazar as eyewitnesses to the previous night's incident is no reason to disbelieve either the testimony of PW1 or the testimony of PW165 or the drawing up of Ext.P1 seizure mahazar itself. It is important to note that PW1 had deposed that at the time of the incident, the Innova vehicle bore Registration No.KL-18A-5964 and yet when he identified the vehicle the next day, it bore the Registration No. KL-58D-8144. He also identified the vehicle before the court later. Ext.P573 FSL report also proves that the adhesive substance found on the reverse side of the false number plates recovered under cover of Ext.P63 mahazar, matched with the

substance found on the real number plates of the Innova car at the time of its seizure on 05.05.2012. Therefore, PW1's identification of the Innova vehicle as the one that he saw the previous night with a different Registration number stands corroborated by the said piece of evidence. The use of a fake number plate on the Innova vehicle also stands proved by this evidence.

32.1. The use of the Innova vehicle for the commission of the crime is proved yet again by Ext.P573 FSL report that shows that the paint flakes recovered from the scene of the crime and from the front tyre of the deceased T.P. Chandrasekharan's motorcycle as per Ext.P20 mahazar, matched with the paint flakes taken from the Innova vehicle after its recovery and seizure. The damages to the Innova vehicle indicated by PW103 Salim Vijaykumar, the Motor Vehicles Inspector attached to the RTO Office Vatakara, in Ext.P104 certificate issued by him also point to the involvement of the Innova vehicle in the incident of the previous night. Further, as already noticed while analysing the evidence against A6 Sijith, page 28 of Ext.P571 test report contains the result of the DNA profiling of the sample of blood collected from inside the vehicle on 05.05.2012 and it shows that it was a mixture of blood belonging to T.P. Chandrasekharan and A6 Sijith. In our view, the above evidence would suffice to unambiguously

prove that it was the Innova vehicle that was seized on 05.05.2012 that was involved in the incident of the previous day.

32.2. Apart from the above, it is also significant that in Ext.P572 FSL report, some of the hair samples collected from the Innova vehicle were found to be similar to the hair samples taken from A6 and A18. Since there was DNA evidence to connect A6 with the incident on 04.05.2012, the trial court relied on the Ext.P572 report only to find A18 guilty of abetting the commission of the offence under Section 302 IPC, as seen from paras 561 to 584 of the impugned judgment.

Recovery of the Swords:

33. The recovery of MO1 series swords was made on 15.05.2012 based on the disclosure statement of A31 Pradeepan. A31 was arrested by PW164 Dy.SP Shoukathali and he deposed that A31 had stated that if he were taken, he would show the place where the swords were first kept and the well in which the swords were subsequently hidden. Accordingly, A31 was taken to a place near Vasudeva Service Centre in Chokli, and he pointed to a well behind the Service Centre. With the help of PW33 Rajesh, the swords were taken out of the well, and PW164 then seized the same under the cover of Ext.P28 mahazar. PW34 Sasidharan Pillai, a Junior

Superintendent in the Taluk Office, Thalassery, was a signatory to the mahazar, and he identified his signature in Ext.P28 mahazar. Although the defence would urge, as it did before the trial court, that Ext.P28 mahazar was not attested to by any persons in the locality, we do not see any legal infirmity in the manner in which the mahazar was drawn up. There is nothing on record that would persuade us to disbelieve the testimony of PW164, PW33 or PW34, and hence, the recovery of MO1 series swords stands proved. In any event, as rightly found by the trial court by relying on *Sunil*,[41] when the recovery of an object is made pursuant to the information given by the accused, there is no obligation on the investigating officer to call independent witnesses from the locality to witness the recovery or to attest the recovery mahazar. We also do not find any merit in the submission of the defence that there was an inordinate delay in producing the seized articles before the Magistrate. The evidence on record shows that the seized swords were produced without any delay along with the Ext.P371 property list before the JFMC, Vatakara, at 1.30 pm on 16.05.2012.

Medical evidence connecting the swords with the injury on the victim:

34. In Ext.P179 post-mortem report prepared by PW136 Dr. Sujith Sreenivas, the cause of death is attributed to "multiple incised chop injuries sustained to the head and face cutting the skull and brain, transecting the

41 State Govt. of NCT of Delhi v. Sunil – [2001 Cri.LJ 504]

frontal lobe". In his deposition before the court, PW136 stated that he had examined the MO1 series of swords at the FSL pursuant to the order of the JFMC and that Injuries 1 to 7 and 10 to 14 noted in Ext.P179 certificate could be caused by the sharp edge of MO1 series swords. He further deposed that the Injuries noted as 8 and 9 in Ext.P179 certificate and the linear contusion of Injury no.4 could be caused by the non-cutting blunt edge of the blade of the said weapons. He further deposed that Injury No's. 1 to 3, 5 to 7 resulting in Injury No.14 have led to the death of the victim; that those injuries are likely to cause death in the ordinary course of nature. Although the defence would point out that the possibility that some of the injuries were caused by a stick or other blunt weapon renders the medical opinion inconsistent with the ocular evidence of PW1 and PW3, we find ourselves in agreement with the trial court when it found that in view of the definite opinion of PW136 that those injuries could be caused by the non-cutting blunt edge of the blade of MO1 series swords, the medical evidence did not completely rule out the possibility of the injuries being inflicted in the manner stated by PW1 and PW3. As rightly found by the trial court, relying on *Solanki Chimanbhai*,[42] unless the medical evidence goes so far that it completely rules out all possibilities whatsoever of the injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be discarded on the ground of alleged inconsistency with

42 Solanki Chimanbhai Ukabhai v. State of Gujarat – [AIR 1983 SC 484]

the medical evidence.

Forensic Evidence against A2 and A3 as regards use of Explosives:

35. PW1 and PW3 had deposed that when A2 got out of the Innova vehicle at the time of the incident, he had a round object in his hand and that before leaving the place, A3 got the round object from A2 and threw it on the road, and it exploded. The remnants of the explosion were collected and sealed by PW132 E.K. Rajan, Assistant Sub-Inspector of Police in charge of the bomb squad, when he inspected the crime scene on 05.05.2012. He deposed to having handed over the sealed package to PW165 Jossy Cherian, the IO. PW142 Remya, the Scientific Assistant had also collected and sealed samples of the remnants of the explosion and handed over the same to PW165. The said samples collected by PW132 and PW142 were then sent to the FSL for analysis, and in Ext.P553 report, the said samples were found to contain Potassium Chlorate, Sulphur and Aluminium. These being explosive substances under the Explosives Substances Act, 1908, and there having been no explanation offered by A2 or A3 as regards the possession and use by them of those substances for any lawful purpose, the trial court found that the charge against the said accused under the Explosive Substances Act, 1908 stood proved. In the appeals before us, nothing substantial has been brought to our notice that would persuade us to take a different view

from that taken by the trial court on this issue. We, therefore, concur with the finding of the trial court on this issue.

Our findings on the Incident:

36. In the light of the discussions above under this section, we are of the view that the eyewitness testimony of PW1 and PW3 stands corroborated by the circumstantial evidence discussed above and affords the basis for entering a finding of guilt under Section 302 of the IPC against A1 to A7. Further, in view *inter alia* of our findings against A1 to A7 on the issue of conspiracy and their guilt established thereunder, we find ourselves in agreement with the finding of the trial court that the unlawful assembly of A1 to A7, armed with deadly weapons, was with the common object of committing the murder of T.P. Chandrasekharan and hence their guilt variously under Sections 143, 147, 148 and 302 read with 149 of IPC as well Sections 3 and 5 of the Explosive Substances Act, 1908, as charged against them, stands established.

Abetment and Harbouring

37. In this section, we deal with the evidence available against those accused, other than A1 to A7, against whom charges have been mounted

alleging abetment to murder, harbouring of the main accused, concealing the design to commit the offence, destruction of evidence and forgery. Only two of the accused, viz. A18 Rafeek and A31 Pradeepan were convicted by the trial court for the offences under Section 302 read with 109 of the IPC and under Section 201 of the IPC, respectively. The said accused have preferred appeals challenging their conviction and sentence (Crl.A.Nos.174/2014 and 176/2014). As regards the other accused (A16, A17, A19, A20, A21, A22, A25, A27, A28, A29, A30, A33, A36, A37, A39, A41, A42, A48, A49, A50 & A70) who were acquitted by the trial court under Section 235 of the Cr.P.C, the State has preferred an appeal (Crl.A.No.403/2014) challenging their acquittal. The widow of T.P. Chandrasekharan has also preferred an appeal (Crl.A (V) 571/2015) challenging their acquittal.

38. For the sake of convenience, we propose to deal with the appeals preferred by A18 and A31 first.

Crl.A.No.174/2014 filed by A18 Rafeek:

39. The trial court found A18 guilty of the offence under Section 302 read with 109 of the IPC. It is the case of the learned counsel for the appellant/convicted accused that since there was no evidence suggesting

that A18 had any knowledge of the use of the vehicle in connection with the murder of T.P. Chandrasekharan or the conspiracy behind it, the mere existence of some evidence that showed that the Innova vehicle was entrusted to him by PW8 could not, without anything more, have formed the basis of the finding of guilt under Section 302 read with 109 of the IPC. The trial court at paras 561 to 584 of the impugned judgment found that the entrustment of the Innova vehicle by PW7 to A18, through PW8 stood proved and further that in the absence of any explanation forthcoming from A18 as to how the vehicle reached the hands of A1 Anoop, it had to be inferred that A18 had given the vehicle to A1 with the knowledge that it was going to be used for the murder of T.P. Chandrasekharan. The trial court also relied on corroborative evidence in the form of CDR data that showed that there were frequent calls between A18 and A1/A3 during the period prior to the murder of T.P. Chandrasekharan to find A18 guilty of the offence under Section 302 read with 109 of the IPC.

39.1. The learned counsel for A18 would argue that in view of the use of phones by A1 and A3 not being proved, the said corroborative evidence could not be relied upon to sustain the finding of guilt against A18. While we find some force in the said argument, inasmuch as we too have excluded the CDR data pertaining to the phones used by A1/A3 by finding the said

evidence to be inadmissible, we are nevertheless inclined to agree with the finding of the trial court on a different line of reasoning. We are of the view that the entrustment of the Innova vehicle to A18 having been proved and A18 not having given any explanation as to how the vehicle entrusted to him came into the possession of A1, the ingredients to support a finding of conspiracy stood established against A18. However, in the absence of a specific charge of conspiracy against him, he cannot be found guilty under Section 120B of the IPC. That, however, does not prevent us from considering the ingredients of conspiracy established against him for the purposes of finding him guilty under Section 109 of the IPC since the offence defined in Section 107 of the IPC is deemed committed if "a person engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing". We are, therefore, in complete agreement with the finding of the trial court that holds A18 guilty of the offence under Section 302 read with 109 of the IPC. However, we find that the said evidence, without anything more, cannot be used to find that A18 had voluntarily concealed the existence of a design to commit murder of T.P. Chandrasekharan to establish a charge under Section 118 IPC. We also find no reason to interfere with the finding of the trial court that acquits A18 for the offence under under Sections 465 and 471 of the IPC.

Crl.A.No.176/2014 filed by A31 Pradeepan:

40. As regards A31 Pradeepan, the charges against him were threefold (Charges 49,50 & 51) and pertained to the offences under Sections 201 and 212 of the IPC. The charge under Section 201 of the IPC was in respect of his alleged action of hiding MO1 series swords in a well and in respect of his alleged action of taking the injured A6 to a hospital in Chokli and giving false information at the hospital as regards the cause of the injury. The latter part of the said action was also the basis of the charge under Section 212 of the IPC. The trial court found him guilty on one count under Section 201 of the IPC in connection with the concealment of the swords in the well. He was acquitted of the other two charges, under Sections 201 and 212 of the IPC. With regard to the recovery of the swords, the basis of the findings of the trial court that found the recovery to be proved has already been discussed in an earlier part of this judgment while dealing with the circumstantial evidence against A1 to A7 and hence we refrain from re-iterating those findings here. We have also found that there is clear evidence to prove that MO1 series swords were used for the commission of the offence.

40.1. The trial court was of the view that apart from his knowledge of

the place of concealment of the swords, which could be inferred from the recovery in terms of Section 27 of the Indian Evidence Act, the entrustment of the swords to him by anyone among A1 to A7, as also his act of concealment of the swords with the intention of screening them from legal punishment, could be inferred. Before us, the learned counsel for A31 would argue that while his knowledge as regards the place of concealment of the swords could be a matter of legal inference, the entrustment of the swords to him by any of the accused and his possession and concealment of the same could not have been inferred by the trial court based on the evidence that it considered.

40.2. While there is some force in the argument of the learned counsel as regards insufficiency of the evidence considered by the trial court to support a finding of entrustment of the swords to him by any of the accused and his possession and concealment of the same, we find that there was other evidence in the form of the testimony of PW18 Santhosh, that was believed by the trial court, and that proved the presence of A31 along with A3 and A5 at Chokli taxi stand. In our view, this evidence can be relied upon to justify the view taken by the trial court. The presence of A31, along with the other accused (A1, A3, A5 & A7) and the Innova vehicle at about 4 pm on the day of the incident (04.05.2012) is sufficient in our view to infer his

knowledge about the use of the same swords for the commission of the murder of T.P. Chandrasekharan, and his concealment of the same, especially when there was clear evidence to show that he had knowledge of the place of concealment of the said swords.

40.3. As regards the other charge under Section 201 of the IPC and the charge under Section 212 of the IPC, we find that although there is some evidence to show that A6 Sijith was treated at the CMC Hospital Chokli for an injury that he had sustained in the incident, there is no evidence that would show that it was A31 who took A6 to the hospital or gave misleading information to the hospital. We, therefore, concur with the findings of the trial court acquitting A31 of the said charges.

Crl.A.Nos.403/2014 filed by the State & Crl.A.(V). No.571/2015 filed by the Victim:

41. As regards the other accused (A16, A17, A19, A20, A21, A22, A25, A27, A28, A29, A30, A33, A36, A37, A39, A41, A42, A48, A49, A50 & A70) whose acquittal by the trial court under Section 235 of the Cr.PC has been impugned by the State and the victim before us; we find on an application of the principles that would govern us while considering an appeal against an acquittal, that there is nothing substantial brought to our notice by the learned Special Prosecutor that would lead us to find that the

views of the trial court were perverse in the legal sense of the term so as to warrant any reversal of the same. As has already been noticed in an earlier portion of this judgment, even in a situation where we have some doubt with regard to the manner in which evidence was appreciated by the trial court or we entertain an alternate view with regard to the guilt of the accused, we have to see whether the trial court's view was a possible view. This is more so because we cannot ignore the fact that the trial court would have had the benefit of observing the demeanour of the witnesses before it, which often provides clues to the weight of their testimony.[43] It is only when the finding of the trial court is demonstrated to be 'clearly wrong', and not merely when it is 'not correct', that we can interfere with the said finding. In the case of the above accused, we do not find any such material as would persuade us to take a different view from that of the trial court.

<u>In Conclusion:</u>

1. We confirm the judgment of the trial court and sustain the conviction of A1 to A8, A11 and A13 (A1 – Anoop, A2 - Manoj @ Kirmani Manoj, A3 – N.K.Sunil Kumar @ Kodi Suni, A4 – T.K.Rajeesh, A5 – K.K.Muhammed Shafi, A6 – S.Sijith, A7 – K.Shinoj, A8 – K.C.Ramachandran, A11 – Manojan & A13 - Kunhanandan) in respect of the charges proved against them. We note that A13 expired during the pendency of these appeals, and his legal representative was impleaded.

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43 H.D.Sundara & Ors v. State of Karnataka – [(2023) 9 SCC 581]

2. Additionally, we convict A1 to A5 and A7 under Section 120B of the IPC as well.

3. We set aside the acquittal of A10 [K.K.Krishnan] and A12 [Geothi Babu] and convict them under Section 120B read with 302 of the IPC.

4. We confirm the acquittal of the other accused.

We direct the Jail Superintendent, Kannur and Tavanur to produce A1 to A8 & A11 in person before this Court at 10.15 am on 26.02.2024 for hearing A1 to A5 & A7 on the sentence to be imposed under Section 120B IPC and all of them (A1 to A8 & A11) on the plea of enhancement of sentence and compensation.

The Registry is directed to issue non-bailable warrants for the immediate arrest and production of A10 and A12 before the trial court. On such production, or in the event of A10 and A12 voluntarily surrendering before the trial court, it shall commit them to prison with a direction to the Superintendent of the prison to produce them before this Court at 10.15 am on 26.02.2024 for hearing on sentence.

The Registry shall also call for the following reports in respect of A1

to 8 & A11, for effectively considering the plea of enhancement of their sentence.

1. Report from the Probation Officers concerned.

2. Report from the Jail Superintendent, Kannur in respect of A1, A2, A4 to A8 & A11 and from the Jail Superintendent, Thrissur and Tavanur in respect of A3 as regards the nature of the work done by the accused while in jail.

3. A psychological and psychiatric evaluation report in respect of A1 to A8 and A11 from the Government Medical College/Government Hospital.

The reports shall reach this Court on or before 26.02.2024.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

prp/

APPENDIX – I

	SIM Card	Service Provider	Call Data Records	Nodal Officer
OP(1)	9747170471	Idea	Ext.P226	PW151
OP(2)	8606896163	Idea	Ext.P232	PW151
OP(3)	7736822709	Tata	Ext.P85	PW99
OP(4)	8606398416	Idea	Ext.P229	PW151

APPENDIX – II

Call From		Call To		Time	Duration in seconds
Accused	CDR	Accused	CDR		
05.04.2012					
A8	P310	A12	P314	08.19	35
06.04.2012					
A12	P314	A11	P317	08.14	25
07.04.2012					
A12	P314	A11	P317	10.23	18
08.04.2012					
A12	P314	A11	P317	17.36	58
A12	P314	A8	P310	17.38	34
10.04.2012					
A12	P314	A11	P317	09.44	24
A12	P314	A11	P317	14.37	24
A11	P317	A12	P314	14.49	7
A11	P317	A12	P314	15.18	9
A8	P310	A12	P314	15.20	8
A12	P314	A8	P310	15.57	19

11.04.2012

A12	P314	A13	P304	19.16	84

13.04.2012

A12	P314	A13	P304	23.13	27

15.04.2012

A13	P304	A12	P314	09.16	161
A12	P314	A11	P317	09.51	41
A11	P317	A12	P314	21.56	147

16.04.2012

A12	P314	A13	P304	07.50	56
A12	P314	A13	P304	20.35	6
A12	P314	A13	P304	20.40	16

18.04.2012

A12	P314	A13	P304	08.16	289
A12	P314	A13	P304	13.23	92

19.04.2012

A12	P314	A13	P304	22.02	195

20.04.2012

A12	P314	A13	P304	07.35	69
A12	P314	A11	P317	07.38	56
A12	P314	A13	P304	07.50	115
A12	P314	A11	P317	14.50	74

21.04.2012

A12	P314	A11	P317	20.30	51

22.04.2012

A12	P314	A11	P317	20.30	51

23.04.2012

A12	P314	A11	P317	19.28	77
A12	P314	A13	P304	20.16	131

24.04.2012

A12	P314	A13	P304	12.08	132
A18	P295	PW8		14.25	57
PW8		A18	P295	14.39	20
PW8		A18	P295	16.26	55
A5	P244	A2	P236	16.29	22
A12	P314	A8	P310	17.23	62
PW8		A18	P310	18.17	13
A12	P314	A11	P317	18.39	17
A18	P295	PW8		19.20	78
A18	P295	PW8		19.25	32

25.04.2012

A18	P295	PW8		11.33	16
A18	P295	PW8		12.31	27
A18	P295	PW8		13.07	35
A18	P295	PW8		14.31	33
A18	P295	PW8		14.44	51
A18	P295	PW8		15.54	11
A18	P295	PW8		16.36	13

26.04.2012

A13	P304	A14		07.01	86
A11	P317	A12	P314	08.34	33
A12	P314	A11	P317	08.35	26
A5	P244	A2	P326	14.35	15
A5	P244	A2	P326	14.47	29

A2	P326	A5	P244	15.08	29
A12	P314	A11	P317	15.21	18

27.04.2012

A12	P314	A11	P317	10.29	45

29.04.2012

A11	P317	A12	P314	07.15	13
A12	P314	A13	P304	11.17	144

01.05.2012

A12	P314	A11	P317	22.24	117

02.05.2012

A12	P314	A11	P317	07.42	27

03.05.2012

A12	P314	A11	P317	20.20	6
A11	P317	A12	P314	23.09	24

05.05.2012

A2	P326	A13	P304	08.27	33
A13	P304	A11	P317	10.18	20
A2	P326	A13	P304	12.08	96

06.05.2012

A12	P314	A11	P317	16.14	36

08.05.2012

A12	P314	A11	P317	09.48	17
A12	P314	A13	P304	10.32	17

12.05.2012

A11	P317	A12	P214	12.18	32
A13	P304	A12	P314	12.26	16

A12	P314	A13	P304	22.06	145

13.05.2012

A11	P317	A12	P314	16.06	30
A13	P304	A12	P314	15.19	31

14.05.2012

A11	P317	A12	P314	15.34	56
A11	P317	A12	P314	18.38	41

15.05.2012

A12	P314	A11	P317	21.27	39
A12	P314	A11	P317	21.46	21

17.05.2012

A13	P304	A12	P314	11.18	22