

SESSIONS CASE No.265/2018

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**IN THE COURT OF THE JUDGE,
SPECIAL COURT FOR SC/ST (POA) ACT CASES /
ADDITIONAL SESSIONS COURT, MANNARKKAD**

Present : Sri. K.M. Rethesh Kumar, Judge.

Tuesday the 4th day of April, 2023 / 14th day of Chaithra, 1945 S.E

SESSIONS CASE No.265/2018

Name of Complainant	: State of Kerala represented by Deputy Superintendent of Police, SMS & Agali Sub-Division, Agali (Crime No.87/2018 of Agali Police Station).
Name of accused	<ol style="list-style-type: none">1. Hussain, Aged 54 years, S/o.Muhammed, Mecheriyil (H), Thavalam Post, Pakkulam, Palakkad District.2. Marakkar, Aged 37 years, S/o.Unneen, Kilayil (H), Mukkali Post, Kallamala, Palakkad District.3. Shamsudheen, Aged 37 years, S/o.Muhammed, Pothuvachola(H), Mukkali Post Kallamala, Palakkad District.4. Aneesh, Aged 34 years, S/o.Rajagopalan, Kunnath (H), Kakkuppadi, Kalkandi Post, Kallamala, Palakkad District.

	<ol style="list-style-type: none">5. Radhakrishnan, Aged 38 years, S/o.Balan, Thazhussery (H), Mukkali Post, Kallamala, Palakkad District.6. Aboobacker @ Backer, Aged 35 Years, S/o.Muhammed, Pothuvachola (H), Pallippadi, Thenkara Post, Anamooli, Palakkad District.7. Sidhique, Aged 42 years, S/o.Saidh, Padinjare Palla kurikkal (H), Mukkali Post, Kallamala, Palakkad District.8. Ubaid, Aged 29 years, S/o.Ummar, Thottiyil (H), Mukkali Post, Kallamala, Palakkad District.9. Najeeb, Aged 37 years, S/o. Latheef, Viruthiyil (H), Mukkali Post, Kallamala, Palakkad District.10. Jaijumon, Aged 48 years, S/o.Ayyappankutty, Mannampatta (H), Mukkali Post, Kallamala, Palakkad District.11. Abdul Kareem, Aged 52 years, S/o.Thajudheen, Cholayil (H), Mukkali Post, Kallamala,
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	<p>Palakkad District.</p> <p>12. Sajeev, Aged 34 years, S/o.Raveendranath, Puthanpurakkal (H), Kottiyurkunnu, Mukkali Post, Kallamala, Palakkad District.</p> <p>13. Satheesh, Aged 43 years, S/o.Govindan, Muriykkada (H), Mukkali Post, Kallamala, Palakkad District.</p> <p>14. Hareesh, Aged 38 years, S/o.Sivaraman, Cherivil (H), Mukkali Post, Kallamala, Palakkad District.</p> <p>15. Biju, Aged 45 years, S/o.Sivaraman, Cherivil (H), Mukkali Post, Kallamala, Palakkad District.</p> <p>16. Muneer, Aged 32 years, S/o.Latheef, Viruthiyil (H), Mukkali Post, Kallamala, Palakkad District.</p>
Charge	Under Sections 143, 147, 294(b), 323, 324, 326, 342, 352, 364, 367, 368, 302 read with Section 149 of IPC and Sections 3(1)(d), 3(1)(r), 3(2)(v), 3(2)(va) of the SC/ST (POA) Act.
Plea of the accused	: Not guilty
Finding of the Judge	: Accused No.1 is found guilty of offences punishable under Ss.143,

	<p>147, 323, 342 and 304 Part II r/w S.149 of IPC and convicted thereunder.</p> <p>He is found not guilty of offences punishable under Ss.324, 326, 302, 364, 367, 368 of IPC and Ss.3(1)(d), 3(1)(r), 3(2)(v), 3(2)(va) of SC/ST (POA) Act.</p> <p>Accused Nos.2, 3, 5 to 10, 12 to 15 are found guilty of offences punishable under Ss.143, 147, 323, 324, 326, 367, 304 Part II r/w S.149 of IPC and S.3(1)(d) of SC/ST (POA) Act r/w S.149 of IPC and convicted thereunder.</p> <p>They are found not guilty of offence punishable under Ss.302, 364, 368 and 352 of IPC and Ss. 3(1)(r), 3(2)(v), 3(2)(va) of SC/ST (POA) Act.</p> <p>Accused No.16 is found guilty of offence punishable under Section 352 of IPC and convicted thereunder. He is found not guilty of any other offences charged against him.</p> <p>Accused Nos.4 and 11 are found not guilty of any of the offences charged against them. Therefore, they are acquitted under Section 235(1) of Cr.P.C. Their bail bonds stand cancelled and they are set at</p>
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	liberty.
Sentence of Order	<p>: 1. a) Accused No.1 is sentenced to undergo R.I. for seven years and to pay fine of ₹100000/- (Rupees one lakh only), for the offence u/s.304 Part II r/w S.149 of IPC. In default to undergo S.I. for one year.</p> <p>b) He is further sentenced to undergo R.I. for six months and to pay fine of ₹1,000/- (Rupees one thousand only), for the offence u/s.143 r/w S.149 of IPC. In default to undergo S.I. for one week.</p> <p>c) He is further sentenced to undergo R.I. for two years and to pay fine of ₹2,000/- (Rupees two thousand only), for the offence u/s.147 r/w S.149 of IPC. In default to undergo S.I. for two weeks.</p> <p>d) He is further sentenced to undergo R.I. for one year and to pay fine of ₹1,000/- (Rupees one thousand only) for the offence u/s.323 r/w S.149 of IPC. In default to undergo S.I. for one week.</p> <p>e) He is further sentenced to undergo R.I. for one year and to pay fine of ₹1,000/- (Rupees one thousand only) for the offence</p>

u/s.342 r/w S.149 of IPC. In default to undergo S.I. for one week.

2. a) Accused Nos.2, 3, 5 to 10 and 12 to 15, are sentenced to undergo R.I. for six months each and to pay fine of ₹1,000/- (Rupees one thousand only) each for the offence u/s.143 r/w S.149 of IPC. In default to undergo S.I. for one week each.

b) Further, accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo R.I. for two years each and to pay fine of ₹2,000/- (Rupees two thousand only) each, for the offence u/s.147 r/w S.149 of IPC. In default to undergo S.I. for two weeks each.

c) Further, accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo R.I. for one year each and to pay fine of ₹1,000/- (Rupees one thousand only) each for the offence u/s.323 r/w S.149 of IPC. In default to undergo S.I. for one week each.

d) Further, accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo R.I. for two years each and to pay fine of ₹1,000/- (Rupees one thousand only) each for the

offence u/s.324 r/w S.149 of IPC. In default to undergo S.I. for one week each.

e) Further, accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo R.I. for seven years each and to pay fine of ₹5000/- (Rupees five thousand only) each for the offence u/s.326 r/w S.149 of IPC. In default to undergo S.I. for five weeks each.

f) Further, accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo R.I. for one year each and to pay fine of ₹1,000/- (Rupees one thousand only) each for the offence u/s.342 r/w S.149 of IPC. In default to undergo S.I. for one week each.

g) Further, accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo R.I. for five years each and to pay fine of ₹2,000/- (Rupees two thousand only) each for the offence u/s.367 r/w S.149 of IPC. In default to undergo S.I. for two weeks each.

h) Further, accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo R.I. for seven years each and to pay fine of ₹1,00,000/- (Rupees one lakh only) each for

	<p>the offence u/s.304 Part II r/w S.149 of IPC. In default to undergo S.I. for one year each.</p> <p>i) Further, accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo R.I. for three years each and to pay fine of ₹5,000/- (Rupees five thousand only) each for the offence u/s.3(1)(d) of the SC/ST (POA) Act r/w S.149 of IPC. In default to undergo S.I. for five weeks each.</p> <p>Accused No.16 is sentenced to undergo S.I. for three months and to pay fine of ₹500/- (Rupees five hundred only) for the offence u/s.352 of IPC. In default to undergo S.I. for four days.</p> <p>The substantive sentences of imprisonment shall run concurrently. The accused are entitled to get set off for pre-trial detention undergone by them under Section 428 Cr.PC.</p>
Name of Police Station and Crime No.	: Agali Police Station Crime No.87/2018
Prosecution conducted by	: Sri.P.Rajesh.M.Menon Special Public Prosecutor.

J U D G M E N T

This is a case charge sheeted by Deputy Superintendent of Police, SMS Unit Agali Sub-Division, Agali alleging commission of offences punishable u/s.143, 147, 148, 294(b), 323, 324, 326, 342, 352, 364, 367, 368, 302 r/w 149 IPC and Sections 3(1)(d), 3(1)(r), 3(2)(v) of SC/ST (POA) Act.

2. Brief history of the case :-

There were a series of theft happened in Mukkali and Chindakki areas during 2017-2018. Even though these thefts were with regard to food items such as rice, spices, other cooked food, beedi, cigarette, battery, torch etc the people in that locality are disturbed with this issue. To put an end to this, some of the accused persons in this case who belong to Mukkali area formed an assembly and decided to apprehend that person behind these thefts. They were under the impression that the person behind these thefts is Madhu, who died in the occurrence. Accordingly, on 22.02.2018 at about 12.30 pm, they gathered at Mukkali and proceeded to Aandiyallachaal reserve forest in search of Madhu after getting information that Madhu is there in the forest. Somehow, they

apprehended Madhu and brought him to Mukkali and intimated the police. Police reached Mukkali at about 3.00 pm and taken Madhu into custody. The Police party left Mukkali at about 3.30pm. While the police party was moving towards Agali, Madhu vomited at a place called Mele Thavalam, while he was sitting in the back seat of the police jeep. Accordingly, the police party hospitalised Madhu in C.H.C Agali at about 4.15 pm. After examining Madhu, the duty Doctor found that Madhu was brought dead. Thereafter, police has registered an F.I.R under Section 174 of the Cr.P.C with regard to the death of Madhu at 5.15 pm on 22.2.2018. There was some public agitation with regard to the death of Madhu. Accordingly, after completing the initial formalities such as inquest, postmortem examination was done at Govt. Medical College Hospital, Thrissur on 24.02.2018. As per the result of postmortem examination, it was found that it was a case of homicide. Accordingly, penal provisions were incorporated in 174 report and investigation was commenced by arraying these accused persons. The Deputy Superintendent of Police, Agali was the head of Investigation Team. Ultimately, a final

report was filed before this court against these accused persons 16 in number alleging that they have committed punishable offences punishable under Sections 143, 147, 148, 323, 324, 326, 294(b), 342, 352, 364, 367, 368 and 302 read with Section 149 of the Indian Penal Code and Sections 3(1),(d)(r), 3(2)(v) of the SC/ST (POA) Act.

3. Prosecution case as per the final report is as follows :-

Madhu (deceased), S/o.Mallan, aged 30 yrs, Chindakki Ooru, Mukkali, (herein after referred to as Madhu) a member of ST Muduka community was suffering from minor mental illness and was of wandering nature at places such as Agali, Mukkali etc. He had the habit of taking food articles from nearby shops without the permission of the shops owners. The accused persons who do not belong to SC/ST community were infuriated by these acts of Madhu. While so on 22-02-18 at about 12.15 pm, the second accused came to know about the presence of Madhu beneath Ajmudi forest at

Vandikkadavu teak plantation from CW19. The second accused informed 9th accused about the presence of Madhu in Ajmudi area from his mobile no (9961268715) to the mobile number of 9th accused (9744791333). The 9th accused in turn directly informed this fact to the 3rd accused. The 3rd accused in turn informed the remaining accused persons directly. Accordingly, the accused Nos. 3, 5, 6, 7, 8, 12 have arrived in front of the shop of 9th accused in an autorickshaw bearing No. KL-50-D-2908 belongs to 10th accused. By that time, accused No.13 has reached that place in his Motor Cycle bearing No.KL-05-AJ-498. He discussed this fact with 9th accused. At that place at about 12.30 pm, these accused persons have formed themselves into an unlawful assembly, knowing that they are members of unlawful assembly with the common object of abducting Madhu from forest and to murder him by inflicting grievous hurt. With that common object on that day at about 12.40 pm accused Nos.3, 5, 6, 7, 8, 9, 10, 12 reached at Vandikkadavu Teak Plantation area in a Marshal Jeep bearing No. KL-11-H-8559 belongs to 9th accused. Accused No.13 reached that place in his Motor Cycle

bearing No.KL-05-AJ-498. After parking their vehicles at Vandikkadavu Teak Plantation, these accused persons have joined with 2nd accused and trespassed into the reserved forest wherein Madhu was dwelling. In search of Madhu these accused persons have travelled at about 2 KMs towards north-east of Bhavani River through that reserved forest comprised in Padavayal Village, Puthur Panchayath, Mannarkkad Taluk beneath Ajmudi hill and they reached at a place called Andiyallachaal, a rocky area of reserved forest and they have found Madhu at about 1.10 pm. These accused persons have apprehended Madhu in prosecution of the aforementioned common object, removed his dress, and tied his hand by his own dhothi. The accused persons individually and jointly caused hurt to Madhu by fisting and by kicking on his face, dorsum and wrongfully confined him. Accused Nos. 5, 7, 8 and 9 have captured the visuals of Madhu in their mobile phones. With intent to insult Madhu among public 8th accused has published those visuals captured in the mobile phones in social media. With intent to prevent Madhu from escaping from that place 3rd accused has tied

the right hand of Madhu with a zip of a bag. 10th accused has put a sack containing rice and other items on the shoulder of Madhu. The accused persons have uttered that Madhu is a thief and they further abused Madhu and insulted him. To prevent Madhu from escaping the 2nd accused has caught hold of the zip that was tied in the hands of Madhu and 7th accused further caught hold of the left hand of Madhu and they made him to walk Madhu by showering insulting words. Meanwhile, the 3rd accused has informed the bringing of Madhu from forest to accused No.14. On getting that information accused No.14 had reached at Vandikkadavu area in his Mahindra xylo car bearing No.KL-32-B-5259 and trespassed into the reserved forest. On getting information about the incident accused No.15 also came there and trespassed into that reserved forest. Thus accused Nos.14 and 15 have also joined that unlawful assembly with the knowledge of the common object of that unlawful assembly. Accused No.14 has beat Madhu on his dorsum by his hand and further recorded the visuals of Madhu in his mobile phone. Accused Nos.2, 6, 7, 9, 10 have further fisted Madhu on his dorsum. 3rd

accused has beat Madhu on his dorsum by using a wooden stick, accordingly 11th left side rib on the back side of Madhu was fractured. Thereafter, the accused persons have brought Madhu at Vandikkadavu shed. Accused Nos. 3 and 15 have caught hold of Madhu since Vandikkadavu, so as to prevent him from escaping from their custody. Thereafter, these accused persons have brought Madhu to Mukkali junction by parading Madhu in a half naked posture by making him to walk about 3 KMs through public road by abducting him from the forest with intent to insult Madhu among public. At about 2.30 pm on the same day these accused persons brought Madhu in front of Sreerag Bakery Cool Bar at Mukkali junction. At that place accused Nos. 4, 11, 16 have also joined in the unlawful assembly. 11th accused has insulted Madhu in public by calling Madhu as thief. 16th accused has hit Madhu on his back side by his knee. At that place accused Nos. 4 and 8 have captured the visuals of Madhu in their mobile phones and has circulated these visuals in social media with intent to insult Madhu. Thereafter, the accused persons have caused Madhu to sit in front of the treasure

box of Ponmala Dharmasastha Temple (close to the northern wall of the treasure box), installed at a distance of 4.9 meters away from the north- eastern corner of that Sreerag bakery building. By that time accused No.6 caught hold of the left collar of shirt worn by Madhu and accused No.15 caught hold of the zip tied on right hand of Madhu with intent to wrongfully confine Madhu and accused No.15 has fisted on the shoulder of Madhu. On getting information about the incident 1st accused came to that place in Mahindra xylo car bearing No.KL-53-F-722. Due to his animosity towards Madhu in committing theft in his shop in several occasions, he knowingly joined the unlawful assembly. Due to the animosity of the 1st accused towards Madhu in committing theft in his shop in several occasions, the 1st accused has stamped Madhu on his chest while he was sitting close to the wall of aforesaid treasure box with intent to murder him. Due to the impact of such stamping the back side of head of Madhu forcibly hit on the wall of treasure box and thereby caused injuries. The accused persons who belong to forward caste, have formed themselves into an unlawful assembly

and committed aforesaid acts due to their animosity towards Madhu in committing theft from their shops, knowing fully that Madhu belongs to SC/ST community and they have attacked Madhu jointly and individually knowing that they are members of such unlawful assembly. The accused persons have beat Madhu with intent to kill him by beating with wooden stick, wrongfully confined him by tying his hands, captured his visuals in mobile phones and circulated the same in social media with intent to insult Madhu among public and prevented him from escaping from that place, put heavy luggages on his shoulder and paraded him through public road in front of public and made him to walk about 3 KMs up to Mukkali. Due to the impact of grievous injuries inflicted by these accused persons Madhu succumbed to the injuries in between 3.30 pm and 4.15 pm on the same day ie, on 22.02.2018, in Police vehicle during the onward journey towards Agali while he was taken to hospital by the Police from Mukkali. Thus the prosecution alleges that the accused have committed offences punishable u/s.143, 147, 148, 323, 324, 326,

294(b), 342, 352, 364, 367, 368, 302 r/w 149 IPC and Sections 3(1)(d), (r), 3(2)(v) of SC/ST (POA) Act.

4. Upon filing final report, this court took cognizance for the above said offences and issued process against accused. Accused appeared before this court on process. The accused persons were released on bail as per the order of the Honourable High Court after filing final report. After hearing the prosecution and accused, charge for the offences punishable under Sections 143, 147, 294(b), 323, 324, 326, 342, 352, 364, 367, 368, 302 r/w 149 IPC and Sections 3(1)(d), 3(1)(r), 3(2)(v), 3(2)(va) of SC/ST (POA) Act was framed, read over and explained to the accused by my learned predecessor to which they pleaded not guilty.

COURT CHARGE :-

5. The charge framed by my learned predecessor are as follows :-

First :- That on 22.02.2018 at 12.40 pm, A2, A3, A5, A6, A7, A8, A9, A10, A12 and A13 among you

formed yourselves into an unlawful assembly in order to abduct deceased Madhu, a Schedule Tribe, having some minor mental disorder (unsoundness of mind) from his lawful guardianship, and assault and thereby to commit murder of him and being members of such unlawful assembly you committed offence punishable U/s.143 IPC and within the cognizance of this court.

Second :- That on the same date, place, at 1.10 pm, in prosecution of common object of your unlawful assembly committed riot and thereby all of you committed offence punishable U/s.147 IPC and within the cognizance of this court.

Third :- That on the same date, place, at 1.10 pm in prosecution of common object of your unlawful assembly, you caught deceased Madhu, Schedule Tribe, from Aandiyalachal and tied his hands with his body with his dothi and thereby you committed offence of

wrongful confinement punishable U/s.342 R/w 149 IPC and within the cognizance of this court.

Fourth :- That on same date, same place and time, you belongs to higher caste in prosecution of common object of your unlawful assembly fisted and kicked deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe causing hurt and thereby you committed offence punishable U/s.323 R/w 149 IPC and 3(2)(va) of SC/ST (POA) Act and within the cognizance of this court

Fifth :- That on same date, same place and time, you in prosecution of common object of your unlawful assembly fisted and kicked deceased Madhu causing hurt without any grave and sudden provocation and thereby you committed offence punishable U/s.352 R/w 149 IPC and within the cognizance of this court.

Sixth :- That on the same date, same place and time, in prosecution of common object of unlawful assembly A5, A7, A8 and A9 recorded the act of assault upon deceased Madhu in their mobile phones and in order to humiliate deceased Madhu , a Schedule Tribe, knowing that he belongs to Schedule Tribe, A8 circulated the same in the social media thereby you belongs to higher caste, committed offence punishable U/s.3(1)(r) of SC/ST (POA) Act R/w 149 IPC and within the cognizance of this court.

Seventh :- That on same date, same place and time, in prosecution of common object of unlawful assembly A3 tied the hands of deceased Madhu with the zip of bag and thereby wrongfully confined him and thereby you committed offence punishable U/s.342 R/w 149 IPC and within the cognizance of this court.

Eighth :- That on same date, same place and time in the prosecution of common object of unlawful assembly in order to humiliate deceased Madhu a Schedule Tribe, knowing that he belongs to Schedule Tribe, A10, placed a sack on the shoulder of deceased Madhu containing rice and other items and all accused in order to insult and humiliate deceased Madhu cried aloud “ thief ” and abused him using insulting words and thereby you belongs to higher caste, committed offence punishable U/s.3(1)(r) of SC/ST (POA)Act R/w 149 IPC and within the cognizance of this court.

Ninth :- That on same date, same place and time, in prosecution of common object of unlawful assembly in order to humiliate deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe, A10 placed a sack on the shoulder of deceased Madhu containing rice and other items and all accused in order to humiliate deceased Madhu called him “thief ”

and abused him using insulting words and paraded him semi naked and thereby committed offence punishable U/s.3(1)(d) of SC/ST (POA) Act R/w 149 IPC and within the cognizance of this court.

Tenth :- That on same date, same place and time, in prosecution of common object of unlawful assembly in order to humiliate deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe, you abused deceased Madhu using obscene words and thereby all of you committed offence punishable U/s.294(b) IPC R/w 149 IPC and within the cognizance of this court.

Eleventh :- That on same date, same place and time in prosecution of common object of unlawful assembly you paraded deceased Madhu, a Schedule Tribe , knowing that he belongs to Schedule Tribe, semi naked and while so the A2 and A7 prevented the

deceased Madhu from escaping from there, A2 by holding the zip tied around his hands and A7 by holding his arm and thereby committed offence punishable U/s.342 R/w 149 IPC and within the cognizance of this court.

Twelfth :- That on the same date, same time and place, accused number 14 and 15 near to the teak plantation in the reserve forest joined the unlawful assembly of accused A2, A3, A5 to A9, A10, A12, A13 knowing the common object of unlawful assembly, and as A14 and A15 joined along with them as a member of the said unlawful assembly, A14 and A15 committed offence U/s.143 of IPC and within the cognizance of this court.

Thirtieth :- That on the same date, same time and place, near the teak plantation, inside reserve forest , in prosecution of common object of unlawful assembly

A14, higher caste beat deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe, causing hurt thereby you committed offence punishable U/s.323 R/w 149 IPC and 3(2)(va) of SC/ST (POA) Act and within the cognizance of this court.

Fourteenth :- That on the same date, same place near to teak plantation inside reserve forest, in prosecution of unlawful assembly A2, A6, A7, A9, A10 again assaulted deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe, causing hurt and thereby you, higher caste, committed offence punishable U/s.323 R/w 149 IPC and 3(2)(va) of SC/ST (POA) Act and within the cognizance of this court.

Fifteenth :- That on the same date, same place and time, in prosecution of common object of unlawful assembly A3 beat deceased Madhu, a Schedule Tribe,

with a stick , a dangerous weapon upon his back causing fracture to his ribs and thereby you, belongs to higher caste, committed offence punishable U/s.326 IPC and 3(2)(v) of SC/ST (POA)Act R/w 149 IPC and within the cognizance of this court.

Sixteenth :- That on the same date, same place and time more particularly at Vandikadavu, in prosecution of common object of unlawful assembly, A3 beat deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe, with a stick, a dangerous weapon upon his back causing hurt and thereby you belongs to higher caste committed offence punishable U/s.324 R/w149 IPC and 3(2)(va) of SC/ST (POA) Act and within the cognizance of this court.

Seventeenth :- That on the same date, same place and time, in prosecution of common object of unlawful assembly you wrongfully confined deceased

Madhu, a Schedule Tribe, A3 by holding shirt, A15 by holding zip tied on the arms of deceased Madhu, a Schedule Tribe, and thereby you, higher caste, committed offence punishable U/s.342 R/w 149 IPC and within the cognizance of this court.

Eighteenth :- That on the same date, same place and time, in prosecution of common object of unlawful assembly you, belongs to higher caste, took deceased Madhu, a Schedule Tribe, under confinement and abducted deceased Madhu unsound mind, from lawful guardianship from Vandikadavu and took him to Mukkali Junction and thereby you committed offence punishable U/s.368 R/w 149 IPC and within the cognizance of this court.

Nineteenth :- That on the same date, same place and time, in prosecution of common object of unlawful assembly you belongs to higher caste, took

deceased Madhu, a Schedule Caste, under confinement and abducted deceased Madhu unsound mind, from lawful guardianship from Vandikadavu and took him to Mukkali Junction for the purpose of committing his murder and thereby you committed offence punishable U/s.367 R/w 149 IPC and within the cognizance of this court.

Twentieth :- That on the same date, same place and time, in prosecution of common object of unlawful assembly you belongs to higher caste, paraded deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe, semi naked from Vandikadavu to Mukkali and thereby you committed offence punishable U/s.3(1)(d) of SC/ST (POA) Act and within the cognizance of this court.

Twenty first :- That on the same date, at Mukkali at 2.30 pm, in prosecution of common object of

unlawful assembly the A4, A11, A16 joined the unlawful assembly of other accused knowing its common object and thereby you (A4, A11, A16) committed offence punishable U/s.143 IPC and within the cognizance of this court.

Twenty second :- That on the same date, at Mukkali, at 2.30 pm in prosecution of the common object of unlawful assembly A 11 abused deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe, and humiliated him by addressing him as thief within the public view and thereby you, belong to higher caste, committed offence punishable U/s.3(1) (r) of SC/ST (POA) Act and within the cognizance of this court.

Twenty third :- That on the same date, at Mukkali at 2.30 pm in prosecution of common object of unlawful assembly A16 gave kick blow upon the back of

deceased Madhu, Schedule Tribe, knowing that he belongs to Schedule Tribe, using his knee causing hurt and thereby you, belongs to higher caste, committed offence punishable U/s.323 r/w 149 IPC and 3(2)(va) of SC/ST (POA) Act and within the cognizance of this court.

Twenty fourth :- That on the same date , at Mukkali, at 2.30 pm, in prosecution of unlawful assembly,the A4 and A8 took the video of act of assault , abuse and humiliation in their mobile phones with an intention to humiliate him within public view and published it by social media and thereby you belongs, to higher caste, committed offence punishable U/s.3(1)(r) of SC/ST (POA) Act r/w 149 IPC and within the cognizance of this court.

Twenty fifth :- That on the same date, at Mukkali, at about 2.30 pm you, belongs to higher caste,

caused deceased Madhu to sit against the treasure box of Ponmala Dharmasasta Temple and A6 holding his shoulder and A15 holding the zip tied around the arms of deceased Madhu wrongfully confined him and thereby you committed offence punishable U/s.342 R/w 149 IPC and within the cognizance of the court.

Twenty sixth :- That on the same date, at Mukkali, at 2.30 pm in prosecution of common object of unlawful assembly A15 fisted deceased Madhu, a Schedule Tribe, knowing that he belongs to Schedule Tribe, on his shoulder and caused hurt upon him thereby you, belongs to higher caste committed offence punishable U/s.323 R/w 149 IPC and 3(2)(va) of SC/ST (POA) Act and within the cognizance of this court.

Twenty seventh :- That on the same date at Mukkali, at 2.30 pm the A1 joined the said unlawful assembly knowing the common object of unlawful

assembly and thereby A1, committed offence punishable U/s.143 IPC and within the cognizance of this court.

Twenty eighth :- That on the same date, at Mukkali, at 2.30 pm in prosecution of common object of unlawful assembly, A1 stamped on the chest of deceased Madhu, Schedule Tribe, knowing that he belongs to Schedule Tribe, causing hurt and caused his head to hit against the wall of the treasure box placed there and thereby you, belongs to higher caste, committed offence punishable U/s.323 R/w 149 IPC and 3(2)(va) of SC/ST (POA) Act and within the cognizance of this court.

Twenty ninth :- That on the same date, at 1.10 pm, at Aandiyalachal, you A 2, A3, A5, A6, A7, A8, A9, A10, A12, A13 formed yourselves into an unlawful assembly and in prosecution of the common object of your unlawful assembly to assault and commit murder

of deceased Madhu on the ground that he belongs to Schedule Tribe, assaulted him and thereafter A14 and A15 also joined the unlawful assembly knowing the common object of unlawful assembly and inside the reserve forest near the teak plantation A14 beat deceased Madhu causing hurt, A2, A6, A7, A9, A10 again assaulted him, and A3 with stick, a dangerous weapon, by beating deceased Madhu caused fracture to his ribs and abducted deceased Madhu (unsound mind)from his lawful guardianship to Mukkali at 2.30 pm and A4, A11, and A16 also joined the unlawful assembly knowing the common object of unlawful assembly and A16 kicked deceased Madhu on his back with his knee, A15 beat him his hands and A1 joined unlawful assembly knowing the common object of unlawful assembly stamped deceased Madhu upon his chest causing hurt while others by preventing deceased Madhu from escaping there, helped other to execute

the common object of unlawful assembly and deceased Madhu died on 22.02.2018 between 3.30 to 4.15 pm due to the said assault and injury sustained to him by the assault and as all of your act of assault and other were done with an intention to cause the death of deceased Madhu, you committed offence of murder punishable U/s.302 IPC R/w 149 IPC and 3(2)(v) of SC/ST (POA) Act and within the cognizance of this court.

Thirtieth :- As all the above acts were done in prosecution of common object of your unlawful assembly, all are liable for offence punishable U/s 143, 147, 323, 324, 326, 342, 352, 364, 367, 368, 302 of IPC and 3(1)(d), (r), 3(2)(v), 3(2)(va) of SC/ST (POA) Act R/w 149 IPC.

6. Though in the final report Section 148 of the Indian Penal Code was incorporated, it is found that no charge was framed for offence punishable under Section 148 of the Indian Penal Code.

7. Though the prosecution has cited 122 witnesses, the prosecution has examined PW1 to PW103 and marked Exts.P1 to P168 documents and MO1 to MO37(a) were also marked. After closure of the prosecution evidence, the accused were examined u/s.313 Cr.P.C. They denied all the incriminating circumstances appearing in evidence against them. Thereafter, the matter was heard u/s.232 Cr.P.C. As it was found to be not a fit case to pass an order of acquittal u/s.232 Cr.P.C, the accused were called upon to adduce defence evidence. DW1 to DW8 were examined and Exts.D1 and D30 documents were also marked at the instance of the defence. Accordingly, the matter is heard u/s. 235 Cr.P.C. Both prosecution and the defence filed separate notes of argument as well and hence the following Judgment.

8. The points formulated for consideration are :-

- 1) Whether Madhu S/o Mallan was a member of SC/ST community ?
- 2) Whether this court has jurisdiction to try this case ?
- 3) Whether the electronic evidence made available in this case can be admitted in evidence ?
- 4) Whether the case involves custodial torture by Police officials ?
- 5) Whether the death of Madhu is a homicide or not ?
- 6) What was the motive behind the crime ?
- 7) Did the accused Nos. 3, 5, 6, 7, 8, 9, 10, 12 and 13 formed themselves into an unlawful assembly at Mukkali at about 12.30 pm on 22.02.2018 with the common object of abducting Madhu from forest and murder him by causing hurt and grievous hurt and thereby committed offence punishable u/s.143 r/w 149 of IPC ?

- 8) Did the accused No. 2 joined the aforesaid unlawful assembly at reserve forest knowing the common object of such unlawful assembly and thereby committed offence punishable u/s.143 r/w 149 of IPC ?
- 9) Did the accused Nos. 14 and 15 subsequently joined the aforesaid unlawful assembly at Teak Plantation in the reserve forest knowing the common object of such unlawful assembly and thereby committed offence punishable u/s.143 r/w 149 of IPC ?
- 10) Did the accused Nos. 1, 4, 11 and 16 have subsequently joined the aforesaid unlawful assembly from Mukkali knowing the common object of such unlawful assembly and thereby committed offence punishable u/s.143 r/w 149 of IPC ?

- 11) What exactly was the common object of such unlawful assembly so formed ?
- 12) Did the unlawful assembly so formed by the accused committed riot in prosecution of the common object of such unlawful assembly and thereby committed offence punishable u/s.147 r/w 149 of IPC ?
- 13) Did the accused have wrongfully confined Madhu, S/o.Mallan In prosecution of the common object of aforesaid unlawful assembly and thereby committed offence punishable u/s.342 r/w 149 of IPC ?
- 14) Did the accused have caused hurt to Madhu, S/o.Mallan in prosecution of the common object of aforesaid unlawful assembly and thereby committed offence punishable u/s.323 r/w 149 of IPC ?

- 15) Did the accused used criminal force against Madhu, S/o.Mallan in prosecution of the common object of aforesaid unlawful assembly and thereby committed offence punishable u/s.352 r/w 149 of IPC ?
- 16) Did the accused persons in prosecution of the common object of aforesaid unlawful assembly abused Madhu by using obscene words in public place and thereby committed offence punishable u/s.294(b) r/w 149 IPC ?
- 17) Did the accused persons in prosecution of the common object of aforesaid unlawful assembly caused grievous hurt to Madhu and thereby committed offence punishable u/s.326 r/w 149 IPC ?
- 18) Did the accused in prosecution of the common object of aforesaid unlawful assembly caused hurt

to Madhu by using dangerous weapon and thereby committed offence punishable u/s.324 r/w 149 IPC ?

19) Did the accused in prosecution of the common object of aforesaid unlawful assembly abducted Madhu from forest in order to murder him and thereby committed offence punishable u/s.364 r/w 149 IPC ?

20) Did the accused in prosecution of the common object of aforesaid unlawful assembly abducted Madhu in order to subject Madhu to grievous hurt and thereby committed offence punishable u/s.367 r/w 149 IPC ?

21) Did the accused in prosecution of the common object of aforesaid unlawful assembly kept Madhu under confinement after abducting Madhu from

forest and thereby committed offence punishable u/s.368 r/w 149 IPC ?

- 22) Did the accused in prosecution of the common object of aforesaid unlawful assembly committed murder of Madhu and thereby committed offence punishable u/s.302 r/w 149 IPC ?
- 23) Whether the act done by accused causing death of Madhu amounts to murder as provided in section 300 IPC ?
- 24) Did the accused not being a member of SC/ST community, in prosecution of the common object of aforesaid unlawful assembly paraded Madhu, a member of SC/ST community in a semi naked posture after placing a sack on the shoulder of Madhu through public road and thereby committed offence punishable u/s.3(1)(d) of SC/ST (POA) Act r/w 149 IPC ?

25) Did the accused not being a member of SC/ST community in prosecution of the common object of aforesaid unlawful assembly recorded the visuals of Madhu S/o.Mallan in their mobile phones and circulated the same in social media with intent to insult and humiliate Madhu in public view knowing that Madhu is a member of SC/ST community and thereby committed offence punishable u/s.3(1) (r) of SC/ST (POA) Act r/w 149 IPC ?

26) Did the accused not being a member of SC/ST community in prosecution of the common object of aforesaid unlawful assembly, committed the aforesaid acts knowing that Madhu is a member of SC/ST community and thereby entitled to get enhanced punishment u/s. 3(2)(v) and 3(2)(va)of SC/ST (POA) r/w 149 IPC ?

- 27) Whether the court is bound to acquit the accused for the sole reason that all the eye witnesses turned hostile to the prosecution case ?
- 28) Whether the prosecution succeeded in establishing guilt of the accused beyond shadow of the reasonable doubt ? If so what are the offences proved against any or all of the accused ? If so what should be the sentence to be awarded ?

PROSECUTION EVIDENCE :-

9. To prove the case, prosecution has examined PW1 to PW103 and marked Exts.P1 to P168 documents and MO1 to MO37(a) were also marked.

10. PW1 (CW1) is an attester to Ext.P1 inquest report. He deposed that he was present in Agali CHC while conducting inquest of the body of deceased Madhu. PW1 further deposed that for the last several years Madhu was dwelling in forest.

11. PW2 (CW10) is an occurrence witness examined by the prosecution to prove the incident took place at Mukkali junction after bringing Madhu to Mukkali junction. He deposed that he has visited Mukkali on that day. Though PW2 was cited to prove the overt act committed by first accused that first accused has stamped Madhu while the later was sitting in front of the treasure box of Ponmala Sastha Temple installed in front of Sreerag bakery at Mukkali junction, he has not deposed about the overt act committed by A1. However, PW2 has specifically identified all the accused persons in the dock. PW2 deposed that the first accused has entered into the gathering formed in front of the treasure box of Ponmala Sastha Temple wherein Madhu was sitting and thereafter first accused has lifted his leg. But, he has not deposed anything to find that he has seen the overt act of stamping Madhu on his chest. PW2 identified first accused from the accused dock as he is the person who has lifted his leg for stamping Madhu. During examination of PW2, the CCTV footages produced by the prosecution was played in open court and the attention of the witness was called upon such

CCTV video. PW2 has identified all the accused persons from the CCTV footages except accused No12. Thus, the fact that who all are accused persons who were seen in the CCTV footages extracted Ext.P92(a) pen-drive was deposited by PW2. This assumes much importance because the remaining occurrence witnesses examined on behalf of the prosecution have intentionally deposed before court that they cannot identify the persons from the videos played in court. It is further evident from the evidence of PW2 that the place that is seen in the video played in the court is that of Mukkali junction. In page 9 of his examination PW2 further deposed that after sustaining the stamping / kicking there was some difference in the facial expression on Madhu. PW2 further identified MO1, big shopper. PW2 further deposed that Madhu told him that Madhu has committed theft from the shop of Hareesh. During examination PW2 further admitted that he has given statement before the Magistrate and accordingly Ext.P3 164 statement was marked. According to PW2, he reached Mukkali at about 2.30 pm. PW2 further admitted that even his visuals are there in the video played in the court.

12. During the course of cross examination of PW2, the counsel for the accused made an attempt to create an impression that due to the previous acquaintance of accused persons with the witness he has identified those persons in the dock. But such statement given by PW2 is not sufficient to disbelieve his version that he has seen first accused lifting his leg for stamping Madhu during the course of examination in chief. PW2 further deposed that Madhu has taken away his mic and Madhu told him that the mic is kept in the forest. Thus the testimony of PW2 in a way substantially proved the allegation made against first accused, though PW2 denied that he has seen the overt act committed by the first accused. Even then in the light of the other evidence adduced in this case the evidence of PW2 contribute a lot for proving the prosecution case. In page No.23 of deposition, PW2 deposed that the incident that was perceived by him directly is being seen by him in the video played in the court hall.

13. PW3 (CW11) is yet another occurrence witness examined by the prosecution to prove the so called incident took

place at Mukkali. During examination PW3 deposed that the incident relating to this case took place in front of the treasure box installed in front of Sreerag bakery at Mukkali. PW3 deposed that Madhu was there inside the gathering and he found that the hands of Madhu was tied. However, PW3 has not identified the accused in the dock and has not narrated anything about the overt act alleged to be committed by the accused persons, thus, turned hostile to the prosecution case. The answers given by PW3 during examination reveal that he is intentionally lying before court. In page No.4 of deposition PW3 deposed that he has not justified the act done by the those persons towards Madhu. Ext.P4 series contradictions were marked through PW3. PW3 is a person who has given 164 statement before court. Thereafter, he turned hostile to the prosecution case. It is pertinent to note that though PW3 deposed that he cannot identify accused persons in the dock, after watching the accused persons in the dock, PW3 deposed that none of the accused persons belongs to SC/ST community. This itself reveals that PW3 is well aware of the accused persons and he is intentionally

giving false evidence before court. It is further to be noted that in page No.8 of his evidence he deposed that in Police Station the Police has shown the accused persons to him and he further deposed that those persons shown to him by the Police are persons who are standing in the accused dock. It is to be noted that during the course of examination PW3 was badly compelled to admit that he is a close relative of deceased Madhu. Despite all these PW3 has turned hostile to the prosecution case by deposing that he has not witnessed the overt acts alleged to be committed by the accused. Thus, the answers given by PW3 reveal that there are reasonable grounds to believe that he has witnessed the whole incident at Mukkali, but for reasons best known to him he is giving false evidence before court. At the same time he was compelled to depose certain relevant facts when testified during cross examination by the learned Special Public Prosecutor.

14. PW4 (CW12) is a Forest Watcher. At the initial stage of examination PW4 deposed that he came before court to depose about the lynching of Madhu. As per the prosecution case PW4 has

accompanied other forest officials while bringing Madhu from forest by the accused persons. Though PW4 admitted that on the relevant date he was there in the forest at the relevant time, he has denied the relevant facts. At the same time, he admitted that the other forest officials such as Panjan, Abhilash etc were also with him at the relevant time. PW4 further deposed that the name of the person who cook food for forest workers is one Meharunnisa (PW6). Through PW4 Ext. P5 series contradictions were marked. The nature of answers given by PW4 reveal that though he was there in the forest on the relevant date of incident and know the facts of this case, he is intentionally giving false evidence before court.

15. PW5 (CW14) is the employee of Sreerag bakery conducted by Hareesh (A14). According to him, he had worked in that shop for about three years. However he deposed that he is quite unaware of the installation of the CCTV camera in that bakery. As per the prosecution case the CCTV footages (Q2) was seized from that bakery. It contains visuals of majority of the incidents that took place in Mukkali junction. Through PW5 Ext.P6 series contradictions

were marked. When the CCTV footages seized from the shop conducted by Hareesh was confronted to PW5 he denied the video played in court. It is sarcastic to note that PW5 has denied even his own visuals displayed in court when his attention was called upon to the visuals. When signatures alleged to be that of PW5 in the seizure mahazar of Q2 was shown to him he emphatically denied it. According to him, Police has obtained his signature in some blank papers. In one occasion he deposed that the video is not clear to him, though the videos were crystal clear. Thus, the answers given by PW5 make it succinctly clear that he is intentionally giving false evidence before court. I am unable to believe the version of PW5 that he is quite unaware of the installation of the CCTV camera in the shop wherein he worked for about three years.

16. PW6 (CW15). As per the prosecution case PW6 is the cook, who was there in the shed at Vandikkadavu wherein food is being prepared for the forest workers. According to the prosecution case while the accused persons have brought Madhu from forest they have passed in front of that shed wherein PW6 was working and

when the group reached in front of that shed Meharunnisa (PW6) has given drinking water to Madhu. However, quite contrary to the prosecution case PW6 has turned hostile to the prosecution case. Ext.P7 series contradictions were marked through PW6. At the same time, PW6 deposed that she knows Kalimooipan (PW10), Rasak (PW7), Anilkumar (PW4) etc. who were working as forest watchers in the forest. The answers given by PW6 also reveal that she is giving false evidence before court.

17. PW7 (CW16) is the Forest Watcher, working in forest department for the last 18 years. In fact this witness was examined by the prosecution to prove that the accused persons have entered the forest area at Andiyallachal and apprehended Madhu from that place, and to prove that accused namely Shamsudheen (A3) has beaten Madhu. However, PW7 turned hostile to the prosecution case by deposing that he has not witnessed any incident. Ext. P8 series contradictions were marked through PW7. At the same time, during cross examination of PW7 he admitted that on that relevant date Panjan (PW62), Abhilash (PW55) etc, the forest officials, were

there in the forest and there is one person namely Meharunnisa (PW6) is cooking food for forest worker. PW7 has given 164 statement before Magistrate. During examination before this court he admitted that he has given statement before the Magistrate stating that one Meharunnisa has served drinking water to Madhu. Later he explained it by saying that it was so stated before the Magistrate as per the instruction of the Police. Despite the fact that the witness has been working in the forest department for the last more than 18 years, he dared to depose that he has not noticed the installation of the CCTV camera in the Anavai Forest Check Post. When the CCTV footages seized from the Anavai Forest Check Post was confronted to this witness, he has not identified the accused persons in the CCTV visuals. At the same date, PW7 admitted his signature in Exts.P9 and P10 annexure scene mahazars. The answers given by PW7 during examination reveal that he is intentionally giving false evidence before court.

18. PW8 (CW13) is another important witness examined by the prosecution to prove the incident took place at Mukkali junction

and the role of first accused in this case. PW8 has given evidence supporting the prosecution case. He has specifically deposed that while he was waiting at Mukkali junction on 22.02.2018 at about 2.30 - 3.00 pm, Madhu was sitting inside group of persons in front of the Hundi (treasure box) installed in front of Sreerag Bakery at Mukkali junction. He deposed that while he was standing on the rear portion of that Hundi, Hussain (A1) came at that place in a xylo car and after removing some of the persons in the gathering he entered inside that gathering and asked where is thief Madhu, thereafter Hussain (A1) has stamped on the chest of Madhu while Madhu was sitting near to the Hundi. Accordingly, the head of Madhu hit on the wall of that treasure box . PW8 has clearly identified A1 in the dock. The answers given by PW8 reveal that he knows Hussain for the last several years and he knows that Hussain is hailing from Pakkulam and conducting a grocery shop at Pakkulam namely Mecheri. PW8 further deposed that it is Ubaid (A8) who has taken the photographs of deceased Madhu. PW8 has identified the CCTV footages played in the court hall. From the

CCTV footages PW8 identified Hussain (A1), Shamsudheen (A3) etc. It is further deposed by PW8 that the hands of Madhu was tied with some belt like material and he identified that black colour zip as MO2. PW8 further admitted the 164 statement given by him before Magistrate.

19. PW9 (CW17) is a witness examined by the prosecution to prove that a group of persons have taken Madhu through the road lies in front of his shop, a Kiosk. But PW9 conveniently denied those facts by deposing that he has not witnessed such incident and he came to know about the incident from newspaper and other media. However, during the course of examination PW9 admitted that he is conducting a shop at Mukkali in a place belonging to Latheef, father of Najeeb(A9). The answers given by PW9 reveal that he knows the business conducted by Najeeb, the nature of business conducted by Najeeb, the parking of a jeep in front of the house of Latheef etc. It is further deposed by PW9 that when the Police officials have shown the CCTV footages, he remembered that some group of persons were proceeding. But according to him, he does not know who all

are the person who have passed through that road. It is further to be noted that PW9 is well aware of Najeeb (A9), but he is conveniently denying that fact. In a suggestive question put to PW9 by the learned Special Public Prosecutor after declaring him hostile the witness answered that Madhu was beaten at Mukkali. According to him, who has beaten Madhu is unaware of him. PW9 further deposed that out of that three shops belong to Najeeb one shop remain vacant and in the shop of Najeeb there is only lady staff. All these facts were deposed by PW9. However, he has not identified Najeeb in the accused dock. In fact the answers given by PW9 during cross examination reveal that he is intentionally deposing that he is quite unaware of Najeeb and he is unable to identify any of the accused persons in the accused dock. Thus, the answers given by PW9 perse reveal that he is intentionally deposing false statement before court.

20. PW10 (CW18) is a Forest Watcher examined by the prosecution to prove that the accused persons have proceeded towards the forest, entered the Reserve Forest at Ajumala for

apprehending Madhu and thereafter came back from forest. The answers given by PW10 reveal that though he knows Madhu he conveniently denied the presence of Madhu along with such group of person who have came from forest. PW10 deposed that there were several persons who were going inside the forest and that group has come back but he could not identify those persons who have entered the forest and came back from forest. Out of the 16 accused PW10 has identified only one person that is accused No.2, Marakkar. According to him, he is a lorry driver who used to take timber from forest. Accordingly, he identified only A2, Marakkar from that group of person, that is the version given by PW10 in page No.5. It is to be noted that such identification of marakkar by PW10 before court is not for the reason that he has got prior acquaintance with A2, but in answer to a suggestive question put by the learned Special Public Prosecutor that can you ascertain any of that persons who went to the forest. The witness answered that out that several persons he knows only one person that is A2, Marakkar. It is to be noted that the distance at which that group of persons were proceeding

towards forest from PW10 was deposed by him in different manner. In page No.2 PW10 deposed that the group was proceeding inside the forest at a distance of 10-70 metres approximately. But, according to PW10, when those group of persons came back from forest he has seen them at distance of $\frac{1}{2}$ to 1 Km. Taking advantage of this testimony given by PW10 the counsel for the accused argued that identification made by PW10 with regard to second accused cannot be accepted as identification at a distance of 1 Km cannot be accepted as it is not humanly possible. However, in page No.2, it is deposed that at a distance of 10-70 metre he identified those group of persons. Thus, even though PW10 has not identified the remaining accused persons, the testimony given by PW10 is crystal clear with regard to identification of A2 in that group of person who have proceeded to the forest and came back from forest. PW10 further admitted that existence of a shed at Vandikkadavu that was used for preparation of food for forest workers. As per the prosecution case there exist a shed at Vandikkadavu and Madhu was taken beside that shed by the accused persons and when the group

of persons reached in front of that shed the cook of that shed namely Meharunnisa has served drinking water to Madhu. But that fact was denied by PW10 by deposing that he has not seen such an incident of serving of drinking water to Madhu by Meharunnisa. At the same time, PW10 admitted the presence of the remaining prosecution witnesses such as Panjan, Anilkumar etc in that shed on that day at Vandikkadavu. It is to be noted that PW10 further admitted signature in Ext.P10 mahazar. During examination PW10 further deposed that he has given statement before the DFO admitting that some persons have brought Madhu from forest. But at the same time, when he deposed before court he has denied that fact. Thus, even though PW10 turned hostile to the prosecution case by turning hostile to the case by deposing that he has not identified the Madhu in that group and identification of the remaining accused persons in that group it is evident from the testimony of PW10 that A2 along with a group of persons have entered the forest, passed through Vandikkadavu, Ajumala area and then came back from forest. It is further deposed by PW10 (Page No.7) that those persons

who have entered in the forest do not belonging to SC/ST community. It is further admitted by PW10 that in whatsapp video shown by one Rasak he has seen some videos in which Madhu was coming from forest along with a group of person. PW10 further admitted that he has witnessed some persons are coming down from forest. It is further relevant to note that in page No.9 of deposition, PW10 deposed that the group of persons have went to the forest at a time around 12.00 - 12.30 approximately and according to him that group of persons were around 10-20 in numbers. All these evidence given by PW10 is relevant because none of the prosecution witnesses have supported the prosecution case by revealing the actual truth before the court. Thus, all these facts deposed by PW10 are strengthening the circumstantial evidence relied on by the prosecution. In page No.10 it is further deposed by PW10 that at a place called Pottikkal he has seen that the group of persons are proceeding inside the forest. Ext.P11 series contradictions were marked through PW10.

21. PW10 was later recalled at the instance of the prosecution and examined. During such examination PW10 deposed that on that day he has actually witnessed some persons bringing Madhu from forest. During that time PW10 deposed that the group of person came from forest were persons from Mukkali. It is further deposed that Madhu was residing in forest. Thus, the evidence of PW10 gives some light to the prosecution case, even though he has initially turned hostile to the prosecution case. In fact, the statement given by PW10 is strengthening the circumstantial evidence brought by the prosecution to prove their case.

22. PW11 (CW19) was working as the loading employee in forest timber depot during the relevant time. Initially, when PW11 was examined, he turned hostile to the prosecution case by deposing the he has not seen anything with respect to the occurrence. Later PW11 was recalled at the request of the learned Special Public Prosecutor and he deposed supporting the prosecution case. When PW11 was recalled and examined he deposed that he has seen

Madhu in forest and the second accused Marakkar asked him about Madhu. PW11 has also identified A2 in court. When PW11 was examined during the second stage after recalling it is admitted by PW11 that Madhu is his distant relative. The explanation offered by PW11 in turning hostile to the prosecution case during the first stage of examination is that he was afraid of the accused persons. In the second time he turned loyal to the prosecution case. According to him, when he is being deposed for the second time the accused persons are in jail and hence there is no need to worry. It is to be noted that, as most of the material witnesses turned hostile to the prosecution case, the prosecution has filed an application for cancellation of the bail granted to some of the accused contending that it is the accused persons who have influenced rather threatened the material witnesses and that is against the bail conditions imposed at the stage of releasing the accused persons on bail. Accordingly, the bail granted to the most of the accused persons were cancelled and they were sent to jail. When PW11 was examined during the second stage after recalling him most of the

accused persons were inside the jail. It seems that as the accused persons were in the jail PW11 gained confidence that there is no need to worry about the accused. The answers given by PW11 during the second stage of examination assumes some importance. He has deposed that he has attended the office of the Public Prosecutor and discussed the case with Public Prosecutor etc. All these answers given by PW11 during the cross examination in the second stage of examination reveal that the witness is an innocent witness and not clever enough to hide anything. He has narrated innocently what had happened during the last few days. Had he was an intelligent witness and intended to give false statement before court, he would have deposed that he never went to the office of Public Prosecutor and discussed the case matters. The very fact that PW11 admitted that he had attended the office of the Special Public Prosecutor itself reveals that he is an innocent witness and he turned hostile to the prosecution case in the first stage for being afraid of the accused person. It is to be noted that PW11 is a rustic villager hailing from such a socially and educationally backward place and

he is not educated also. In such circumstance, it is quite common for PW11 in not supporting the prosecution case in the initial stage being afraid of the accused persons. Simply because PW11 turned hostile to the prosecution case in the first stage that doesn't mean that his evidence doesn't inscribe the confidence of the court. The answers given by PW11 during the course of second stage of examination itself reveal that he is not a cunning witness able to give clever answers before court and that he is an innocent person, not aware of the consequences of such testimony given by him. I find that the testimony of PW11 can be accepted and relied. In this context, it is worthwhile to rely upon the decision of the Hon'ble High Court of Kerala reported in **2022(2) KLD 581 (DB)**.

23. PW12 (CW20) is yet another witness examined by the prosecution to prove that he has witnessed the bringing of Madhu from forest by the accused persons . However, PW12 turned hostile to the prosecution case by deposing that he has not witnessed the incident. Ext.P12 contradictions were marked through PW12. It is to be noted that the witness is frankly admitting that he is engaged

in the work of loading of timber from forest for the last few years. In such circumstance, the testimony of PW12 that he is quite unaware of the driver and other workers engaged in the loading of timber cannot be believed even for a moment. Thus, the answers given by PW12 reveal that he is intentionally giving false evidence before court.

24. PW13 (CW21) is also examined by the prosecution to prove that he has seen Madhu in the forest and the accused persons have brought Madhu from forest. Though he is admitted to be a distant relative of Madhu he turned hostile to the prosecution case by deposing that he is quite unaware of any of the incident took place in forest. PW13 also deposed that he is quite unaware of A2 and other persons who are working in the forest, though admittedly he is working in the forest for the last several years. Thus, his testimony also reveal that PW13 also intentionally giving false statement before court.

25. PW14 (CW22) is yet another timber loader working in the forest for several years. Though he deposed that he know Kalimooipan he has denied his acquaintance with other persons who were examined in this case. PW14 also turned hostile to the prosecution case completely just like PW13. But at the same time, PW14 admitted that he knows that lady who is preparing food in the Vandikkadavu shed for the forest staff. Ext.P14 series contradictions were marked through PW14.

26. PW15 (CW23) is the person examined by the prosecution to prove that Madhu along with accused persons were proceeding towards Mukkali on the relevant day through Silent Vally -Mukkali road. During examination PW15 deposed that on that day he has seen a group of persons passing through the road along with a person with shabby dress and on the very next day he came to know that one person is died. Ext.P15 seizure mahazar was marked through this witness. As per Ext.P15 seizure mahazar, vehicle bearing No.KL-32-B-5959 was seized. However, in the final report, the vehicle number is mistakenly stated as KL-32-B-5259. Ext.P47(c)

registration particulars produced by PW57 reveal that the correct number is KL-32-B-5959. According to PW15 out of that group of persons, he knows only Ubaid and as per the version of PW15 he realised one person as Ubaid at a distance of 200 metres by seeing his backside. However, PW15 has identified Ubaid in the accused dock. The learned counsel for the accused argued that as the witness has identified Ubaid (A8) by seeing his backside at a distance of 200 metres such identification made by PW15 cannot be accepted. That seems to be a valid argument.

27. PW16 (CW24) is yet another witness examined by the prosecution to prove that the accused persons have taken Madhu to Mukkali through Silent Vally Mukkali road. He has not supported the prosecution case and turned hostile to the prosecution case. Accordingly, the learned Special Public Prosecutor has cross examined him. He denied the suggestion made by the Prosecutor that the witness has seen the incident of bringing Madhu to Mukkali by the accused persons. However though initially PW16 denied the passing of Madhu and accused persons through that road, during the

course of cross examination PW16 admitted that through the road lies on the front side of his house plot people have passed. But he has not identified who are all those persons. PW16 has identified A3, Shamsudheen from the accused dock as person from Mukkali. It is to be noted that during the period of examination of PW16, a news was spreading that the witnesses in this case (Madhu case) are being influenced by the accused involved in this case by paying money. At this juncture the answer given by PW16 to a suggestive question put by the learned Special Public Prosecutor assumes importance. A suggestion was put to PW16 stating that he is deposing against the prosecution case due to the influence of the accused. He spontaneously answered that “we have not received anything from anyone else” (ഞങ്ങൾ ഒന്നും വാങ്ങിയിട്ടില്ല). In fact this answer gives some inference. Thus, nothing material was brought out from the evidence of PW16 supporting the prosecution case.

28. PW17 (CW26) is doing some Crane service business. He deposed that on the relevant day there was no work for him in

the plantation and therefore, he has spent some time in the forest with other workers. On that day, he has seen some plate, food items, beedi, cigarette, battery, mobile charger etc in the forest and according to him, some human dwelling in that place was observed in that forest area. According to him, on the very next day he came to know about the death of Madhu. Apart from this nothing material was brought out from the evidence of PW17.

29. PW18 (CW18) is another witness examined by the prosecution to prove that the accused persons have brought Madhu from forest. But he also turned hostile to the prosecution case. Through him Ext.P15 series contradictions were marked. Nothing material was brought out from PW18.

30. PW19 (CW28) is yet another witness who supported the prosecution case to prove the incident that took place at Mukkali. His evidence incriminates first accused in this case. He deposed that on 22-02-18, he found that some persons have gathered there at Mukkali junction near bakery. That gathering was in front of that

Hundi installed in front of that bakery and Madhu was sitting there. According to him, he realised that it was Madhu. Madhu was sitting close to that Hundi and people gathered there were asking something to that Madhu. While so one person has went inside that gathering by removing some of the persons of that gathering and he stamped Madhu. PW19 identified the person who stamped Madhu as accused No.1 from the accused dock. PW19 further deposed that first accused was shown to him at the Police Station. According to him, Madhu was in a pathetic situation at that time. Thus, PW19 supported the prosecution case. The statement that he has witnessed stamping of Madhu was reiterated by him during the course of cross examination also. According to him, at the time of stamping of Madhu by first accused he was there. His evidence will be appreciated in detail at the time when the evidence against the A1 is discussed.

31. PW20 (CW29) is a Forest Watcher working in the forest department for the last 16 years. In fact the prosecution has examined this witness to prove that the accused persons have

brought Madhu from forest, reached at Anavai Forest Check Post and thereafter brought Madhu to Mukkali by tying the hands of Madhu, parading through public road and to prove the role of A16. He deposed that when he reached at Mukkali, Madhu was sitting adjacent to the treasure box. Apart from that PW20 has not given any evidence supporting the prosecution case. Accordingly, prosecution has declared him as hostile and cross examined. When the CCTV footages seized from Anavai Forest Station, Sreerag Bakery, Mukkali etc. were shown to the witness by playing the same in court hall by using laptop, LCD player etc. the witness has blindly denied everything. Even his own visuals in the CCTV footages is denied by him though his visuals in the CCTV footages are crystal clear. The witness is dared to deny his own visuals when his attention was specifically invited to such visuals. At the same time, PW20 deposed that he knows most of the accused persons in the dock. Ext.P18 series contradictions were marked through PW20. As the witness continuously denied every visuals in the CCTV footages confronted to him and attempted to make all officers of court as fool

in order to ascertain his eyesight, he was forwarded to the District Hospital, Palakkad and the doctor has reported that there is nothing to find that the witness has got any visual impairment. The nature of answers given by PW20 reveal that he is intentionally denying the CCTV visuals. After examining his vision again the witness was mounted the witness box and during that time also the CCTV visuals were again brought to his attention. During that time, in one occasion when the CCTV footages of the Mukkali junction for the time span of 3.25.34 was shown to the witness he admitted that the visuals are that of him. The answers given by PW20 make its succinctly clear that he is intentionally giving false evidence before court.

32. PW21 (CW31) is a witness examined by the prosecution to prove the bringing of Madhu to the Mukkali by the accused persons by tying his hands. But PW21 also has conveniently turned hostile to the prosecution case by deposing that he is quite unaware of the incident. Ext.P19 series contradictions were marked through PW21. The call data records reveals that he was contacted by

several accused persons in this case during the course of trial of the case. The nature of answers given by PW21 during examination reveal that he is also giving false evidence before court.

33. PW22 (CW32) is the witness examined by the prosecution to prove the incident occurred at Mukkali and Vandikkadavu, bringing of Madhu to that place etc. He turned hostile to the prosecution case by deposing that he has only witnessed taking of Madhu to the Police Jeep and the mob at Mukkali Junction. Regarding the incident took place before that he has not supported the prosecution case. However the answers given by PW22 reveal that he is intentionally giving false evidence before court. The call data records reveal that the accused persons have contacted this witness in his mobile phone in several occasions and the witness has also in return contacted the accused persons. The relevant contradictions in his statements were marked as Ext.P20 series. When his attention was brought to the CCTV footages at Mukkali, he denied his own visuals in the CCTV footages.

34. PW23 (CW33) was examined by the prosecution to prove the incident at Mukkali and existence of a shed at Vandikkadavu. He also turned hostile to the prosecution case. Ext.P21 series contradictions were marked through PW23. At the same time he admitted that he is a driver by profession. The nature answers given by PW23 also reveal that he is intentionally giving false evidence before court.

35. PW24 (CW34) is also a driver by profession. He was also examined to prove the incident at Mukkali junction and at Vandikkadavu shed . The answers given by PW24 also reveals that he is giving false evidence before court. Ext.P22 series contradictions were marked through PW24. At the same date the call data details made available before court reveal that the accused persons have contacted this witness also during course of trial.

36. PW25 (CW35) also has got a jeep. The call data records reveals that some of the accused persons have contacted this witness

in his mobile phone during the course of trial. He also turned hostile to the prosecution case.

37. PW26 (CW36) is the witness examined by the prosecution to prove the incident at Mukkali. He also turned hostile to the prosecution case. When the CCTV footages were shown to this witness he emphatically denied the same. The witness has denied even his own visuals seen in the CCTV footages even though his visuals are very clear in the CCTV footages played in court. It is sarcastic to note that the witness deposed that he can clearly recognize the face of the person pointed out to him in the CCTV footages. Despite all these he is denying his own visuals seen in the CCTV footages. Ext.P24 series contradictions were marked through PW26. The answers given by PW26 make its succinctly clear that he is intentionally giving false evidence before court. The call data details produced in this case reveal that some of the accused persons have contacted this witness during the course of trial.

38. PW27 (CW40) is the witness examined by the prosecution to prove the bringing of Madhu by the accused persons through Silent Vally- Mukkali road by putting luggages on the shoulder of Madhu. PW27 is a loyal witness. She deposed that she was a Kudumbasree Coordinator at that time. According to her, on the date of incident while she was proceeding towards Anavayil along with Subrahmaniam and Sindhusha through Mukkali-Silent Vally road, she witnessed some persons bringing Madhu near to Silent Vally Information Centre. According to her, at that time Madhu was found to be in a tired condition with shabby dress and one sack was found to be on the shoulder of Madhu and one jeep was also proceeding along with that group of persons who accompanied Madhu. During the course of examination PW27 deposed that she found that some one was pouring water to the mouth of Madhu. Later at about 7 - 7.30 pm on that day she came to know that one person was died and later she identified that person so died is Madhu. She could identify the CCTV footages containing visuals of bringing Madhu to Mukkali. After watching the accused

dock this witness identified accused No.13, 14 and 16 in the dock. In fact this witness is the person who has shared some information to the media people during that period. When the counsel for the accused Nos.2 and 5 confronted such photographs of this witness addressing the media people, she admitted the same. According to her, these photographs was taken at the time when she has shared some information to the Asianet media about the incident on the next day of the incident.

39. Though this witness was subjected to piercing cross examination by all the counsel for the accused, nothing was brought out to disbelieve her testimony. The answers given by PW27 during the course of cross examination reveal that she has seen the gathering including Madhu for a few minutes only. For that reason alone it cannot be held that identification made by this witness is wrong. It is specifically deposed by PW27 that the group of persons accompanying Madhu was about 5–10 persons. Thus, the evidence of PW27 is relevant to prove that a group of persons have paraded Madhu through public road towards Mukkali.

40. PW28 (CW43) is the witness, who is conducting a grocery shop at Kaklandi. According to him, in the year 2018 some theft took place in his shop and he found that some rice, coffee powder, beedy etc were found to be stolen from his shop and later he has intimated this to Police. Thereafter he came to know that one thief was apprehended in Mukkali. Accordingly he proceeded to Mukkali on the relevant day along with another hardware shop owner. When he reached at Mukkali it is found that some person were gathered in front of one treasure box and Madhu was also there and he found that the rice sack taken from his grocery shop was there inside that gathering. Accordingly, he identified MO3 sack. Later Police came and by that time someone informed Police that rice from the shop of PW28 was also stolen. Accordingly, the name and other details of this witness were also collected by the Police. Thereafter, he returned to his place, later the Police informed the witness to come to the Police Station at Agali. Accordingly, he reached Agali Police Station on the relevant day and he came to know that Madhu died. Actually the name of PW28 is

stated in Ext.P80 FIS. Thus, the evidence of PW28 reveals that theft took place in his grocery shop and later he proceeded to Mukkali wherein he found that Madhu was there in front of a treasure box at Mukkali junction and he shared his name and details to the Police. The nature of answers given by PW28 during cross examination reveal that when he reached the Police Station some other persons in Mukkali were also there in the station. The nature of answers given by PW28 reveal that the identification made by PW28 with respect to MO3 sack is perfectly correct. The answers given by PW28 during cross examination reveal that the Police has directed him to surrender before them under the impression that he was also involved in the crime. But later the Investigating Officer has exonerated him. Even though this witness was cross examined at length, nothing was brought out to disbelieve his testimony. In fact the evidence of PW28 proves that theft occurred in his shop.

41. PW29 (CW44) is the witness examined by the prosecution to prove that theft occurred in his shop also. He deposed that he was conducting a tea shop at Kakkuppadi and according to

him, from his shop some bakery items, sugar and tea powder etc were stolen. But he has not filed any complaint before Police. Infact, the name of this witness was also there in Ext.P80 FIS and later he was exonerated. During cross examination it is elicited from PW29 that in two occasion theft happened in his shop, that too during night.

42. PW30 (CW45) is the witness who is conducting a hotel at Kalkandi. According to him, theft happened in his shop also and on the relevant day one Arun informed him that the person who committed theft in his shop was apprehended and is detained at Mukkali. PW30 deposed that in two occasion theft happened in his shop. He further deposed that the thief has entered his shop by removing the roof tile of that shop and according to him, the thief used to take few food items by packing the same. According to him, he has also reached Mukkali. By that time, he has seen that one person was found sitting at Mukkali. Later Police came there and when the name and details of the shops wherein theft took place were asked, he has shared his name and details also. He further

deposed that he has not filed any complaint to the Police. The name of PW30 is also found a place in Ext.P80 FIS. Accordingly, he was also initially detained in Police Station and later after realising the truth he was set free. During his cross examination by counsel for accused Nos.4, 7, 14 and 15 he deposed that just like him the name and details of 7 persons were shared to police. It is further deposed by PW30 that in adjacent shops also similar theft took place.

43. PW31 (CW46) is yet another witness examined by the prosecution to prove that theft occurred in his shop, parading of Madhu in front of his shop etc. But during examination though the witness admitted that theft occurred in his shop he denied the fact that Madhu was paraded in front of his shop. Accordingly, he turned hostile to the prosecution case. During cross examination by the learned special Public prosecutor it is revealed that the witness is none other than the father of Najeeb (A9) and Muneer (A16). During cross examination the witness admitted that theft occurred in his shop and in that incident ₹10,000/-, some plates, torch,

cigarette etc were stolen and he has filed a complaint before the Police. It is further deposed by PW31 that there was CCTV camera in his shop and the CCTV footages were seized by the Police in that case. As per the prosecution case this witness has also come to Mukkali junction while Madhu was sitting in front of treasure box but the witness denied his visit to Mukkali on the relevant day. Ext.P25 contradiction was marked through him. According to PW31 even though there is CCTV camera in his shop, pursuant to the theft in his shop he has not verified the CCTV footages of his shop. During examination this witness has identified accused Nos. 3, 6, 14, 9 and 16. He dared to depose that though he has been conducting a shop at Mukkali junction for the last 14 years, he is quite unaware of the treasure box installed at Mukkali Junction. When his attention was invited to the CCTV footages at Mukkali junction, he denied it. The name of this witness also find a place in Ext.P80 FIS. Thus, the evidence of PW31 reveal that theft took place in his shop and he made a complaint to police. Ext.P89 final report was filed by PW91 with regard to the theft in his shop. He has not supported the

prosecution case with regard to other facts for obvious reason that his two children (A9 and A16) are involved in this case.

44. PW32 (CW48) is Videographer who recorded the inquest conducted by Sub Collector in CHC Hospital, Agali. Through whom Ext.P26 series compact disk containing video of inquest, Ext.P26(b) 65 B certificate etc were marked. Though this witness was vehemently cross examined by the counsel for the accused, nothing was brought out to disbelieve his testimony. During examination this witness specifically deposed that while recording videos it is not being continuously recorded, but it would be recorded in slots in the order of sequence and according to him, he has not done any manipulations in that video. He has clearly identified the compact disk and proved 65B certificates. In fact, the recording of video in slots (part by part) was disputed by the counsel for the defence and contended that there is manipulation. However, the answer given by PW32 make its clear that this is the practice followed while recording programmes and there is absolutely nothing to disbelieve the evidence PW32.

45. PW33 (CW49) is an attester to Ext.P27 scene mahazar dated 24.02.2018 of the second place of occurrence at Mukkali . He admitted his signature and accordingly Ext.P27 was marked through him.

46. PW34 (CW50) is also another attester to Ext.P27 scene mahazar, who has also admitted his signature in Ext.P27 scene mahazar.

47. PW35 (CW51) is an attester to Ext.P28 seizure mahazar, whereby vehicle bearing No. KL-11-H- 8559 marshal jeep was seized. He admitted his signature in Ext.P28 seizure mahazar and accordingly Ext.P28 seizure mahazar was marked through him.

48. PW36 (CW53) is an attester to Ext.P29 seizure mahazar whereby vehicle bearing no KL 53 F 722 was seized. He admitted the signature there in and accordingly Ext.P29 seizure mahazar was marked through him.

49. PW37 is the elder brother of accused no 14. He is an attester to the seizure mahazar prepared while seizing the DVR

from the shop of accused no 14. He turned hostile to the prosecution case. During examination PW37 admitted that he has signed in some blank white papers. At the same time, he denied his signature in seizure mahazar when confronted to him. It is further deposed by PW37 that at the relevant time his younger brother Hareesh (A14) was in Police Station. The answers given by PW37 make it succinctly clear that for obvious reasons he turned hostile to the prosecution case. It is to be noted that during examination the witness has not denied the installation of the CCTV camera in Sreerag Bakery conducted by A14. When a court question was put to the witness as to how many CCTV cameras are there in Sreerag Bakery, the witness answered that he is not sure about it.

50. PW38 (CW56) is the photographer who has taken the photographs of accused persons and taken print out of the photographs, copied the same in CDs and produced Ext.P30 series photographs and Ext.P30 CD containing photographs, Ext.P30(r) 65B certificate. He emphatically deposed that all these photographs was taken by him and print outs, and compact disk etc were

prepared by him. Though he was vehemently cross examined, nothing was brought out to disbelieve his testimony.

51. PW39 (CW57) is an attester to Ext.P31 seizure mahazar prepared while seizing DVR from Ponniyammal Gurukulam at Mukkali (Q3). During examination this witness admitted that there is CCTV camera at Ponniyammal Gurukulam but denied the seizure in his presence.

52. PW40 (CW58) is an attester to Ext.P15 seizure mahazar prepared while seizing vehicle bearing No.KL-32-B-5959 Mahindra Xylo car. He admitted his signature in Ext.P15 seizure mahazar. Infact PW15 Gokul was also an attester to Ext.P15 seizure mahazar.

53. PW41 (CW60) is an attester to Ext.P32 seizure mahazar prepared while seizing Motor Cycle bearing No. KL-5-AJ-498. He admitted his signature in Ext.P32 and hence it was marked through him.

54. PW42 (CW61) is an auto rickshaw driver he has produced auto rickshaw bearing No.KL-50-D-2908 to the Police. But

he turned hostile to the prosecution case by deposing that he has not produced the vehicle. At the same time he deposed that auto rickshaw bearing No. KL-50-D-2908 belongs to Jaijumon (A10).

55. PW43 (CW63) is the close relative of Hareesh (A14). As per the prosecution case the mobile phone of Hareesh (A14) was produced by this witness to the police on 08.03.2018. But, he turned hostile to the prosecution case by deposing that he has not produced it. At the same time, he admitted that he is closely related to accused No.14. It is further deposed by PW43 that on 08.03.2018 Hareesh (A14) was in Police custody. The testimony of PW43 reveal that for obvious reason he turned hostile to the prosecution case.

56. PW44 (CW65) is conducting MAM Auto Consultant at Nellipuzha, Mannarkkad. It is he who purchased Bullet bearing No.KL-5-AJ-498 from one Albin and sold it to Satheesh (A13). According to him, during that period the registration was not transferred to the name of A13. The forms were got signed and given.

57. PW45 (CW66) is the son of first accused and owner of Xylo car bearing No.KL-53-F-722. As per the prosecution case in that car first accused and others came to Mukkali on the relevant day. During examination PW45 admitted that he is the owner of vehicle bearing No. KL-53-F-722. During examination he further admitted that he has subscribed a mobile connection bearing No. 9946474879 by using his ID card. But he denied the suggestion that it is being used by his father. According to PW45 it is used by himself. During examination PW45 admitted that on 22-02-18 himself, his brother his father (A1) and uncle have come to Mukkali for visiting his sister's house at Mukkali. During cross examination of the witness the counsel for the first accused elicited that on that day for buying some bakery items, they came to Mukkali.

58. PW46 (CW68) is also a photographer who has taken the photographs and the video graphs of the place of occurrence. The DVD and photographs produced by him were identified by the witness during examination and are marked as Ext.P33 series. He was later recalled and examined. At that time, Ext.P33(k), 65B

certificate of those photographs and CDs were produced. Though the witness was subjected to severe cross examination nothing was brought out to disbelieve his evidence.

59. PW47 (CW69) is the then Village Assistant of Kallamala Village Office. He has prepared Ext.P34 scene plan of Mukkali junction at the instruction of the then Village Officer (PW48) and identified the same when confronted to him. Accordingly, the scene plan was marked and proved through him.

60. PW48 (CW70) is the then Village Officer, Kallamala Village Office, at his instruction PW47 has prepared scene plan. It was counter signed by PW48. When Ext.P34 scene plan was shown to the witness he identified the signature there in. PW48 further issued Ext.P35 caste certificate of accused Nos.1 to 5, 7 to 16. Again he has prepared Ext.P36 scene plan of Vandikkadavu on 06.03.2020. Thus, this witness supported the prosecution case.

61. PW49 (CW71) is the then Village Officer holding charge of Padavayal Village. He has prepared Ext.P37 scene plan of place of

occurrence at Aandiyallachal and identified the signature there in. He supported the prosecution case.

62. PW50 (CW72) is the then Village Officer of Palakkayam Village Office. He was prepared Ext.P38 caste certificate of accused No.6.

63. PW51 (CW73) is the Tahsildar, Mannarkkad who was holding the charge of Principal Tahsildar, Mannarkkad during the relevant time and he has issued Ext.P39 caste certificate of Madhu. According to him, as per the reports submitted by the Village Officer, Padavayal Village this certificate was issued and some enquiry was conducted by him also. In fact the certificate appears to be in the form of a report and not in the prescribed form as contemplated under the provisions of Kerala (Scheduled Caste / Scheduled Tribe) Regulation for issue of Community Certificate Act, 1996. Accordingly, the prosecution has subsequently produced a caste certificate by issuing a summons u/s.91 Cr.PC to PW100 and

accordingly the caste certificate of Madhu in the prescribed form is made available before court and it is marked as Ext.P163.

64. PW52 (CW76) is the Nodal Officer of Idea Cellular Limited who has proved Ext.P40 series, Ext.P41 series and Ext.P42 series, call data records, customer application forms, 65 B certificates etc. He deposed before court that during that relevant time one Saheel Kombath and P. Rajkumar were nodal officers of Idea Cellular and they left the company and their whereabouts could not be traced out. As PW52 worked along with them, he has got acquaintance with the signature of those persons. Accordingly, Ext.P41 series and Ext.P42 series CDR and CAF etc issued by Saheel Kombath and P. Rajkumar were also marked through this witness. According to him, he is the present Nodal Officer of Idea Cellular and as he is acquainted with the signature of other Nodal Officers who have issued those documents. The witness has specifically deposed that the data's are extracted from the server of Idea Cellular Limited which is located at Pune in a space having an extent of 2 lakh square feet and hence the server cannot be brought here.

According to him, the data is being retrieved from the server by using unique password and user Id system. Laptops were issued to those Nodal Officers and only through those laptops the data can be accessed from the server. By using any other laptops or desktop the data cannot be accessed. It is further deposed by the witness that there is a three layer password protection system for accessing data from the server. This reveals that Exts.P40 series to Ext.P42 series document cannot be manipulated easily. Apart from all these there is no suggestion from the side of the defence that these documents are not genuine and fabricated documents. The cross examination of this witness was with regard to other facts relating to who all are persons collecting data from customers, who all are feeding the data in the server etc. It is further evident from the testimony of PW52 that apart from physical verification of id proof, application form etc there is EKYC verification and if it is found that there is any disparity in the identification details then SIM will not be issued to the applicant. Thus, the testimony of PW52 formally proved Ext.P40 series to Ext.P42 series call data records, customer application form,

65B certificate etc. To whom the SIM was issued, who all are the persons who have contacted each other etc are the contents of call data records which is self explanatory. Thus, PW52 supported the prosecution case. Though the counsel for the accused persons have vehemently cross examined this witness nothing was brought out to disbelieve his testimony or could not create an impression that these documents are not genuine and fabricated. In fact the evidence of PW52 clarify that there is no scope for any manipulation in these documents.

65. PW53 (CW81) is the Tribal Watcher of Mukkali Forest Station who has accompanied the Investigating Officer and Scientific Officer when they visited the place of occurrence for collecting the samples, material objects and prepared scene mahazar etc. PW53 admitted his signature in Ext.P43 scene mahazar of Aandiyallachaal (first place of occurrence), he has identified MO3 series to MO22. These are the material objects collected by the Investigating Officer from the place of occurrence, ie Aandiyallachaal. The place wherein Madhu was apprehended by the accused persons as per the

prosecution case. PW53 further identified the photographs shown to him containing pictures of Aandiyallachaal and other parts of Ajumla Reserved Forest. He has also identified the video footages produced before court when it was played by using LCD projector and laptop etc. He identified all those places in Aandiyallachaal in Reserved Forest. The counsel for the accused persons vehemently cross examined this witness. They tried their level best to create an impression that the places shown in the photographs and the video recording in the mobile phone are not Aandiyallachaal but some different place. But it is specifically deposed by PW53 that as he is regularly visiting that places he is damn sure that these photographs and videos are of Aandiyallachaal and there is no doubt for him. Thus, the attempt of the defence counsel to create an impression that the videos and photographs are not of Aandiyallachaal but of some other place became a futile exercise. Thus, PW53 has fully supported the prosecution case. He further deposed that he knows Madhu as well.

66. PW54 (CW82) is then Beat Forest Officer of Anavai Forest Station and he was there at that office when the Investigating Officer and his team seized CCTV footages from Anavai Forest Station. He is also a signatory to Ext.P44 seizure mahazar, whereby the DVR, Adaptor etc of Anavai Forest Station were seized. The witness further identified MO23, MO23(a), DVR and adapter etc that was seized by the Investigating Officer with the help of Cyber Cell Expert. Thus, PW54 also supported the prosecution case.

67. PW55 (CW84) is the then Forest Range Officer of Attappdi. He has produced the copy notification, plan etc of Aandiyallachaal Forest stating that it is a reserved forest. These documents are marked Ext.P45 series. Though this witness was vehemently cross examined by the counsel for the accused nothing was brought out to disbelieve his testimony. He deposed that the place namely Aandiyalachaal come within his jurisdictional limits. Thus, PW55 supported the prosecution case.

68. PW56 (CW88) is the then Casualty Medical Officer of Agali CHC . On 22-02-18, she had examined the body of Madhu. She deposed that on 22-02-18 at about 4.15 pm , a person was brought before her in a stretcher by the Police and attenders and when she called his name as Madhu, he has not responded. After conducting the preliminary examinations she has taken ECG also and it is found that the person was brought dead. PW56 has admitted her signature and handwriting in Ext.P46 OP ticket. It is specifically deposed by PW56, that in the OP ticket initially she written the time as 4.12 pm, but later after watching the casualty clock she has corrected it as 4.15 pm. The doctor's evidence reveals that she herself has made over-writings in Ext.P46 OP ticket. She takes the whole responsibility of correction in the Ext.P46 OP ticket. According to PW56 on examination the patient was brought dead and that was intimated to the Police and death intimation letter is marked as Ext.P46(a) that also bears the signature of PW56. It is specifically deposed by PW56 that the intimation letter does not contain seal of the hospital. At that time, office hours was over and hence office

seal could not be affixed. She further deposed that for conducting examination it has taken about 5-10 minutes. According to her, in between 4.05 pm and 4.10 pm the patient might have been brought to the hospital. This witness was subjected to piercing cross examination by the counsel for the accused. But nothing was elicited from this witness against the prosecution case. It is further deposed by PW56 that if the case involves emergency issue then they will first examine the person then only the details can be elicited from the patient. Thus, the evidence of PW56 make its clear that Madhu was brought before CHC, Agali as dead. The evidence given by PW56 reveals that she has joined in the Health Service Department on 07.02.2018 only. It is further evident from the testimony of PW56 that the handwriting in the OP ticket and death intimation letter are that of PW56 but the name in OP ticket was not written by her. It is further deposed by PW56 that the correction in OP ticket ie 4.12pm is corrected as 4.15 pm was done at that time itself. Even though some suggestive question was put to PW56 that Madhu was brought to CHC Agali only at 4.40 pm, it is emphatically

denied by PW56 and deposed that she had examined the patient at 4.15 pm itself. Thus, PW56 supported the prosecution case.

69. PW57 (CW86) is the then Joint RTO, Mannarkkad, who issued registration particulars of vehicles involved in this case and marked as Ext.P47 series. He has supported the prosecution case.

70. PW58 (CW87) is the doctor of Govt. Mental Health Centre, Kozhikode. According to him, on 19-11-12 while he was working as Psychiatrist Consultant in Govt Mental Health Centre, Kozhikode, he examined Madhu and treated him. According to him, Madhu was suffering from paranoid schizophrenia and the doctor find that it is a serious case of mental illness requiring life long treatment. Through him Ext.P48 medical record was marked. The doctor further opined that if medicine is not taken periodically, there are chances of increasing the symptoms of this mental illness.

71. PW59 (CW89) is the then Superintendent in Tribal Specialty Hospital, Kottathara during 2008 and on 26.08.2008 he examined Madhu. Madhu was admitted there on 13-08-08 and

discharged on 17.08.2008. He was advised to continue the treatment for psychosis. Through PW59 Ext.P49 series documents were marked. Further it is deposed by PW59 that the blood samples of these accused persons were collected as per the request of the Police.

72. PW60 (CW85) was then Forest Range Officer, Mukkali Forest Station. He deposed that under his supervision forest watchers such as Anilkumar, Razak, Kalimoooppan etc were deployed in the teak plantation and yet another forester namely Panjan was also deputed. He further deposed that even before one month from 22.02.2018 itself the plantation was handed over to the contractor for felling purpose. It is further deposed by PW60 that there is a shed in Vandikkadavu for the preparation of food for the workers. At about 5 pm on 22.02.2018 he came to know that one tribal person namely Madhu was apprehended by a group of person accordingly he registered OR.No.1/2018. Later the accused in that case was formally arrested by filing Ext.P50 application. This witness also identified the video footages produced in this case and

identified the area as forest area in Aandiyallaachaal forming part of reserved forest. He further identified some of the accused persons in the dock.

73. PW61 (CW91) is the then Nursing Assistant of Tribal Specialty Hospital, Kottathara. He was an attester to Ext.P51 mahazar prepared while seizing the blood samples of accused persons involved in this case.

74. PW62 (CW80) was the then Section Officer of Mukkali Forest Station. He has narrated about the geographical layout of Ajumala and Aandiyallachaal reserved forest areas. According to him, on 24-02-18 when the Investigating Officer and the Scientific Officer visited the Aandiyallachaal forest for collection of evidence he has also accompanied them along with Perumal and Panali. He further deposed that the Investigating Officer has seized food articles, big shopper, spices powder etc from that place. He is an attester to Ext.P43 scene mahazar. He further deposed that on 05-03-18 when the Investigating Officer visited the place of occurrence

at Pottikkal Teak Plantation along with one Shamsudheen he was there. PW62 identified A3 in the dock. He witnessed the recovery of MO24 wooden stick by A3. He is also a signatory to Ext.P52 recovery mahazar. Though this witness was vehemently cross examined, nothing was brought out to disbelieve his testimony.

75. PW63 (CW42) is a tailer by profession. In fact prosecution has examined this witness to prove the incident at Mukkali, but he has not supported the prosecution case by deposing that he is quite unaware of the accused in the dock thus turned hostile to the prosecution. Ext.P53 series contradictions were marked through him. At the same time, PW63 admitted that when he was there on the relevant day at Mukkali there was a group of persons and one person was there whose name was said to be Madhu by someone else. Apart from this nothing material was brought out from this witness.

76. PW64 (CW92) was the Scientific Officer of the DCRB Thrissur, who collected the samples in this crime on 23.02.2018 and

on 24.02.2018. She collected material evidence from the vehicle bearing No. KL-01-BW-5724 (police jeep) in which Madh was brought from Mukkali. She collected food matters from the reserved forest at Aandiyallachaal. These material evidences were packed, sealed and labelled and the same was seized by the Investigating Officer. She also supported the prosecution case.

77. PW65 (CW93) was the then Civil Police Officer in SMS Unit Agali Sub Division, who was present at that time when PW64 entrusted the material evidence collected by her to the Investigating Officer by describing it in Ext.P55 mahazar. He was also an attester to Ext.P54 mahazar. He further identified MO3 sack and he is also an attester to P56 and P57 seizure mahazars. He supported the prosecution case.

78. PW66 (CW95) was the WCPO of Sholayur Police Station, who was doing attached duty in Agali Dy.SP, Office during the relevant period. She was also an attester to Ext.P54, P55 and P58 seizure mahazars. Ext.P58 mahazar was prepared while seizing

MO25. Like that PW66 was also an attester to Ext.P59 seizure mahazar. While seizing the OP ticket by describing it in Ext.P60 seizure mahazar. PW66 was an attestor. PW66 further identified Ext.P46 OP ticket. PW66 thus supported the prosecution case.

79. PW67 (CW78) is the then Sub Collector of Ottapalam, who has conducted inquest on the body of Madhu at Agali CHC. According to him, he has recorded statements of five persons as part of this inquest. The dress of Madhu that was seized at the time of conducting inquest was also identified by him as MO26 series. He identified his signature in Ext.P1 inquest report. Later the body was sent for postmortem examination at Medical Collage, Thrissur and he has also accompanied the doctors at the time of conducting postmortem examination at Medical Collage Hospital, Thrissur. This witness was subjected to lengthy and piercing cross examination. Thereafter, the witness was again recalled to prove the Magisterial enquiry report prepared by him u/s. 176 Cr.PC. That is marked as Ext.P165. As per Ext.P165 enquiry report, PW67 arrived at a conclusion that this is not a case of custodial torture by the Police.

80. PW68 (CW95) was the Additional Sub Inspector of Police working in SMS Unit Agali Sub-Division, Agali. He was an attester to Ext.P61 mahazar prepared at the time of entrusting the material objects collected from the body of Madhu by Sub Collector to the Investigating Officer. He identified MO26 series dress worn by Madhu. He is also an attester to Ext.P60 seizure mahazar prepared while seizing the OP ticket (Ext.P46) by the Investigating Officer.

81. PW69 (CW96) was working in Dy.SP office, Agali from AR camp on attached duty. He was an attester to Ext.P62, P63, P64, P65 and P66 seizures mahazars prepared while seizing MO27 series mobile phones of the accused. He was also an attester to Ext.P67, P48 and P57 series seizure mahazars prepared while seizing Ext.P49 series.

82. PW70 (CW39) is the unfortunate mother of Madhu. She has only hearsay evidence about the incident. According to her, up to age of 16 Madhu was with her and studied in school, later he was

sent to Palakkad for learning carpentry work. Thereafter, Madhu was suffering from some mental illness and was treated in Kottathara Mental Health Centre, Kozhikode etc. She further deposed that Madhu had not taken proper medicine and he used to spend his time in forest area, river etc.

83. PW71 (CW37) is the brother-in-law of Madhu. According to him, he belongs to Kurumba community and his wife belongs to Muduka community. He deposed that Madhu was suffering some minor mental illness and in one occasion he has taken Madhu to Mental Health Centre, Kozhikode and according to him, he has produced Ext.P48 and P49 series documents to Police. He has got only hearsay information about the death of Madhu.

84. PW72 (CW97) is the CPO working in Cyber Cell, District Police, Palakkad. He has helped the Investigating Officer for seizing MO27 series and MO25 mobile phones of the accused. He is also signatory to Ext.P62, P63, P64, P65 and P66 seizure mahazars. He has helped the Investigating Officer for seizing MO28 series DVR

and power adapter etc from Sreerag bakery, MO 23 series DVR and adapters etc. from Anavai Forest Station, MO29 DVR and MO29(a) adapter from Ponniyammal Gurukulam at Mukkali. It is PW72 who has collected the face book user information details of Ubaid (A8) and Aneesh(A4). That is marked as Ext.P68(series). The 65B certificates for those documents were also signed by this witness and these documents are marked as Ext.P68(b). Thus, PW72 supported the prosecution case.

85. PW73 (CW98) is the then CPO in Agali Police Station, who was deployed for escort duty wherein body of Madhu was kept. After the postmortem the body of Madhu was released to the relatives by PW73. He has also entrusted the sealed envelopes containing material objects collected by the doctor who conducted postmortem to the Investigating Officer.

86. PW74 (CW101) is Gunman of Agali Dy. SP (I.O), who is an attester to Ext.P69 seizure mahazar prepared while seizing the

photographs of the accused persons when it was produced by the photographer Jinson. He has also supported the prosecution case.

87. PW75 (CW102) is an attester to Ext.P70 seizure mahazar prepared while seizing the autorickshaw of Hareesh.

88. PW76 is the CPO of Ottapalam Police Station, who was working along with the Investigation team of this case as per the order of District Police Chief. He is an attester to Ext.P58 seizure mahazar prepared while seizing mobile phone of Hareesh (A14) when it was produced by the relative of Hareesh namely Anand. He is also a signatory in Ext.P71 seizure mahazar prepared while seizing the photographs and DVD produced by the photographer, Albin. He is also a signatory in Ext.P72 seizure mahazar prepared while seizing the DVRs. He is also signatory in Ext.P59, P46, P73 and P74 seizure mahazars. It is he who have collected OP ticket of Madhu from the hospital.

89. PW77 (CW115) is a Contractor and party to Ext.P75 agreement dated 27.11.2017, whereby he entered into an agreement

with DFO, Palakkad with respect to cutting and transportation of teak wood from the forest department. According to him, when he reached at Mukkali on the relevant day he found that a group of persons at Mukkali. Madhu was there in that gathering.

90. PW78 (CW104) is the CPO, working in the Dy.SP office, Agali on working arrangement. On 17.03.2018 he signed in Ext.P76 seizure mahazar prepared while seizing the screen shot of videos circulated in whatsapp when it was produced by Nikul. he is also an attester to Ext.P77 seizure mahazar prepared while seizing vehicle diary of Bolero Jeep bearing No. KL-01-BW-5724.

91. PW79 (CW105) is the writer of Agali ASP office, who produced the cell id decoder of mobile phones, the CDR of mobile phones etc. to the Dy.SP office from District Police Office, Palakkad.

92. PW80 (CW107) is the photographer, DCRB Palakkad who has taken the photographs of inquest at Agali CHC and copied the same in Ext.P78 compact disk.

93. PW81 (CW108) is the then Sub Inspector of Police in Agali SMS Unit. He has collected Ext.P75 agreement with regard to felling of teak timber between Abbas and DFO, Mannarkkad from the office of DFO, Mannarkkad.

94. PW82 (CW109) was the Junior Sub Inspector of Agali Police Station during that period. He has accompanied the Dy.SP while the latter has visited the place occurrence along with Scientific Officer. He is also attester to Ext.P79 seizure mahazar prepared while handing over the material objects by Scientific Officer to the Investigating Officer.

95. PW83 (CW110) is the Additional Sub Inspector of Police in Agali Police Station on the relevant date. It is PW83 who along with other two Police officials have taken Madhu from Mukkali junction on 22.02.2018 in Police Jeep. He deposed that while he was on patrol duty on that day at about 2.15 pm, he got a telephonic information from the GD charge of Agali Police Station namely Rejimon that a person namely Madhu involved in theft case is

apprehended at Mukkali. Accordingly, he proceeded to that Mukkali and reached Mukkali at about 3 pm. By that time, it is found that Madhu was sitting in the CITU waiting shed at Mukkali with shabby dress and tired condition. Some person who have gathered there said that it is Madhu, a thief and he remains as a nuisance to general public in that area. PW83 deposed that he has collected the name and address of Madhu from him. Further someone gathered there has given the name and address of 7 persons who have brought Madhu to that place. But the answers given by PW83 during cross examination reveals that he is quite unaware of the person who has given the name and address. Whether the name and address were given by the respective persons are also unaware of him. As per the version of PW83, a few person gathered there have taken Madhu to the Police Jeep bearing No.KL-01-BW-5724. Likewise some others have put a sack containing rice and other items near to the Police Jeep and that was taken to the Police Jeep. The Police party left Mukkali at about 3.30 pm itself and they have proceeded towards Agali. In the course of that journey PW83 made a formal enquiry

with Madhu. By that time, it is stated by Madhu that about 10 persons in Mukkali have apprehended him while he was in the forest, brought to Mukkali by tying his hands and fisting, beating etc and putting a sack on his shoulder. At Mukkali also some of the persons have beat him and one person has stamped him at Mukkali. It is to be noted that the name and address of these persons were not stated by Madhu, but the persons who gathered therein Mukkali have given this details. That is the only inference that can be gathered from the evidence of PW83 (Page 4). When the police party reached a place called Mele Thavalam, Madhu informed the Police that he wanted to vomit. By that time the Police Jeep stopped and Madhu has vomited through the quarter glass of the Jeep, as Madhu was sitting on the back seat of the Jeep and it was found that Madhu was so tired. Accordingly, he informed the GD charge of Agali Police Station to prepare a requisition for medical examination of Madhu and according to PW83 they reached Agali CHC at about 4.15 pm and they have taken Madhu in front of the duty doctor (Lima Francis) in a stretcher. After examining Madhu the doctor

certified that Madhu is brought dead. Thereafter, he has informed the issue to the higher officials and Police station. After shifting the body of Madhu to mortuary the police party has proceeded to Police station and at about 5.15 pm he has registered Cr.No.87/2018 u/s. 174 Cr.P.C with regard to the death of Madhu. According to PW83, as there was power failure in the Police Station at the relevant time, he has manually registered FIR. Ext.P80 is the FIS recorded by him and Ext.P81 is the FIR registered by PW83. PW83 further identified MO26 series dress of Madhu.

96. The counsel for the accused have subjected PW83 to piercing and lengthy cross examination, because he is the one of the Police officers in whose custody Madhu was died. During cross examination PW83 deposed that he has not complied with the legal formalities required for taking custody of a person. It is further deposed by PW83 that he has not noticed the injuries on the body of Madhu and according to him there was no *prima facie* external injury other than one swelling over the lips.

97. The main contention of the defence is that it is these police personnel including PW83 have brutally manhandled Madhu and accordingly Madhu succumbed to the injuries sustained. PW83 was subjected to piercing cross examination with regard to manual registration of FIR, delay in giving medical aid to Madhu in other private hospitals available in between Mukkali and Agali etc. Even suggestions were put to PW83 stating that Madhu was taken to Agali Police Station and subjected Madhu to torture in the Police Station as well as in the Police Jeep. All these suggestions were denied by PW83. During the course of cross examination PW83 deposed that at the time of registering Ext.P81 FIR , he was quite unaware of the cause of death of Madhu and that is why he has registered FIR u/s. 174 Cr.P.C (Page 14). According to him, he has registered Ext.P80 FIS based on some notes taken down by him at Mukkali wherein he has noted the name and address of 7 person as stated by the person who gathered there. PW83 vehemently denied every suggestion put to him that it is Police, who have tortured Madhu and Madhu died due to Police torture.

98. PW84 (CW111) is the yet another Civil Police Officer accompanied PW83 at the time of taking Madhu from Mukkali. As per his version, he was driving the Police Jeep at the relevant time. He also deposed in tune with the version given by PW83. Though PW84 was also subjected to lengthy and piercing cross examination by the counsel for the accused this witness also denied each and every suggestions put to him that it is police personnel, who is responsible for the death of Madhu.

99. PW85 (CW114) is the then CPO of Agali Police Station, who has brought the requisition for medical examination of Madhu from the Agali Police to Agali CHC. He also deposed that he rushed to Agali CHC along with that requisition for medical examination of Madhu as requested by Rejimon, GD charge of Agali Police Station in response to the telephonic information given by Prasad Varkey (PW83). According to him, he along with other police personnel and staff of hospital taken Madhu near to the doctor in a stretcher. After examining Madhu, the doctor certified that Madhu was brought died. This witness was also subjected to thorough cross examination.

100. PW86 (CW90) is the Professor of Forensic Medicine and Police Surgeon who conducted autopsy on the body of Madhu along with others in a team. Accordingly, he issued Ext.P82 postmortem certificate. He formally proved the contents of Ext.P82 postmortem certificate. It is worthwhile to reproduce the contents of postmortem certificate hereunder :-

A. GENERAL:

Body of a moderately built and nourished adult male of height 154 cm and weight 40 Kg. Eyes closed, conjunctivae congested and oedematous and cornea hazy. Blood stained frothy fluid seen at nostrils and mouth. Other external body orifices were normal. Finger nails were blue. Blood stained fluid seen smeared on upper part of back of chest. A tattoo 4.5x4 cm present on inner aspect of right arm, 10 cm above elbow. Another tattoo 3.5x3 cm present on front of right forearm, 10 cm below elbow. Hyperpigmented scar 0.5x0.5 cm present on back of right arm, 10 cm

above elbow. A hypopigmented area with multiple spotty hyperpigmentations present over an area 4x1.5 cm, vertical, on right side of front of chest, 7 cm below collar bone and 5.5 cm outer to midline. Two hypopigmented areas 0.5x0.5 cm each and 1 cm apart present on front of right leg just below knee. A hypopigmented area 1.8x1 cm oblique on right side of front of chest, upper outer end 7.5 cm below collar bone and 2.5 cm outer to midline. Multiple small hypopigmented areas, 0.2x0.2 cm to 0.5x0.5 cm present on front of chest and abdomen across midline, on front and outer aspects of left arm and on back of right side of chest. A hypopigmented area 0.5x0.5 cm present on front of abdomen at midline, 3.5 cm above umbilicus. Postmortem slippage of skin seen on right side of front of abdomen, just above umbilicus. Hypopigmented area 1x0.3 cm, horizontal, present on back of left wrist. Hyperpigmented scar, 10 cmx1 to 1.5 cm, vertical,

present on upper outer aspect of right side of trunk, lower inner end 8 cm above top of hip bone and 12 cm outer to midline.

Rigor mortis feebly present in head, neck and upper limbs and was fully retained in lower limbs.

Postmortem staining present on back and sides of trunk, and back aspect of upper arms, not fixed.

Greenish discolouration of iliac fossae present on either sides. Marbling present on front of shoulders and arms. Body was kept in cold chamber at 5 pm on 23-02-2018.

B. INJURIES (ANTE-MORTEM) :

1. Contusion 5x3x0.5 cm on left side of forehead just above eyebrow and 3 cm outer to midline.
2. Contusion 6x5 cm, full thickness, on left side of back of head, 3.5 cm above the level of tip of mastoid and 3 cm outer to midline.

3. Contusion 4x3 cm, full thickness of left temporalis muscle. The skull was intact. Brain (1371 gm) showed features of raised intracranial tension with flattening of gyri, narrowing of sulci and uncal grooving.
4. Contusion 0.8x0.5x0.3 cm on right side of lower lip, 0.5 cm outer to midline.
5. Multiple small contusions over an area 2x1.5 cm on inner aspect of left side of lower lip, 0.5 cm outer to midline and 1 cm below muco-cutaneous junction.
6. Contusion 2x1x0.5 cm on left side of lower lip, 3 cm outer to midline.
7. Contusion 14x8x3 cm on top of left shoulder and adjoining back of neck, 3 cm outer to midline.
8. Contusion 12x8x4 cm on back of trunk across midline, upper extent 4 cm below root of neck

involving the full thickness of para spinal and trapezius muscles.

9. Abraded contusion 6x4x1 to 1.5 cm left side of back of chest, 13 cm outer to midline, 5 cm below top of shoulder.
10. Contusion 5x2x0.3 to 0.5 cm, oblique on right side of back of trunk, upper outer end 10 cm below root of neck and 2 cm outer to midline.
11. Multiple small contusions varying in sizes of 3x3x1.5 cm to 4x4x3 cm over an area 13x6 cm on right side of back of chest, 12 cm below top of shoulder and 3 cm outer to midline.
12. Tramline contusion 12.5x2.5x1 to 2 cm, with a central pale area of 1 cm breadth in its long axis, obliquely placed on left side of back of trunk, lower inner end 6.5 cm outer to midline and 32 cm below top of shoulder. Underneath, the XI th rib was seen fractured on back aspect with blood

infiltration over an area 8x6 cm. Perinephric haematoma seen on lower pole of left kidney.

13. Contusion 2.5x1x0.3 cm vertical on back of left arm, 10 cm above elbow.
14. Contusion 10x8x2 cm on back of left thigh, 13 cm above knee fold.
15. Multiple linear abrasions varying in sizes 3.5x0.1 cm to 4.5x0.1 cm over an area 4.5x1.5 cm horizontally placed on left side of back of neck with an underlying contusion 5x4x1.5 cm across midline, just above root of neck.
16. Abrasion 0.5x0.5 cm on left side of front of chest, 9.5 cm outer to midline and 12 cm below collar bone.
17. Abrasion 0.8x0.5 cm on top of left shoulder, 6 cm inner to tip of shoulder.

18. Multiple small abrasions over an area 6x3.5 cm on left side of front of abdomen, 2 cm outer to midline and 2 cm below umbilicus.
19. Abrasion 0.6x0.5 cm on right side of back of chest, 3 cm outer to midline and 2 cm below root of neck.
20. Linear abrasion 3 cm long, oblique on right side of back of shoulder, upper outer end 5 cm inner to tip of shoulder.
21. Abrasion 0.5x0.3 cm on back of right forearm, 4 cm above wrist.
22. Linear abrasion, 7 cm oblique on right buttock, 9 cm outer to midline and 14 cm below top of hip bone.
23. Linear abrasion, 7 cm vertical on back of right thigh, 8 cm above knee.
24. Abrasion 0.6x0.2 cm on inner aspect of right leg, 5 cm below knee.

25. Multiple linear abrasions over an area 6x1 cm, oblique on back of right leg upper outer end 12 cm below knee.
26. Multiple spotted abrasions over an area 5x1.5 cm, vertical on front of right leg, 9 cm above ankle.
27. Superficial lacerated wound 0.8x0.1 cm on back of right heel, 3 cm above sole.
28. Multiple spotted abrasions over an area 1x0.5 cm on back of left forearm, 5 cm above wrist.
29. Abrasion 0.6x0.3 cm on left side of back of trunk, 5 cm above top of hip bone and 4.5 cm outer to midline.
30. Two abrasions 0.2x0.2 cm and 0.2x0.1 cm and 0.5 cm apart on left side of front of chest, 20 cm below collar bone and 12 cm outer to midline covered with brown scab.
31. Multiple spotted abrasions over area 2.5x2 cm on left side of front of chest, 11 cm below upper end

of sternum and just outer to midline with brownish black scab.

32. Multiple linear abrasions over an area 6x4 cm, varying in sizes 3x0.1 cm to 4.5x0.2 cm obliquely placed on outer aspect of left side of chest, 12 cm below collar bone and 14 cm outer to midline covered with brown scab at places.
33. Two spotted abrasions over an area 0.5x0.5 cm on outer aspect of left side of chest, 24 cm below collar bone and 14 cm outer to midline covered with reddish brown scab.
34. Linear abrasion 5 cm long, oblique on back of left arm, 3 cm below tip of shoulder with reddish brown scab.
35. Multiple linear abrasions over an area 6x6 cm on outer and back aspect of right forearm, 5 cm below elbow covered by brown scab.

36. Multiple linear abrasions over an area 5x3 cm on back of right wrist and hand covered with black scab.
37. Multiple linear abrasions over an area 5x2.5 cm, vertically placed on back of right thigh, 1 cm above knee with reddish brown scab.
38. Multiple linear abrasions over an area 3x1.5 cm on front of left forearm, 1.5 cm, below elbow, covered with brown scab.
39. Hypopigmented area with spotty hyperpigmentation 0.8x0.5 cm on back of left forearm, 6 cm above wrist.
40. Hypopigmented area and abrasions over an area 2.5x1.5 cm on top of left foot, 9 cm above tip of second toe covered with black scab.
41. Abrasion 0.5x0.5 cm on right side of back of chest, 8.5 cm below root of neck and 1.5 cm outer to midline with brown scab at its upper margin.

42. Linear abrasion 1.5x0.1 cm, oblique on right side of back of chest, upper inner end, 8 cm below top of shoulder and 5 cm outer to midline, covered with brown scab.
43. Multiple small linear abrasions over an area 3x3 cm on right side of back of chest, 9 cm below top of shoulder and 9.5 cm outer to midline with brown scab.
44. Multiple linear abrasions over an area 10x8 cm on outer and back aspect of right side of trunk, 8 cm outer to midline and 8 cm above top of hip bone covered with brown scab.

Neck dissection was done in bloodless field. All strap muscles, blood vessels, nerves, hyoid bone, thyroid cartilage were normal and intact.

Injury nos. 1 to 29 were fresh in nature.

C. OTHER FINDINGS : Air passages contained food particles similar to that present in the stomach. Lung

right (394 gm) and left (439 gm) showed features of early ARDS. Heart (254 gm): Walls, valves and chambers were normal. Left coronary artery, its branches and ostium were normal and patent. Right coronary artery was hypoplastic and patent. Intima of aorta close to the opening of right coronary artery showed a fatty thickening (1x1x0.4 cm). Aorta showed red staining due to decomposition and a few calcified atheromatous plaques. Liver (1086 gm) and kidneys right (99 gm) and left (121 gm). Stomach contained pieces of plantain in brownish mucoid fluid having no unusual smell, mucosa was congested at places. Urinary bladder contained scanty cloudy urine. Vertebral column and spinal cord were normal. All internal organs were pale and showed early decomposition changes.

Entire postmortem examination was video recorded and photographed.

Blood, viscera and dried blood stained gauze for grouping were preserved and sent to chemical analysis lab through the charge CPO.

Tissue bits and dissected heart sent for histopathology examination.

Two oral swabs, nail clippings, SD card containing the video recording and SD card containing the still photographs of postmortem examination were handed over to CPO-6450 in sealed envelopes.

OPINION AS TO CAUSE OF DEATH :

DEATH WAS DUE TO MULTIPLE BLUNT INJURIES SUSTAINED (INJURY NUMBERS 1 TO 15).

101. Thus, as per the postmortem report and the oral evidence of PW86 the injury No.1 to 15 are the cause of death. During the course of examination of PW86 MO24 wooden stick was shown to the witness. He identified the same by stating that this was shown by the Investigating Officer during the course of investigation as well and he further deposed that he has also visited

the scene of occurrence during the course of Investigation. He narrated how each injury stated in the postmortem report could have been caused. According to him, injury No. 1 to 3 can be caused by a blunt force, by a blunt object or striking on a blunt surface forcibly. During examination of PW86 it was elicited by the learned Special Public Prosecutor with regard to the uncal grooving stated in injury No.3. According to the doctor, for forming that uncal grooving it may takes more than 2 or 3 hours. In fact this opinion made by PW86 has got very much relevancy to the facts of the case. Likewise, PW86 deposed above each injury, how it could have been caused etc. According to PW86 injury No.12 can be caused by a long rode like weapon just like MO24, wooden stick. By this time the doctor pointed out MO24 weapon. At this time the doctor further explained the Perinephric haematoma stated in injury No.12. Likewise, PW86 deposed that injury No.13 and 14 can be caused by blunt weapon. According to the doctor, injury No.18 could have been caused by stamping with foot. As far as injury No. 26, 28, 31 and 33 are concerned he deposed that it could have been caused by stemmed

spiky small plants. The doctor supplemented that such type of stemmed spiky small plants were seen by him while he visited the spot, when he examined the scene of occurrence. Further the doctor deposed that nature and distribution of injuries suggest an inference that these injuries were caused by other persons means 2 or more persons.

102. In fact, the result of the postmortem examination has given an entirely given different dimension to the Investigation in this case. As per the opinion of the doctor, the cause of death of Madhu was due to injury No. 1 to 15 noted in postmortem examination report. Based on that Section 174 FIR was converted by incorporating several penal provisions including 302 IPC.

103. During the course of cross examination of this witness the counsel for the first accused put a suggestive question (page 15) that injury No.1 to 3 can be caused if the deceased was subjected to fisting. In answer to this the witness answered that this will happen when the head was forcibly hit on a hard surface by caught hold of

the head. According to the witness injury No. 1 and 2 cannot be caused by a single act. Likewise, a suggestive question was put to the doctor (page 15) stating that can injury No. 1 and 2 be caused if the victim was in a lying position and somebody was kicking or stamping him. According to the doctor, only injury No.2 can be caused by such act and not injury No.1. This answer given by the witness and question suggested by the counsel assumes importance. In page 26 in answer to the suggestive question that injury No.1 to 3 can cause brain edema is also assumes importance. It is further deposed in answer to the suggestive question that injury No.1 to 3 can be caused due to hitting of head against hard surface and these injuries will cause damages to brain and cause unconsciousness. It is clarified by the doctor that it may not happen immediately. At the same time, the doctor deposed that these injuries can lead to brain damage, loss of consciousness and death in a short time in answer to a suggestive question. Again it is stated that when the edema became severe the victim fall into unconsciousness and die. In fact these answers given by PW86 during cross examination in page 26

was canvassed by the counsel for the first accused and argued that the injury No.1 to 3 was caused after 3.30 pm and accordingly death of Madhu was caused immediately thereafter. This testimony of the witness will be discussed in detail while appreciating evidence. It is further elicited from PW86 (page 27 and 28) that with all these injuries the victim can behave normally, he can take food etc and it is clarified by the doctor in page 28 that brain edema is developed over a period of time and in the initial stages the person will behave normally. In page 31, a suggestive question was put to the doctor that the injuries noted by the doctor can be caused in a custodial torture as well. To this question the doctor answered that the nature of injury was not that of a custodial torture and according to the doctor when “all the injuries are taken together as a pattern these are not of a nature of custodial torture”(page 32). Even though the counsel for remaining accused persons have also vehemently cross examined PW86, nothing was brought out to disbelieve the postmortem certificate or the evidence of the doctor.

Nothing was elicited from the doctor by the defence counsel even to create a probability of custodial torture in this case.

104. PW87 (CW77) was the Nodal Officer of Bharti Airtel Kerala Circle and he has produced call data records, customer application form, 65 B certificate etc of mobile phones used by accused No.6 and it is marked as Ext.P83 series. Though this witness was cross examined at length, nothing was brought out from this witness to find that the documents produced by this witness is not genuine or fabricated. The witness has emphatically denied the suggestion put to the witness.

105. PW88 (CW99) is the then WCPO of Agali Police Station, working as Station writer during the relevant period, who has kept the note books of Prasad Varkey, Mohandas and Sujilal in safe custody as entrusted by the Investigating Officer. Later she produced these note books and manual general diary of the Agali Police Station to the Dy.SP. She further received Manual general diary on interim custody as per Ext.P84 receipt and she thereafter

produced Ext.P84 general diary and relevant pages of the general diary is marked as Ext.P84(a) through this witness. She has also kept the vehicle diary (Ext.P86) of KL-01-BW-5724 (Police Jeep) in the station locker and later produced the same before the Investigating Officer. The relevant pages of vehicle diary was marked as Ext.P86(a) through this witness. The note books of Prasad Varchy, Mohandas and Sujilal were marked as Ext.P87 series through this witness.

106. PW89 (CW112) was working in Agali Police Station during the relevant period on attached duty. He is yet another police personnel who accompanied PW83 while taking Madhu from Mukkali. He has also deposed in tune with PW83 and PW84. This witness was also thoroughly cross examined by the defence, but nothing could be elicited from him to probabalise the defence contention that it is a case of custodial torture.

107. PW90 (CW121) is then Village Officer of Kallamala Village, he has prepared Ext. P88 series scene plan (2 Nos).

108. PW91 (CW118) is the then Sub Inspector of Police, Agali Police Station, who was leave on 22.02.2018. He deposed that on 22.02.2018 at about 2 pm, one Shamsudheen (A3) has informed him over phone that he has seen Madhu. On getting this information he shared the same to the Police Station. After about one hour Shamsudheen again called this witness and intimated that along with Madhu he reached at Mukkali. During examination PW91 identified A3 in the dock. During cross examination he deposed that he informed the fact to the Police Station as Madhu is a accused in theft case and witness further deposed that he has further instructed to send somebody to Mukkali. During cross examination PW91 admitted that he was the Investigating Officer in a theft case alleged to be committed by Madhu and according to him, for that reason he knows Madhu as well. During cross examination the witness admitted that it is he who had conducted investigation in Cr.No.524/2016 of Agali Police Station against Madhu involving offence punishable u/s.457, 380 and 461 IPC and filed final report in that case and Muneer was complainant in that case. Ext.P89 is the

final report in that case. The witness No.2 in Ext.P89 final report is none other than accused No.16 in this case.

109. PW92 (CW113) was Grade Senior Police Officer of Agali Police Station during the relevant time, who was on GD charge duty on 22-02-18. He deposed that on that day at about 2 pm, Sub Inspector, Subin has called him in station phone and informed that Madhu is being brought to Mukkali by public and some Police personnel on patrol duty is to be sent to Mukkali. Accordingly he has intimated Prasad Varkey. Thereafter, Prasad Varkey informed him that Madhu is being taken to Agali and on the way Madhu has vomited in the Police Jeep and for conducting medical examination of Madhu a requisition is to be prepared. Accordingly, he has prepared a requisition form and sent to Agali CHC, through Kumaran (PW85) and thereafter it was further informed by Prasad Varkey that the doctor examined Madhu and certified that Madhu is dead and he has registered these facts in the general diary. Thereafter, Prasad Varkey came to the Police Station and registered crime No.87/2018 manually due to non-availability of power supply.

Ext.P85 series manual GD entered by PW92 was proved through him. According to him, he has also entered the details in the CCTNS. Though this witness was subjected to piercing cross examination nothing was brought out to probabalise the defence version that it is a case of custodial torture.

110. PW93 (CW117) is then ISHO of Agali Police Station. It is PW93 who has produced the CCTNS GD to the Investigating Officer along with 65B certificate and these are marked as Ext.P90 and Ext.P90(a). According to him, on 22.02.2018, he was on duty and he was on law and order duty at some other place. He came to know about the incident at about 4.20 pm when it was informed by Prasad Varkey over phone. After reaching Police Station he has made arrangements for Magisterial enquiry, arranged scientific expert, finger print bureau, dog squad etc. He has brought 8 accused persons to Agali Police Station and kept them under surveillance. This witness was subjected to vociferous cross examination, nothing was brought out to probabalise the defence allegation that it a case of custodial torture.

111. PW94 (Additional witness) is the then Nodal Officer, Vodafone Idea Cellular Limited. He has produced Ext.P91 series call data register, call details, 65B certificate etc. According to him, actually these documents were issued by the then Nodal Officer Rajesh.M.R and he knows the signature of Rajesh.M.R and accordingly Ext.P91 series documents were marked through PW94. Subsequently, PW94 was again recalled and Ext.P91(b) to P91(d) series call details, customer application form, 65B certificate etc were also marked. Though this witness was also cross examined at length, nothing was brought out to question the genuineness of the documents produced by the witness.

112. PW95 (CW116) is the Assistant Director RFSL, Thiruvananthapuram. He has examined DVRs, mobile phones, photographs etc involved in this case and prepared Ext.P92 report. Ext.P92(a) is the annexure pendrive produced by PW95 containing the relevant CCTV visuals, videos and photographs that were extracted from the DVRs, mobile phones etc. Ext.P92(b) is the 65B certificate issued by him. He has examined all the DVRs,

photographs (Ext.P30 series), and mobile phones sent to him. Ext.P93 series hard-disk taken from DVRs are marked through him. He has also identified MO25 and MO27 series mobile phones examined by him that is sent for examination from court. He has identified each mobile phones. During examination the CCTV footages, photographs etc are shown to him and identified all the accused persons in the CCTV footages and photographs. The evidence of this witness will be evaluated in detail during the course of appreciation of evidence.

113. PW96 (Additional witness) is the then Judicial First Class Magistrate, Mannarkkad, who has conducted Magisterial enquiry under section 176 (1A) Cr.PC. Ext.P94 Magisterial enquiry report was marked through him. The result of his enquiry is that the death of Madhu is not due to Police torture. Even though the witness was also vehemently cross examined by the counsel for the defence, nothing was brought out to disbelieve or shatter his opinion that the death of Madhu is not a case involving Police torture.

114. PW98 (Additional witness) is the Nodal Officer of BSNL, through him Ext.P161 series call data record, Customer Application Form, 65B certificate etc are marked. It is pertinent to note that none of the counsel for the accused cross examined this witness, it means that there is no dispute with regard to the call data records, customer application form, 65B certificate produced by this witness.

115. PW99 (Additional witness) is the Nodal officer of reliance Jio Info-com, through whom Ext.P162 series call details, customer identification form, 65B certificate etc were marked. Though this witness was subjected to cross examination, nothing was brought out to find that the documents submitted by the witness is not genuine.

116. PW100 (Additional witness) is the present Attappadi Tribal Taluk Tahsildar who has issued Ext.P163 caste certificate of Madhu in response to summons issued to him u/s. 91 Cr.P.C. He deposed that Madhu belonged to Hindu-Mudukar, a member of ST

community. The answers given PW100 further reveal that he has arrived at such conclusion based on his enquiry and on the basis of the report of the Village Officer. The back file of the caste certificate is marked as Ext.P163(a). It contains the school admission register of Madhu, ration card of Madhu etc. According to the witness, the father of Madhu was a member Hindu-Mudukar community and Madhu was following the caste of his father. Though this witness was subjected to lengthy cross examination, nothing was brought out to disbelieve his testimony and caste certificate.

117. PW101 (CW121) is the Successor of PW97, who conducted further investigation in this case and produced Ext.P88 series sketch and scene plan and prepared Ext.P9 and P10 annexure scene mahazars. In fact the considerable portion of the investigation was conducted by PW97 itself. With regard to some additional sketch, plan and mahazar of some place of occurrence Ext.P9, P10 and P88 series were produced by PW101.

118. PW102 is the Assistant Superintendent of Police, Palakkad who was holding charge of Agali DySP during the period 06.12.2022 to 12.12.2022. During that period the SD card containing the video recording of the postmortem examination of the body of Madhu which was received back from National Human Right Commission was traced out and produced before court in response to summons issued u/s.91 Cr.PC. The covering letter addressed by National Human Rights Commission is marked as Ext.P166 and SD card is marked as Ext.P167. The covering letter addressed by the witness is marked as Ext.p166(a). This witness was not cross examined by the counsel for the accused despite having given opportunity.

119. PW103 is the Police Photographer of DCRB, Thrissur, Rural, who has video recorded, the postmortem examination of the body of Madhu and identified Ext.P167 SD card. He has also issued Ext.P168 65B certificate. He deposed that it he who had video graphed the postmortem examination. During examination the witness deposed that postmortem examination will

not be recorded continuously and it will be recorded in part by part to save space in the memory card. Ext.P167 memory card was played in the court by using laptop and the same is identified by PW103. None of the counsel for the defence cross examined this witness.

120. PW97 is the Investigating Officer who conducted the entire Investigation in this case. According to him, while he was working as Dy.SP, SMS Unit, Agali Sub Division as per the Inspector General of Police he has taken over investigation of this case on 23.02.2018. On 23.02.2018, he has seized MO26 series dress worn by Madhu at the time of his death as per Ext.P61 seizure mahazar. These dresses were collected by SDM at the time of conducting inquest. MO26 dresses were produced before court as per Ext.P97 property list. The sample collected by the Scientific Officer namely Rini Thomas were seized as per Ext.P55 and P79 seizure mahazars, the same was produced before court as per Ext.P98, P114 property list. The sack and other material objects that was kept in the Police Jeep while taking Madhu into the custody and other material

objects in that sack were seized. MO3 is the sack and other items of property found in MO3 sack are MO16, MO31 series, MO20 series MO33 series, MO34, MO18 series, MO21, MO36, MO37 series, MO12 and MO2 etc. MO2 is zip alleged to be used for tying hands of Madhu. Infact it is identified by PW8, Suresh. These items were produced before the court as per Ext.P99 property list. On 24.02.2018, the Investigation Officer prepared Ext.P21 scene mahazar. During examination before court he has narrated the contents of scene mahazar as Mukkali junction. Thereafter, on 24.02.2018 at about 4.00 pm, he along with his team and Scientific Officer namely Rini Thomas proceeded to yet another scene of occurrence at Aandiyallachal forest. The material objects collected by the Investigating Officer from that forest area was also identified by him. Ext.P43 is the scene mahazar with respect to the Aandiyallachal forest. MO4 series, MO6, MO7 MO9, MO10 series, MO14, MO19, MO15 series, MO1, MO17 series, MO8, MO12 series, MO13, MO19 series, MO32 series, MO22, MO5 series etc were seized by PW97 from Aandiyallachal forest. These items of

properties were produced before court as per Ext.P100 property list. Thereafter, on 24.02.2018, the accused Nos. 1 to 16 were arrested as per Ext.P101 series to P103 series arrest records. These are arrest memos, arrest intimations and Inspection memos of accused Nos. 1 to 11. The Investigating Officer seized MO27(d) mobile phone from Aneesh (A4). The photos and videos that is found in MO27(d) mobile phone were also identified by PW97 during examination before court when the contents from Ext.P92(a) pen-drive was played before court. MO27(d) mobile phone was seized from accused No.4 as per Ext.P66 seizure mahazar and the same was produced before court as per Ext.P104 property list. MO27 mobile phone was seized from Sidhique (A7) and from that mobile phone MO27(e) memory card was also seized. These were seized as per Ext.P62 seizure mahazar and the same was produced before court as per Ext.P105 property list. MO27(a) mobile phone was seized from Radhakrishnan (A5) as per Ext.P63 seizure mahazar and the same was produced before court as per Ext.P106 property list. It is to be noted that, that particular mobile phone has got a secrete password

bearing No.3311 with the help of Vinu, working in District Police Cyber Cell this mobile was opened. The contents of this mobile phones were also identified by the Investigating Officer when contents in Ext.P92(a) pen-drive was played before court. Likewise, MO27(b) mobile phone was seized from Najeeb (A9) as per Ext.P64 seizure mahazar and the same was produced before court as per Ext.P107 property list. MO27(c) mobile phone was seized from Ubaid (A8) as per Ext.P65 seizure mahazar and the same was produced before court as per Ext.P108 property list. Likewise, MO25 mobile phone used by Hareesh (A14) was produced by the relative of Hareesh namely Aanand and the same was seized as per Ext.P58 seizure mahazar and the same was produced before court as per Ext.P137 property list. The videos and photos in that mobile phone with regard to the incident was also identified by PW97 when Ext.P92(a) pen-drive was played before court at the time of his examination. The Investigating Officer further prepared Ext.P109 report adding penal provisions in the original FIR and further filed Ext.P110 report requesting the Sub Divisional Magistrate Ottapalam

to transfer records of this case to this court. The Investigating Officer filed Ext.P111 address report of the accused before court. As per Ext.P112 remand report the accused persons were produced before court on 25.02.2018. The materials collected by the doctor who conducted postmortem examination was seized as per Ext.P56 seizure mahazar. These material were produced before court as per Ext.P113 property list. The blood samples of accused Nos. 1 to 16 were collected as per Ext.P51 seizure mahazar and the same was produced before court as per Ext.P115 property list. Vehicle No.KL-11-H-8559 used by accused No.9 was seized as per Ext.P28 seizure mahazar. Likewise, vehicle used by first accused was seized as per Ext. P29 seizure mahazar. These vehicles were produced before court as per Ext.P116 property list. Ext.P87 series note books of Prasad Varcky, Mohandas and Sujilal were seized as per Ext.P117 seizure mahazar. These were produced before court as per Ext.P118 form 15. The manual GD of Agali Police was seized on 25.02.2018 as per Ext.P119 seizure mahazar. The Manual GD is marked as Ext.P85 and the relevant pages are marked as Ext.P85(a),

the same was returned to WCPO as per Ext.P84 receipt. On 26.02.2018, the Investigating Officer has examined the CCTV footages of Sreerag bakery conducted by accused No.14 with the help of Vinu, CPO from District Cyber Cell, Palakkad. On that day itself, MO28 DVR and MO28(a) adapter were seized as per Ext.P120 seizure mahazar. It is deposed by the Investigating Officer that in that areas there is frequent power failure and hence to avoid data loss and hash value of DVR were not taken. According to the Investigating Officer with the help one Aanand (PW43), Sreerag bakery of Hareesh (A14) was opened. These DVRs and adapters were produced before the court as per Ext.P121 property list. Meanwhile, the Investigating Officer made arrangement for collection of caste certificate of accused and caste certificate of deceased Madhu. The photographs of the accused persons were taken with the help of Lamiya Studio, the photographs produced are marked as Ext.P30 series and these were seized as per Ext.P69 seizure mahazar and the same was produced before court as per Ext.P122 form 15. The GD of Anavayil Forest Station was seized as

per Ext.P123 seizure mahazar on 28-02-18, the same was given to Tribal Forest Watcher on interim custody as per Ext.P124. Ext.P125 is the original GD that was produced before court during the course of examination. Ext.P126 is the custody application filed by the Investigating Officer seeking Police custody of the accused Nos.1 to 11. The DVRs and adapters from Anavai Forest Station was seized as per Ext.P44 seizure mahazar. MO23 and MO23(a) are the DVR and adapter seized from Anavai Forest Station. The same was produced before court as per Ext.P127 property list. On 02.03.2018 the CCTV footages of Valliyammal Gurukulam at Mukkali was examined and accordingly MO29, MO29(a) DVRs and adapters were seized as per Ext.P31seizure mahazar and the same was produced before court as per Ext.P128 property list. Likewise, the call data records were also obtained and seized as per Ext.P59 seizure mahazar. On 04.03.2018 the Xylo car bearing No. KL-32-B-5959 used by A15 was seized as per Ext.P15 and the same was produced before court as per Ext.P130 property list. The vehicle bearing No. KL-05-AJ-498 used by A13 was seized as per Ext.P32 seizure

mahazar and same was produced before court as per Ext.P131 property list. Based on the confession statement given by A3, MO24 weapon was seized as per Ext.P52 recovery mahazar. Ext.P132 is the relevant portion of confession statement of A3. MO24 weapon was produced before court as per Ext.P133 property list. The vehicle bearing No.KL-50-D-2908 was seized as per Ext.P70 seizure mahazar and the same was produced before court as per Ext.P134 property list. For seeking custody of accused No.11, 14, 15 and 16 Ext.P135 custody application was filed before court. The remaining persons were produced before court after police custody as per Ext.P136 report. The registration particulars of the vehicle involved in this case was obtained from Joint RTO, Mannarkkad. Ext.P47 series are the vehicle registration particulars. The photographs produced by photographer of Pic Lab Studio containing photos of the place of occurrence and the videos were seized as per Ext.P71 seizure mahazar and the same was produced before court as per Ext.P139 property list. Ext.P33 series are the photographs and videos produced from Pic Lab Studio. The relevant visuals that was

extracted from the CCTV footages of Ponniammal Gurukulam, Sreerag Bakery, Anavai Forest etc were extracted by the Cyber Cell Expert, District Cyber Cell Office, Palakkad (Vinu) in a DVD and the same was seized as per Ext.P72 seizure mahazar. MO30 DVD contains relevant CCTV footages seized from above mentioned places. The material objects seized were sent for examination as per Ext.P141 forwarding note (copy). The DVR and mobile phones were sent to FSL, Thiruvananthapuram as per Ext.P142 forwarding note (copy). Ext.P35 and P38 are caste certificates of the accused. The screen shot of visuals circulated in face book and WhatsApp was produced by one Nikhil on 17.03.2018, that was seized as per Ext.P76 seizure mahazar. Ext.P143 series are the screen shot of facebook and WhatsApp group namely "Voice of Attappadi". These were produced before the court as per Ext.P144 property list. Ext.P39 caste certificate was obtained from Tahsildar, Mannarkkad. As per Ext.P67 seizure mahazar documents for treating Madhu in Mental Health Centre, Kozhikode, Govt. Tribal Specialty Hospital, Kottathara etc were seized and the same was produced before court

as per Ext.P145 property list. Ext.P48, P49 and P49(a) are the medical records of Madhu. Ext.P146 report was given to FSL. Final report of Cr.No.524/2016 wherein Madhu was the accused was produced before court and marked as Ext.P89. For substituting some of the penal provisions such as Forest Act, Ext.P147 report was filed. As the Investigation could not be completed within 60 days, Ext.P148 report was filed. The investigation of this case was continued as per Ext.P149 report and proceedings. Ext.P150 is the order of District Police Chief deputing some police officers to the investigation team. As per Ext.P57 seizure mahazar the CCTNS GD and its 65B certificates were seized. Ext.P90 and P90(a) are the CCTNS GD and the 65B certificate. These were produced before court as per Ext.P151 report. Ext.P46 O.P ticket was seized as per Ext.P60 seizure mahazar and the same was produced before court as per Ext.P152. The vehicle diary of Kl-01-BW-5724 was seized as per Ext.P77 seizure mahazar and the same was produced before court as per Ext.P153. The agreement with respect to felling of teak timber from forest entered between Abbas and DFO, Mannarkakd was

seized as per Ext.P73 seizure mahazar and the same was produced before court as per Ext.P154. Ext.P155 report was filed by the Investigating Officer for incorporating section 352 IPC in the FIR. Ext.156 report was filed for deleting section 27(1)(e)(iv) of Kerala Forest Act. All the accused persons were identified by the Investigating Officer in the open court during the course of examination. The IPDR showing the usage of facebook by Ubaid and Aneesh was seized as per Ext.P74. Ext.P68 series are the facebook business records and 65B certificate. Ext.P91 is the certified copy of IPDR and Ext.P91(a) is the 65B certificate. These documents were produced before court as per Ext.P157. Ext.P158 report was filed narrating the details of mobile phone used by the accused persons. Ext.P159 chemical analysis report was produced before court. Likewise, Ext.P46(b) requisition for medical examination of Madhu, Ext.P34 sketch of scene plan, Ext.P45 series details regarding reserved forest etc were also confronted to the witness and marked. Ext.P92 series Cyber Forensic report and 65B certificate, pen-drive etc were also identified by PW97. He has

recorded the statement of witnesses. Ext.P2 series, Exts.P4 series to P8 series , P11 series to P14 (series), P16 series to P25 series and P53 series case diary contradictions were proved through the Investigating Officer. The entire relevant portion of CCTV footages seized from Mukkali, ie from Sreerage Bakery, Ponniyammal Gurukulam, the CCTV footages from Anavay forest station etc were played in open court from Ext.P92(a) during the course of examination of PW97 and he identified the same. Likewise, the remaining photographs and videos extracted from the mobile phone seized from the custody of the accused were also played from Ext.P92(a) pen-drive. The witness has identified all the relevant photographs videos and all the accused persons in court. After completing the investigation he has filed the final report on 22.05.2018. Though the counsel for the accused persons have conducted lengthy, vehement and piercing cross examination for about two weeks nothing was brought out to disbelieve his testimony. All along, several suggestions were put to PW97 to make him to depose that he has intentionally conducted the investigation

in such a way as to save the Police personnel. But the Investigating Officer brilliantly denied all those suggestions. Despite all these piercing cross examination nothing was brought, even a single admission can be obtained from the mouth of the Investigating Officer probabilsing the defence set up by the accused persons.

DEFENCE VERSION :-

121. Defence case is of total denial. By canvassing the principle of last seen theory, invariably all accused persons contended that as Madhu died while he was in the custody of police, the latter is responsible for death of Madhu. Each and every fault on the part of the police was highlighted by the defence for buttressing their argument that it is a case of custodial torture. Non-compliance of procedure for arresting a person / taking custody of person, manual registration of F.I.R by PW83, hospitalisation of Madhu at C.H.C.Agali without taking Madhu to the nearest private hospitals, minor corrections in the hospital records, delay in conducting postmortem examination, power failure in Agali Police Station, non-

verification of CCTV footages in Agali Police Station by the Investigating Officer etc. were highlighted by the defence and contended that it is a case of custodial torture. The defence further contended that the police have influenced Dr.Lima Francis, Sub Collector, Ottapalam etc. for saving the police department from the allegation of police torture. Thus, in nutshell, the defence contended that it is a case of custodial torture. Apart from that, accused No.1 justified his visit in Mukkali on the relevant day in connection with some family affairs. In order to prove those contentions, accused No.1 has examined DW5 to DW8 and marked Exts.D20 to D23 and D25 to D30 documents.

DEFENCE EVIDENCE :-

122. On the side of the defence DW1 to DW8 were examined and Exts.D1 to D30 documents were marked.

123. DW1 is the present Senior Nursing Officer of Agali CHC, who has produced Ext.D13 casualty injection register of Agali CHC during the relevant period. She has also deposed about Ext.D6

postmortem register, Ext.D12 casualty OP register etc of Agali CHC during the relevant period. The evidence given by DW1 along with Exts.D6, D12 and D13 documents reveal that there are some corrections in Ext.D12 OP register. But on examination it is revealed that apart from the correction in the relevant entries there are correction in several other entries also. Likewise in Ext.D13 injection register also there is correction. It is found that instead of 4.25 pm it is written as 4.15 pm.

124. DW2 is the present Assistant Engineer of Agali Section KSEB, he has proved Ext.D7 invoice issued by KSEB, produced Ext.D14 complaint register of KSEB, Agali dated 22.02.2018, Ext.D15 LT interruption register of KSEB Agali dated 22.02.2018 and Ext.D16 HT interruption register of KSEB Agali dated 22.02.2018. As per the evidence given by DW2, no complaint is registered with regard to power failure in the Agali police station at the relevant time. At the same time, he admitted that invariably in all cases consumers will not make complaints during the time of power failure.

125. DW3 is the Assistant Engineer of 11 KV Sub Station, Mannarkkad, who has produced Ext.D17 interruption register of 33 KV Sub Station of Agali and Ext.D18 operators daily register of 33 KV Sub Station, Agali dated 22.02.2018. According to DW3, there is no power interruption in Mannarkkad 11 KV Sub Station during 5 – 5.30 pm on 22.2.2018. But there was interruption in between 6.35 pm and 7.13 pm. It is to be noted that Exts.D17 and D18 are with regard to major power failure in 11 KV and 33 KV Sub Stations. It will not contain details regarding the power failure in transformer level/LT connection interruption (page-7).

126. DW4 is the present Taluk Legal Services Committee Secretary, who has produced Ext.D19 petition filed by PW70, the unfortunate mother of Madhu for deputing Special Public Prosecutor.

127. DW5 is the son-in-law of A1 who has produced Ext.D20 to D24(a) series documents to prove that the daughter of A1 is married to DW5 at Mukkali and to show that the daughter of

A1 is staying at Mukkali. DW5 deposed that his daughter fell in love with another boy and later that girl eloped with her fiancée. DW5 deposed about the existence of a treasure box at Mukkali. He further deposed that in the shop conducted by A1 bakery items, grocery items, vegetables etc are there. According to him, his house is beside Mukkali-Anakatty road at a distance of 25-30 metres from Mukkali junction towards Anakatty. But his evidence was disproved by oral evidence of DW7. DW5 further identified the surroundings of Mukkali by watching the CCTV footages shown to him. At the same time, this gentle man could not identify the visuals of his father-in-law (A1). It is further evident from DW5 that his house has got vehicular access from Mukkali-Anakatty road. The evaluation of the evidence of DW5 reveal that he is giving false evidence before court with regard to certain material facts.

128. DW6 is the younger brother of A1. Whose name and details including mobile number found a place in Ext.P80 FIS. According to him, the house of DW5 is situated at a distance of 10-15 metres away from Mukkali junction beside Mukkali-Anakatty

road. According to DW6, he along with his elder brother (A1) and two children- PW45 and DW8 reached Mukkali on 22.02.2018 in connection with some family affairs. It is pertinent to note that DW6 has given evidence before court stating that his brother (A1) has shared his name and address to the police (page-7). Likewise, he has also shared his name and other details to Police (page-6). In fact, the evidence of DW6 proved that police persons have collected the name and details of some business persons at the time when Madhu was taken from Mukkali. Accordingly, DW6 and his elder brother (A1) has disclosed the name and details to Police. This evidence of DW6 is more than sufficient to conclude that these persons have come Mukkali having got knowledge regarding apprehension of Madhu. Had these persons are way-fares, or mere bystanders just like several other bystanders of nearly 75 - 100 persons, why these persons have shared their name and details to the police ?. In fact, when we appreciate the oral evidence of DW6 along with the video found in Q5 file containing video of the place near to police jeep at Mukkali while taking Madhu by police and the

conversation therein reveal that they have shared their name and details to police for the reason that theft occurred in their shops also.

129. DW7 is the present Secretary of Badariya Juma Masjid Committee, Mukkali, who has produced Ext.D25 minutes book of Juma Masjid Committee, Mukkali. This witness was examined to prove that on 26-08-20 some settlement talk was made with regard to the love affair of grant-daughter of A1 (Sadariya) with her boy friend. Infact, during examination he deposed that the house of DW5 is situated at a distance of 200-300 metres away from Mukkali junction beside Mukkali-Anakatty road (page-14). This material testimony of DW7 reveal that with regard to this relevant fact DW5, DW6 and DW8 are giving false evidence before court. According to him, for reaching the house of DW5 while coming from Anakatty side there is no need to come to Mukkali junction ie at about 200 - 300 metres ahead of Mukkali junction the house of DW5 is situated. This evidence of DW7 also reveal that, had A1 and party really wanted to visit the house of DW5 for meeting the daughter of

A1 there was no need to come to Mukkali junction. In fact the evidence given by DW7 improbabilise the whole defence set up by A1.

130. DW8 is the son of A1 who has accompanied A1 at the time when A1 reached Mukkali on 22.02.2018. He has also given similar version given by DW5 but his testimony reveal that he is also giving false evidence before court to save his father (A1). When his presence in xylo car while it was moving back from Mannarkkad road to Anakatty road was testified, he denied the same. However, a close scrutiny of the CCTV footages reveal that at about 3.51.08 pm this gentile man was walking towards Mannarkkad road from Mukkali and at about 3.52.36 pm onwards he is coming back to Mukkali junction in xylo car by sitting in the second row seat. The person with red coloured shirt who is sitting in xylo car is none other than DW8. When the relevant portion of CCTV footages was brought to his notice he emphatically denied. According to him, it is only a glare. Infact, this statement given by DW8 makes his testimony untrustworthy. At the same time, it is to

be noted that at the relevant time when A1 stamped Madhu while latter was sitting in front of the treasure box, DW5 was also there at the place. However, this gentle man, the young blood remain silent by controlling his emotions. This is a circumstance to find that age is not a determining factor to measure maturity.

131. Thus, on evaluation of the oral evidence of DW5 to DW8 reveal that their evidence improbabilise the defence case and rather strengthen the prosecution case.

132. Exts.D26 to D30 documents were also produced at the instance of A1 to prove the love affair of grand-daughter of A1. Exts.D1 to D4 series are contradictions in the statement of witnesses. Ext.D5 is the certified copy of Judgment in CC.1049/09. It reveals that Madhu was convicted in that case for offence punishable u/s.324 IPC and sentenced to undergo simple imprisonment for 3 months.

FIRST INFORMATION REPORT :

133. Originally, the criminal law was set in motion by PW83 by registering Ext.P80 F.I.S and Ext.P81 report under Section 174 of Cr.P.C at 5.15 pm on 22.02.2018. This F.I.S and report was *suo moto* registered by PW83 based on his own information regarding the death of Madhu. In that F.I.S., name of 7 persons were mentioned. But, they were not arrayed as accused in Ext.P81 report. Thereafter, inquest was conducted on 23.02.2018. Postmortem examination was conducted on 24.02.2018. As per the result of postmortem examination, it is found that injury Nos.1 to 15 stated in Ext.P82 postmortem report are the cause of death of Madhu. Accordingly, penal provisions including 302 IPC were incorporated in Ext.P81 report and investigation was commenced by PW97.

PLACE OF OCCURRENCE :

134. The first place of occurrence is a place namely Aandiyallachaal, a rocky place in Ajumudi hill area of Silent Valley Reserved Forest situated at a distance of 2 km towards north-east of Bhavani River forming part of Padavayal Village, Pudhur Panchayat,

Mannarkkad Taluk. Ext.P43 is the scene mahazar of the first place of occurrence. It is formally proved by PW53. These places were identified by PW53 and PW62 when video of this place was played before court. Ext.P37 is the scene plan of first place of occurrence. It is formally proved by PW49. The contents of Ext.P43 scene mahazar is proved by PW97.

135. The second place of occurrence is the immediate northern side of concrete treasure box of Ponmala Dharmasastha Temple, Mukkali installed at a distance of 4.9 metres away from the south-eastern corner of Sreerag Bakery Cool Bar situated at Mukkali junction. The place lies on the western side of Mannarkkad-Anakkatty public road and forming part of Kallamala Village, Mannarkkad Taluk. Ext.P27 is the scene mahazar of the second place of occurrence. It is formally proved by PW33. Ext.P34 is the scene place of the second place of occurrence. It is formally proved by PW37. During examination, PW97 deposed about the contents of Ext.P27 scene mahazar. Ext.P9 is the annexure seizure mahazar of second place of occurrence. Ext.P10 is the yet another annexure

scene mahazar with respect to the place at Vandikkadavu through which Madhu was brought to Mukkali. Exts.P36, P88 and P88(a) are the annexure scene plans. These were formally proved by PW48 and PW90. Exts.P9 and P10 was prepared by PW101, the Dy.SP who conducted further investigation in this case.

APPRECIATION OF EVIDENCE :-

136. To prove the case, prosecution has examined altogether 103 witnesses as PW1 to PW103 and marked EXts. P1 to P168 documents. MO1 to MO37(a) were also marked. Out of these huge number of witnesses only a few material witnesses supported the prosecution case. To prove the overt acts of accused, prosecution has examined PW2 to PW31 and PW63. They are cited by the prosecution as eye witnesses of several incidents happened at different places starting all the way from Aandiyallachaal, a place in silent valley reserve forest to Mukkali junction. The distance between these two places comes about 3 kilo meters. After forming an unlawful assembly at Mukkali some of the accused went to the

Aandiyallachaal reserve forest for apprehending Madhu. When such unlawful assembly came back to Mukkali, along with Madhu the remaining accused have joined in that unlawful assembly knowing the common object of such unlawful assembly. At Mukkali also some overt acts were committed by some of the members of such unlawful assembly by sharing the common object of unlawful assembly. That is the prosecution version. Taking into account of the fact that the incident occurred at difference places, I find it convenient to appreciate evidence against each of the accused persons separately or in groups. It seems that will be the convenient method of approach to analyse the evidence.

137. **Appreciation of Evidence against A1:-** First let me examine the role of accused No.1 in the case. Whether the accused No.1 joined the unlawful assembly and shared the common object of such unlawful assembly will be discussed while answering point nos 7 to 11. Now, let me examine the factual aspect of the evidence that is available in the prosecution records, which are incriminatory to the first accused. PW2, PW8 and PW19 are three witnesses who

have given evidence against A1. In fact PW8 and PW19 are the core witnesses examined by the prosecution to prove the role of first accused in this case. PW2, though declared as hostile witness there are several facts revealed from his evidence which are incriminatory to A1. PW2 was declared hostile at the instance of learned Special Public Prosecutor for the sole reason that he has not supported the exact overt act alleged to be committed by first accused. It is to be noted that PW2 has deposed before court that he has seen the first accused lifting his leg for stamping Madhu. But according to him, he has not witnessed the actual overt act of stamping. The then learned Special Public Prosecutor has taken the risk of declaring PW2 as hostile to the prosecution case. In fact an evaluation of oral evidence of PW2 reveals that in all other aspects he supported the prosecution case. In fact PW2 is the one and only witness who has given evidence incriminating the entire accused persons. It is PW2 who has identified most of the accused persons (15 out of 16, except A12) after watching their visuals in the CCTV footages. PW2 has also identified these accused persons in the dock also. Thus, the

relevancy of the oral evidence of PW2 assumes much importance rather gives much weightage. Court is justified in accepting such portion of evidence of hostile witness to prove the prosecution case, if it found acceptable. **(AIR 2020 SC 3863) (2022KHC 727)**.

138. In one way the evidence of PW2 gives more weightage than the oral evidence of PW8 and PW19 even for incriminating the first accused in this case. Had PW2 not identified all these accused persons by watching the visuals in CCTV footages, it would have been difficult for the court to identify the accused from the CCTV footages. No other witness examined by the prosecution including PW8 and PW19 could identify all the accused by seeing their visuals in the CCTV footages. Had PW2 not given any evidence by identifying all those accused persons by watching the CCTV footage, the entire burden should have been on the part of the court to find out each accused from the visuals. True that in addition to the evidence of PW2 there is evidence of PW95, the Expert who has produced Ext.P92, FSL report and Ext.P92(a) pen-drive. (Time in CCTV may not be the exact time. Time is referred only for easy

understanding of CCTV footage)Wherein he has identified all these accused persons except first accused by seeing their photographs, the CCTV footages and the videos in mobile phone. These facts are very clearly stated in Ext.P92 report. It so to be noted that during examination in chief PW2 has very clearly deposed before court that he has seen the first accused lifting his leg for stamping Madhu. PW2 has clearly identified first accused in the dock and he has also identified the visuals of first accused in the CCTV footage, when the CCTV footages of Mukkali was shown to him. But when PW2 was cross examined by the counsel for the accused a suggestive question was put to him stating that he does not know for what purpose Hussain (A1) lifted his leg. In answer to that question PW2 deposed that he don't know. Taking advantage of this answer to the suggestive question the counsel for the first accused argued that, it is a place of rocky area and to be more alert while walking through that place the first accused might have lifted his leg and for that reason alone it cannot be held that first accused has lifted his leg for stamping Madhu. The CCTV footages of that place reveal that very

close to that concrete treasure box of Ponmala Sree Dharmasastha Temple there is no rocks. It is evident from Ext.P33(a) DVD containing video footage of place of occurrence at Mukkali that there is some flattened rock at some distance away from the treasure box. But, there is no rocks at the place where Madhu was sitting. It seems that taking into account of some rocks shown in Ext.P34 scene plan such a contention was taken. But, Ext.P33(a) DVD containing video file reveal that adjacent to the treasure box, there is no rock. In fact, it is a flat space.

139. It is to be that the CCTV footages will clearly reveal the presence of PW2 at the material time when the so called stamping was made by first accused. [At time 3.36.(10-13)pm]. The exact position of PW2 where he was sitting or spending his time at Mukkali junction is also very much important. It seems that he was sitting at a distance of 4 or 5 meters away from that gathering. Anyway PW2 has not deposed the exact overt act committed by first accused.

140. The next witness examined by the prosecution to prove the overt act of first accused is PW8, Suresh. According to him, he reached at Mukkali from Mannarkkad. By that time he has seen that Madhu was sitting in front of the treasure box installed in front of Sreerag Bakery at Mukkali junction and he found first accused stamping Madhu as well. Likewise, PW8 deposed that at that time when he saw Madhu at Mukkali his hands were tied by using MO2 zip. He identified MO2 zip also. The presence of PW8 at the time some were near to 3.30 to 3.35 pm is evident in the CCTV footages itself. The presence of PW8 is also not disputed during all these time, except at the exact time, ie, at 3.36 pm onwards PW8 is not there within the capturing area of the CCTV camera (Q2 file in Ext.92(a) pen-drive). This was highlighted by the counsel for the accused and my attention was drawn to the CCTV footages at the relevant time. The so called incident of stamping of Madhu by first accused took place at 3.36.10 seconds to 13 seconds. in between these 3 seconds the so called overt act committed by A1 happened. According to the prosecution during that fateful moment the first

accused stamped Madhu while the later was sitting in front of the treasure box at Mukkali.

141. Now let me examine whether PW8 was there at the relevant time at 3.36 onwards at Mukkali junction near to that gathering wherein Madhu was sitting in front of the treasure box. A meticulous examination of the CCTV footages reveal that from 3 pm onwards PW8 was there near to the Mukkali junction and at some point of time the presence of PW8 is there in the CCTV footages. Exactly at 3 hours 35 minutes 5 seconds the PW8 Suresh is found to be moving towards the Keeripara road and thereafter he is coming back after 3 hours 52 minutes only. As per the prosecution case the alleged stamping of Madhu by first accused took place at 3.36.10 to 13 seconds. During this relevant time the presence of PW8 is not there within the capturing area of CCTV camera, and during these time the presence of PW8 is not visible in the CCTV footages. According to the counsel for the first accused PW8 was not there at the relevant time and he was purchasing some grocery items from the shop of Usman and he came back only at 3.52.05 pm. Infact the

CCTV footages that is played in court probabalise such an argument canvassed by the counsel for the first accused. PW8, Suresh was testified with respect to these facts, the answer given by him is that he was standing on the back side of that treasure box at the relevant time when first accused stamped Madhu. It is true that the CCTV footages does not have 360 degree camera. CCTV camera does not coverage all the four sides of that treasure box wherein Madhu was sitting. In the CCTV footages only two besides of the treasure box is visible. We are at complete darkness on the other two sides of the treasure box to identify these two sides of that treasure box. Court is unable to ascertain the presence of PW8 on the remaining two sides of the treasure box. At any rate, so long as the presence of PW8 cannot be detected in front of that treasure box at the relevant time of 3.36.10 - 13 pm, this court is inclined to accept the argument canvassed by the counsel for the first accused that at the relevant time PW8 was not there and there is no chance of witnessing the role of first accused by PW8. In the absence of any evidence or any CCTV footages that the Suresh was there on the back side of that

treasure box, court has no other option than to accept the argument of learned counsel for the first accused. At least the counsel for the first accused could create a fair doubt regarding the presence of PW8 at the relevant time in or around the treasure box. Needless to say that only first the accused is entitled to get that benefit of doubt and hence I find that the oral evidence of PW8 cannot be accepted in toto. His evidence cannot be accepted without a rider as pointed out by the counsel for first accused.

142. Now coming to the oral evidence of PW19. PW19 is yet another witness examined by the prosecution to prove the role of the first accused. It is true that the presence of PW19 is visible in the CCTV footages at several time in Mukkali junction itself. But the question is not whether he was present here and there at Mukkali junction. The question is whether PW19 was there in front or around that treasure box at 3.36.10 seconds to 13 seconds. It is evident from the CCTV footages that is seized from Ponniyammal Gurukulam (Q3) that PW19 was moving towards the southern side of that Joly's shop and thereafter he spends some considerable time there and

then moving towards the capturing area of CCTV camera at 3.25 pm only (Time may not be the exact time). Thereafter, he is moving towards Silent Valley road in an autorickshaw. Thus, at the relevant time PW19 was not there at Mukkali junction. As per the oral evidence adduced by witnesses in this case the shop of Joly is situated at a distance of 50 to 100 meters away from Mukkali junction. It may not be possible to watch the incident at Mukkali junction by standing at that place near to the Joly's shop. Thus, a comparative study of the CCTV footages in Q2 and Q3 file reveal that PW19 was also not there at or in front of the gathering at Mukkali to witness the overt act allegedly committed by the first accused. Accordingly the counsel for the first accused argued that neither PW8 nor PW19 has not witnessed the incident. Rather there is no chance of witnessing the alleged incident by PW8 and PW19. As discussed in the case of PW8, absolutely there is no evidence available before court that PW19 was also there on the back side or somewhere near to the treasure box. Any how in the CCTV footages at the relevant time the presence of these two

witnesses cannot be seen. If that be so, even though these witnesses have deposed that they were present somewhere near to Madhu, I am constrained to accept the argument canvassed by the counsel for the first accused that hardly there is any chance to witness the alleged overt act committed by the first accused.

143. In fact, had the counsel for the first accused not pointed out this material fact of the absence of PW8 and PW19 within the capturing area of CCTV camera, the court would have blindly accepted the oral evidence of PW8 and PW19 to incriminate first accused in this case based on their evidence alone . This would have lead to a wrongful appreciation of evidence. Because in all other aspects the evidence of PW8 and PW19 appears to be cogent and convincing. Thus counsel for the first accused could succeed in establishing that the only two witnesses who have supported the prosecution case had no chance to witness the so called incident of stamping of Madhu by A1. It is very much material in this case and I am sure that only after a meticulous examination of the CCTV footages in repeated times can find out this lacuna in the prosecution

evidence. The court appreciates the way in which the counsel for the first accused has examined the CCTV footages so as to find out the real truth, rather acknowledges such effort or endeavor of the counsel for the first accused.

144. Incidentally, the counsel for the accused has canvassed an argument that PW19 has got no prior acquaintance with the Hussain (A1) and it was for the first time he has seen Hussain at Mukkali on the date of incident. Thereafter, he was taken to Police Station, and there also Hussain was shown to PW19 in several occasions and his photographs were also shown to PW19 in several occasions and he has identified first accused with the help of the police officials. It is further argued that in this case no test identification parade was conducted and hence the identification of first accused by PW19 is to be ignored. Admittedly no test identification parade was conducted in this case. The explanation offered by the Investigating Officer is that immediately after the incident the videos and photos of accused persons were happened to be circulated in social media and hence it was a meaningless task to

conduct the test identification parade. But both these witnesses have identified first accused in court along with other accused persons when they were in accused dock, which is substantive in nature. So I am not inclined to accept the argument canvassed by the counsel for the first accused that identification made by these witnesses are to be ignored. Apart from all these the oral evidence of PW8 reveal that he knows first accused for several years even before the incident. During examination before court also PW8 has deposed about the place of business of Hussain and what he is doing etc. This reveal that he has got prior acquaintance with Hussain even before the incident in this and hence the identification made by PW8 can never be ignored.

145. Thus, the oral evidence of PW8 and PW19 may not be sufficient and it can not be taken into account to prove the role of the first accused in this case. It is well settled that men may lie but the circumstance will not. Likewise, it is worth to say that “men may lie but machine will not”. In order to prove the innocence of first accused, in order to prove that PW8 and PW19 are giving false

evidence before court, in order to prove that PW8 and PW19 are not there near to the place where Madhu was sitting at the relevant time etc A1 heavily relied on the CCTV footages. That is the CCTV footages in cam-1 and cam-3 of Q2 hard-disk seized from the shop of A14, Hareesh (Sreerag Bakery). As per the prosecution case in between 3.36.10 seconds and 3.36.13 seconds (pm) the so called incident of stamping of Madhu by first accused took place.

146. In order to prove that incident the prosecution also heavily relied on the very same CCTV footages in both these cameras. A meticulous examination of the CCTV footages collected from camera-1 and camera-3 of Q3 DVR reveal that in between 3.36. (pm)10 seconds and 3.36.13 seconds a sudden disturbance is happening in that crowd. That disturbance is very clear in camera 3 of the CCTV footages. From the CCTV footages of camera-1, at 3.35 pm 15 seconds onwards it could be seen that A1 is coming near to the gathering wherein Madhu was sitting. A1 was walking towards the gathering and entering into that gathering. After entering into gathering the first accused is not visible as he is a short man

compared to other members who have gathered in that place. But the CCTV footages makes it clear that first accused entering into the gathering that is evident from the footages in cam-3. At 3.36.10 seconds to 13 seconds there is a sudden movement / disturbance occurring in that gathering. Spontaneously A7 was standing up immediately and rising his hands towards A1. This gestures of A7 is clearly visible in the CCTV footages. The person in black shirt is A7. Immediately after this incident / disturbance the persons who were standing here and there were rushing to that spot including Hareesh, A14. The CCTV footages in Q2 (Camara-1) reveals that at the relevant time after the so called stamping when A1 came out of the gathering the persons who standing inside that gathering were staring at A1. The persons who are standing in the near places are also rushing to the spot. Why I am emphasizing all these movements of A7, who was sitting in front of Madhu at the relevant time and other movements of bystanders who have gathered there etc is that, the movements of each and every spontaneous / contemporaneous action of these persons are relevant under S.6 of

Evidence Act. In my view, all these gestures or actions assumes importance and are relevant u/s. 6 of Indian Evidence Act. In this context, illustration (a) of section 6 of Indian Evidence Act assumes importance.

As per illustration (a) of section 6 Evidence Act–

“A is accused of the murder of B by beating him.

Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact”.

147. In fact the mannerism or gestures of A7 who stood up immediately, other persons who are staring or looking at A1 immediately, the person who were standing near to that place were rushed to the spot immediately including A14 are relevant facts u/s.6 of Evidence Act. All these facts will come within the meaning of “whatever done by the bystanders” as stated in the illustration (a) of S. 6 of Evidence Act. It is true that the evidence of PW8 and PW19

creates a doubt with regard to their presence at the relevant time. But the machine which captured this incident will not discriminate A or B whether it is A1 or A7 or A14 etc. The court cannot ignore this important material. This relevant fact assumes much importance especially when the entire witnesses examined by the prosecution to prove the occurrence have turned hostile to the prosecution case. Can the court or accused persons say that the goddess of justice is blind folded and hence this court is not expected to see the CCTV footages and ascertain the role of A1 and find out the truth from the CCTV footages. It can never be. A1 can never deny these vital CCTV footages as he is also heavily relying on it. The court is expected to examine all these materials placed before the court and arrive at a right conclusion.

148. In this context, it is worthwhile to rely on the decision of our Hon'ble High Court of Kerala reported in **2018 (3) KHC 725** (para-36). I find that the CCTV footages are to be treated as silent witnesses. These witnesses will not support anyone. This will remain as an independent and impartial silent witness. Whatever

images that was seen in the camera will be feed in to the hard-disk. I find that the CCTV footages in between the time span of 3.36.10 to 13 pm in Cam 1 and cam 3 of hard-disk seized in the Sreerag Bakery (Q2) conducted by accused No.14 proves the role of first accused in stamping Madhu. No other witnesses is required. As rightly pointed out by the counsel for the first accused the evidence of PW8 and PW19 cannot be believed to prove the exact role played by first accused. But the counsel for the accused cannot turn round and say that the CCTV footages cannot be believed, rather it is first accused who has whole heartedly accepted the CCTV footages. As rightly contended by the the first accused that so long as the accused persons have actively participated in the trial by accepting the CCTV footages, now it may not be correct to deny the genuineness of the CCTV footages. In fact, first accused cannot ignore what was seen in the CCTV footages in between 3.36.10-15. The CCTV footages of this crucial time reveals the overt act committed by the first accused.

149. It is to be noted that the presence of first accused at Mukkali is admitted by him. According to him, he came to that place

for a definite purpose relating to some family affairs. According to him, the grand-daughter of first accused fell in love with another boy and as informed by his daughter he along with his two children Niyas (DW8) and Riyas (PW45) and his younger brother (DW6- Abdul Rahman) came to Mukkali. According to him before going to the house of his daughter they wanted to buy some sweets for the children and for that purpose they came to Mukkali junction. By that time it is noticed that a gathering is there in Mukkali and somebody was sitting inside a group of persons. Due to curiosity he along with other persons have come in front of that gathering but he could not see who is the person who is sitting inside and later only he came to know that it was Madhu and somebody has brought Madhu from forest and all those things.

150. Thus, now let me examine whether there is any probability of such a defence set up by the first accused. First of all it is to be noted that the role of first accused in stamping Madhu is clear from the CCTV footages, which I have already discussed. Now the other visuals in the video files in mobile seized from Ubaid-(A8)

[Q5 file in Ext.P92(a)] reveal that first accused is standing there very close to the back door of the Police Jeep at the time when Madhu was taken to the Police Jeep. His presence close to the back door of Jeep is very clear in the video. That means he has spent some considerable time at Mukkali and he has left that place only after taking Madhu by Police, that too after disbursing of that mob. That is evident from CCTV footages in Q2 file. It is to be noted that after getting down from his xylo car he is straight away came near to the gathering. What does it mean? Can it be believed that person who came to Mukkali in connection with his family affairs alone will spend such a considerable time of more than 20 -25 minutes in that place due to curiosity ? It can never be excepted from a prudent man.

151. Likewise, coming to the story of purchasing of bakery, it is evident from the oral evidence of DW5 that in the shop of first accused itself bakery items are available. Can it be believed that a shop owner who sell bakery items will purchase bakery items from another shops to his grand children especially when Mukkali where

first accused came is just 8 KMs from his shop and he is coming from his shop itself. It is further to be noted that even though a defence was taken only for purchasing bakery item he visited Mukkali absolutely there is no evidence to show that he has purchased any bakery items. No bills are produced. He cannot simply say that he is not supposed to keep the bills for this long time, especially when the first accused was taken to custody on 22.02.2018 itself. Had he got bills he could have kept it safe. That would be a very valuable piece of evidence to prove his defence. Or else he could have examined the so called bakery owner to prove the purchase of bakery items.

152. According to A1 on that day he came Mukkali to visit the house of DW5, where the daughter of A1 resides. It is admitted by DW5 that his house is in Anakkatty road before reaching Mukkali. According to DW5 and DW8 the house of DW5, is situated at a distance of 10 to 25 meters from Mukkali junction. But DW7, the Secretary of the mosque deposed that the house of DW5 is situated at a distance of 200 to 300 metres away from Mukkali junction towards Anakkatty road. Then why he came to Mukkali

junction by skipping the house of DW5 by travelling this much distance? In fact it seems that the examination of the DW7 has improbabilised the defence set up by the first accused.

153. Niyas (DW8) the son of first accused was examined to prove that he purchased bakery items. According to him, he purchased bakery items from the bakery and boarded the vehicle in front of the bakery shop. At the same time, it is evident from the CCTV footage that at 3.52.36 pm the Niyas was inside the vehicle when the vehicle was passing towards Anakatty road from Mannarkkad road. When his attention was brought to the CCTV footage he denied it and according to him, it is not he who is inside the vehicle and it is only a glare. But the exact position of the Xylo car when the second row of that Xylo car passes in between the red coloured taxi and an auto rickshaw that is parked at Mukkali reveal that it is none other than Niyas who is sitting inside the car. (evident from CCTV footage Q2 – Camera-3). Likewise, at 3.51.08 seconds it is found that Niyas is moving towards Mannarkkad road where xylo car is admittedly parked, for entering into the Xylo car . When these

visuals are brought to notice of Niyas he emphatically denied it. Again “only men can lie not the machine”. The CCTV footages at 3.51.08 and at 3.52.36 pm in Q2 file (Camera-3) will reveal that DW8, the son of A1 is giving false evidence before court only to save his father A1 and the same is the case with the evidence of son-in-law (DW5). DW5 is a person who can see everything in CCTV except the visuals of his father-in-law. All these witnesses have deposed that the front side of the house of DW5 is facing towards Anakatty road. Then why they came to Mukkali junction?. Another story also was cooked up by saying that there is an alternate pathway through the Silent Vally road.

154. When we examine the oral evidence of the defence witnesses DW5, DW6, and DW8 etc., it reveal that all these witnesses are intentionally giving false evidence before court. In fact the evidence let in by DW7 discredit the evidence of DW5, DW6, and DW8. The defence set up by the first accused that they reached that place in connection with the family affair of the issue regarding the grand-daughter cannot be believed even for a moment. It is true

that the daughter-in-law had got some love affair and later that girl has eloped with her boy friend. It is crystal clear that taking advantage of the Ext.D25 to D30 documents the first accused has moulded a defence justifying his presence at the relevant time in Mukkali. Absolutely there is no convincing evidence available before court to find that these persons ie, first accused, his two children and DW6 have come to that spot in connection with some family affairs.

155. It is further to be noted that as per the version of PW28 and PW30 the police party who have taken Madhu from Mukkali has collected the name and details of the shop owners wherein theft took place. The words of police persons in video in mobile phone of A8 (Q5) file proves these facts. In the last portion of the video the police is asking “who is that person related to rice”, by that time somebody is responding that it is Mathachan. A1 has also shared his name and details including phone number of his son to the police. That is proved by DW6, the brother of A1. According to him he has also shared his name and details to police. Had no theft

took place in his shop why A1 has shared his name and details including the phone number of his son to police. This particular evidence is sufficient to hold that theft occurred in the shop of A1 and DW6 also. Under the belief that it was committed by Madhu, A1 and others came to Mukkali for causing some hurt/attack to Madhu and entrust him to police. That is the only possible inference that can be formed based on the available materials. The circumstances of the case, the time spent by first accused and others in Mukkali, the CCTV footage at the relevant time at 3.36.10 pm onward proves all these facts. It is true that for the defence, it is sufficient to establish a probable defence. But the defence evidence itself prove that the defence set up by the first accused is not at all probable. The defence story can never be believed. It is against the common course of human contact. Apart from all these the overt act of first accused is evident from the CCTV footages itself. So long as the first accused admit the CCTV footages he has no other go than to accept the CCTV footages at 3.36.10 pm also. The entire CCTV footage is to be accepted. He cannot accept the CCTV footage for a few minutes

which are favourable to him and to reject the remaining part which are unfavourable and incriminating to him. Law does not permit such piecemeal acceptance of evidence.

156. It is to be noted that several persons from distant places have reached Mukkali after getting knowledge regarding the apprehension of Madhu. PW28, PW29 and PW30 are persons of Kalkandy, Kakkuppadi etc. They are conducting shops at these places. As per their evidence, theft took place in their shops. How they got information regarding the apprehension of Madhu is not brought out in evidence. But the evidence of these witnesses reveal that they got knowledge regarding the apprehension of a thief in Mukkali and accordingly, they came to Mukkali. Likewise, somehow A1 also obtained information regarding apprehension of Madhu and he also came to Mukkali along with PW45, DW6 and DW8. It is true that there is no evidence as to how A1 got knowledge regarding apprehension of Madhu. As persons in whose shops theft occurred rushed to Mukkali, A1 also rushed to Mukkali. Simply because there is no mobile phone communication between any of the remaining

accused with A1, it cannot be held that A1 has not obtained information regarding apprehension of Madhu. Therefore, the mere fact that the prosecution failed to prove how A1 got knowledge regarding apprehension of Madhu, it does not lead to a conclusion that he cannot be said to have shared the common object of unlawful assembly. It is further to be noted that there was some telephonic communication between the son of A1 and Shamsudheen (A3) at 19.06.1 pm on 22.02.2018 itself. In such circumstance, A1 cannot contend that the remaining accused persons are stranger to him.

157. Thus, I find that the story put up by the first accused that he came to Mukkali due to some family affairs is not at all probable and convincing and hence, I reject the defence taken by first accused. I find that the first accused came to Mukkali along with his children and younger brother after getting knowledge regarding the apprehension of Madhu from forest by other accused persons and he has shared the common object of the unlawful assembly formed by other accused and knowingly joined the unlawful

assembly, committed some overt act by stamping Madhu while Madhu was sitting in front of the treasure box at Mukkali.

158. **Appreciation of Evidence against A16 :-** As per the final report A16 has also joined in the unlawful assembly at Mukkali along with other accused persons and at Mukkali A16 has hit on the back side of Madhu by his leg. This is the only overt act alleged against A16. The manner in which A16 hit behind Madhu is evident from the video files seized from Ubaid. (MO27(c)). The video file that is found in Q5, (file No.VID 20180222-WA0091) reveal that at 1.05 seconds A16 is found hitting Madhu behind his back and at that time Madhu is turning back. Madhu was unable to react towards A16 because A14 is caught hold in the zip tied on the right hand of Madhu. I have played and watched the relevant video file repeatedly. It is evident from the video file that, while Madhu was standing in front of Sreerag bakery at Mukkali A16 has hit Madhu on his back side and spontaneously Madhu is turning back. The facial expression of Madhu reveal that due to such hit made by A16 no serious pain or injury is caused to Madhu. It is true that pain is

subjective in nature. Whether the hit made by A16 caused pain to Madhu is known to him only. But, when severe pain is caused to a person that will be revealed from that person's facial expression, gestures etc. Not even a single injury in the postmortem report can be attributed to the so called hit made by A16. Nothing was brought out during examination of PW86, the doctor that the so called hit made by A16 caused any injury to Madhu. The video containing visuals of hitting Madhu by A16 was not brought to PW86. In order to attract section 323 IPC, there should be pain, disease, or infirmity. Even a pain is sufficient to attract offence punishable u/s.323 IPC. In this context, it is to be noted that the term hurt is defined in section 319 of IPC. The term hurt is defined as "who were causes bodily pain, disease or infirmity to any person is said to cause hurt". In the absence of any evidence to find that the hit made by A16 caused any pain, injury or other bodily infirmity or disease, A16 cannot be incriminated with even section 323 IPC. However, I find that the act done by A16 will definitely come within the purview of criminal force as defined u/s.350 IPC punishable u/s.352 IPC. No

other penal provision can be attributed to A16. No other penal provision can be fastened on A16. Whether A16 has joined the unlawful assembly and shared common object will be answered while discussing points 7 to 11. Therefore, I hold that based on the video file seized from mobile phone of A8, Ubaid (Q5 file) in Ext.P92(a) pen-drive, A16 can be fastened with liability of having committed offence punishable u/s.352 IPC alone. Apart from this evidence there is no other material available before court which are incriminatory to A16. Therefore, I hold that A16 has committed offence punishable u/s.352 IPC only. The prosecution failed to prove any other charge levelled against him.

159. **Appreciation of evidence against A4** :- Even as per the final report the role of 4th accused is confined to a place at Mukkali. As per the final report 4th accused and 8th accused have taken the visuals of Madhu in their mobile phones and circulated the same in the social media . There is no case for the prosecution that A4 has attacked Madhu. It is further alleged that 4th accused has also joined in the unlawful assembly knowing the common object of

unlawful assembly. Accordingly, the charges levelled against other accused persons were also levelled against 4th accused by canvassing section 149 IPC. Whether 4th joined the unlawful assembly and shared the common object will be discussed while answering point nos 7 to 11.

160. It is to be noted that there no allegation of any commission of any overt act by A4 for causing hurt to Madhu. The only allegation is taking of visuals in his mobile phone. The fact that A4 has taken the visuals of Madhu in his mobile is evident from the photos extracted in Ext.P92(a) pen drive. This reveals that A4 has recorded the visuals of Madhu in his mobile phone. The contents of Q4 [MO27(d)] mobile phone seized from A4 (Aneesh) is extracted as Q4 file in Ext.P92(a) pen-drive. In page 3 of Ext.P92 report of Cyber Forensic Expert, it is stated that 3 photos and one video of Madhu is found therein. As per the report of the Expert (page 3) the photos were captured in the Q4 mobile itself. Apart from that the CCTV footage (Q2) reveal that at the time when Madhu was brought to Mukkali A4 is found to be taking photos of Madhu in a mobile.

Ext.P66 is the seizure mahazar whereby Q4 mobile [MO27(d)] belongs to A4, Aneesh was seized. It was formally proved by PW69, Abhilash, the CPO. Apart from PW69 and PW72 is also an attester to Ext.P66 mahazar. Both these witnesses admitted Ext.P66 and formally proved these documents. The call data records, customer application form etc reveal that mobile connection bearing No 9961069609 was subscribed by A4. IMEI number of the mobile phone was also stated in the CDR and also in the Ext.P66 seizure mahazar. All these reveal that that mobile phone is being used by A4, Aneesh. The seizure of Q4 mobile from the custody of A4 is proved by the oral evidence of PW69 and PW72. Absolutely there is no material available before court to disbelieve these evidence adduced by the prosecution. In fact, the prosecution wants to establish the seizure of the mobile phone from A4. Once it is proved that the mobile phone is seized from A4 and it is come out from the CAF and CDR that the mobile phone is being used by A4, then the burden is on accused (A4) to explain as to the circumstances how these photos and videos came to his mobile phone and offer a

plausible explanation. These facts are coming within the exclusive personal knowledge of A4 and therefore, it is for him to prove or offer any explanation with regard to such mobile visuals in his mobile in view of section 106 of Evidence Act. A4 has not offered any explanation. In such circumstances the court has no other option than to accept the electronic evidence produced in this case and the oral evidence of PW66 and PW72 regarding the seizure of mobile phone from A4. From this evidence the prosecution has succeeded in establishing that the 4th accused has taken (captured photos/videos) of Madhu in his mobile phone.

161. In this context, it is to be noted that the common object of such unlawful assembly was to apprehend Madhu, cause grievous hurt and then to entrust Madhu to the Police. The unlawful assembly did not have a common object to take photographs of Madhu. But it was so happened during the course of that incident. In such circumstances, simply because A4 has taken the photographs of Madhu it cannot be said that he has shared the common object of such unlawful assembly and joined that unlawful assembly. In

such circumstances, I find that he cannot be incriminated for a charge u/s.302 IPC by canvassing 149 IPC.

162. It is to be noted that Ext.68(a) is the face book business record of Aneesh. Ext.P68(b) is the 65B certificate for these document. Ext.P143 series are the screen shots of the whatsapp chat. Ext.P143 series are marked through PW97, the Investigating Officer. The person who produced Ext.P143 series screen shots of whatsapp chat is CW63, Nikhul. CW63 was not examined in this case. From the available records court can safely arrive at a conclusion that Aneesh has got face book account and whatsapp account. The fact in issue is whether Aneesh posted these whatsapp chat and not whether Aneesh has got face book account or whatsapp account. Only if it is proved by convincing evidence that Ext.P143 series visuals are uploaded by Aneesh, he can be implicated in this case. It is true that Ext.P143 whatsapp chat contain the name of Aneesh. There are so many Aneesh in Kerala. How can I conclude that the Aneesh intended in P143 is A4 in this case. Aneesh is a very common name in Kerala. Neither CW63 Nikhul nor admin of

that group deposed before court that Ext.P143 whatsapp chat was posted by Aneesh. Or else the whatsapp authority has to depose that Ext.P143 visuals were posted by Aneesh. No such evidence is forthcoming to prove these facts. The evidence of PW97, Investigating Officer cannot be taken as evidence to prove those facts. His version is only his personal opinion, rather the result of his investigation. Such statement of Investigating Officer does not tantamount to evidence (**1997 SCC (Cr1) 857**). Thus, the documents made available before court is not sufficient to conclude that Aneesh has posted any photographs or videos of Madhu in social media. The evidence made available in the case reveal that the mobile phones of accused persons contain photos and videos of Madhu. That is evident from Ext.P92 report filed by PW95, the expert. Unless it is established that it is the accused no 4, who has posted the whatsapp chat in social media he cannot be implicated in this case. It is admitted by the Investigating Officer, PW95 and several other witnesses examined in this case that several persons in Mukkali have taken photos and videos of Madhu. The question is who is the

person who has posted these visuals in social media. According to Investigating Officer he also received videos and photos of Madhu in his whatsapp chat. Can he be held liable? Likewise, out of these 103 witnesses not even a single witness deposed that accused no 4 called Madhu as a thief in public view.

163. Further it is to be noted that so long as A4 has not done any overt act for causing hurt to Madhu he cannot be fastened with the liability of causing bodily injury to Madhu by canvassing section 149 IPC. Therefore, I hold that the prosecution has failed to establish that accused no 4 is in any way liable for commission of any offence charged against him.

164. **Appreciation of Evidence against A11:-** As per the prosecution case A11 has joined in the unlawful assembly of other accused persons when Madhu was brought to Mukkali. It is further alleged that A11 has called Madhu as “thief” in public view. Apart from this allegation of calling Madhu as thief, there is no allegation of causing hurt to Madhu by A11. He never went to the forest to

bring Madhu. Likewise, there is no allegation of capturing any visuals of Madhu by A11. Without doing any overt act, it cannot be said that A11 has joined the unlawful assembly.

165. But none of the witness deposed about such act alleged to be committed by A11. In the CCTV footages it is evident that A11 is there in the group at Mukkali at the place where Madhu was standing in front of Sreerag bakery, and also at the place where Madhu was sitting in front of the treasure box of Ponmala Sastha Temple etc. The CCTV footages does not contain any voice records. Even the mobile clippings produced before the court does not reveal the usage of such abusive language by A11 towards Madhu. It is to be noted that along with A11 there were several other persons gathered there and these persons were not arrayed as accused. It is come out from the evidence of the Investigating Officer that around 75 persons have gathered there at Mukkali. Here in this case only 16 persons were arrayed as accused. Without having any pinch of evidence against A11 he cannot be fastened with any of the penal provisions charged against him. No material including electronic

evidence or oral evidence of witness is available in the prosecution records to incriminate A11 in this case. Therefore, I hold that prosecution has miserably failed to prove the involvement of A11 in this case.

166. Appreciation of Evidence against A2, A3, A5, A6, A7, A8, A9, A10, A12, A13, A14 and A15:- Out of these accused persons even as per the prosecution case accused Nos.14 and 15 have not went to the Aandiyallachal for apprehending Madhu. But in the final report it is stated that these accused persons also have trespassed into the reserved forest and joined the unlawful assembly in the reserved forest. The eye witness examined by the prosecution to prove the incident which took place in forest are PW4, PW6, PW7, PW10, PW11, PW12, PW13, PW14, PW15, PW16, PW17, PW18 etc. All of them turned hostile to the prosecution case. Further PW15, PW20, PW22, PW23, PW24, PW25 and PW27 were examined to prove the bringing of Madhu to Mukkali by the accused persons. Most of these witnesses also have turned hostile to the prosecution case. But out of these witnesses PW15 and PW27 supported the

prosecution case. Though PW10 and PW11 are initially turned hostile to the prosecution case, they supported the prosecution case when they were recalled as per order in CMP.No.1303/2022. But even these witnesses who have supported the prosecution case has not deposed anything regarding the alleged overt act committed by these accused persons causing hurt / grievous hurt to Madhu.

167. Even though during the first stage of examination PW11 has given evidence completely against the prosecution during the second stage of examination that is when he was recalled as per order in CMP.No. 1303/2022, he supported the prosecution case. The counsel for the accused contended that his testimony cannot be believed, as once he proved himself to be disloyal. However in the light of decision of the Hon'ble High Court of Kerala reported in **2022(2) KLD 581(DB)**. The testimony of PW11 need not be disbelieved on that ground alone. During the second stage of examination PW11 deposed that he has seen Marakkar (A2) and some drivers in forest at Aandiyallachaal forest on the relevant day. Out of these persons PW11 has identified A2, Marakkar in the box.

According to him A2 has made an inquiry with PW11 whether Madhu is there in the forest. It can be inferred that A2 obtained information about the presence of Madhu in forest from PW11. During cross examination of PW11 in the second stage of examination he deposed about his visit in the office of the learned Special Public Prosecutor, the video conference conducted by the Witness Protection Committee headed by District Judge etc. Even though PW11 admitted that he visited the office of the learned Special Public Prosecutor and had occasion to see the video conference headed by District Judge, there is nothing to find that these persons have given any wrong advise to PW11 to give any false evidence before court. Thus even though role of PW11 is very little, it is relevant to prove that he has seen Marakkar(A2) in Aandiyallachaal and inquiry made by Marakkar about Madhu.

168. PW10 is yet another Forest Watcher who turned hostile to the prosecution case and then supported the case during the second stage when he was recalled. According to him he has seen A2, Marakkar in forest even during the examination in chief in

the first stage itself. During the examination in chief he deposed that he has seen some persons are walking through the forest at 10-70 meters and according to him out of these persons Marakkar was there. But during the cross examination of this witness the counsel for the accused made a successful attempt in creating an impression that the witness has seen that somebody was walking through forest at a long distance of 500 meters or 1 KM and so. But when the overall evidence of PW10 is evaluated it can be inferred that he has seen some persons were walking through forest on that fateful day and out of that he has identified A2, Marakkar but expressed ignorance about rest of the relevant facts. But when he was examined after recalling, he affirmatively deposed that it was Marakkar whom he identified on the relevant day. He further stated that he has seen Madhu on 22.02.2018.

169. Likewise, PW15 is a person who has witnessed the bringing of Madhu by a group of persons. According to him, he recognized A3 from that group. Likewise, PW27 has deposed that on the relevant day when she was proceeding towards Silent Valley

road from Mukkali in a jeep she has witnessed an incident that a group of persons are bringing one tired person carrying one sack on his shoulder. PW27 has identified A13, A14 and A16 from the accused dock. According to her, at the time when she watched news she realised that it was Madhu who was the person brought by that group of persons on that day. The remaining witnesses have not revealed anything material supporting the prosecution case.

170. In this context, it is to be noted that witnesses who have given 164 statement including the close relatives of Madhu turned hostile to the prosecution case. The reason behind such turning of witnesses hostile to the prosecution case assumes importance in this case. While granting bail to the accused persons, a specific order was passed by the Hon'ble High Court imposing a condition that accused persons shall not contact with the witnesses involved in this case. In fact, this condition was imposed with a view to avoid chances of influencing of witnesses by the accused persons. But quite contrary to the direction of the Hon'ble High Court most of

the accused persons (almost 11 accused persons) have regularly contacted the witnesses during the course of trial of this case.

171. The fact that accused persons have contacted the witnesses during the trial stage is evident from Ext.P161(series) and Ext.P 162(series) call data records produced by the prosecution, formally proved by PW98 and PW99. These call data records reveal that accused persons have contacted PW2, PW3, PW4, PW5, PW6, PW7, PW10, PW21, PW22, PW24, PW25, PW63 etc. in several occasions. It is to be noted that many of the accused persons have kept regular contact with these witnesses. Can it be said that these accused persons have contacted the witnesses for discussing about foreign policy of Government of India or about next Parliament election ? Never. It can only be said that these accused persons have contacted these witnesses only for the purpose of winning over the case, that too by violating the specific order passed by the Honourable High Court of Kerala.

172. In fact such contacting of witnesses by the accused is relevant u/s.8 of Evidence Act. It will come within the meaning of subsequent conduct referred to in section 8. Illustration (e) of section 8 makes it clear. The accused cannot contend that the subsequent conduct so mentioned in section 8 of Evidence Act is meant for conduct of the accused soon after the crime only. I find that the contacting of the witnesses by the accused during the course of trial also will come within the meaning of “subsequent conduct” referred to in section 8 of Evidence Act. These circumstances lead to the only conclusion that the reason behind turning of witnesses hostile to the prosecution case is none other than the accused themselves. That is a circumstance pointing out the involvement the accused in this case.

173. The motive behind the commission of crime was proved by the prosecution that I will discuss in detail. The forming of unlawful assembly by these accused persons at Mukkali, which proves the preparation will be discussed while answering point nos 7 to 11.

174. Now coming to the execution of the crime the most important aspect of a crime. It is true that none of the witnesses examined by the prosecution has deposed anything so as to prove the overt act committed by these accused persons. So there is no oral evidence to prove these facts. Here comes the relevancy of electronic evidence in this case. The photographs and videos recorded in the mobile phones seized from the accused persons clearly reveal the involvement of accused persons in the crime. Altogether 6 mobile phones were seized by the Investigating Officer from the custody of the accused. Out of these 6 mobile phones, MO27(c) mobile which contains 2 videos and 7 photographs relating to the incident of this case was seized from A8, Ubaid (Q5). MO27(a) containing 11 photographs and 2 videos relating to this offence was seized from A5, Radhakrishnan (Q6). MO27 along with MO27(e) memory card was seized from A7, Sidhiqe which contains some captured photos relating to the incident (Q8). Likewise, MO27(b) mobile phone was seized from A9, Najeeb it contains 4 videos and 6 photographs (Q7). Like that MO27(d) mobile phone

was seized from A4, Aneesh (Q4). Similarly, MO25 mobile phone belongs to A14, Hareesh was produced by his relative Anand (Q9).

175. The relevant videos and photographs in these mobile phones are extracted in Ext.P92(a) pen drive by PW95. Out of these photographs many of them were captured in these mobiles itself. That is evident from Ext.P92 Cyber Forensic Analysis report filed by PW95. PW95 has brilliantly extracted the relevant photographs and videos from each mobiles. In find that it was a tedious work for PW95 to pin point these relevant photos and videos from these mobile phones containing several thousands of photographs and videos saved in that mobiles.

176. Out of these videos, the video file No.VID-20180222-WA0034 having the duration of 5.38 minutes assumes very much relevancy in this case. (video file in Q7 in Ext.P92(a) pen drive). It contains the most relevant incident, which reveal the involvement of all the accused persons except A14 and A15. The presence of 9 accused persons are crystal clear in that video. The presence of A9,

Najeeb is not there in that video but his presence is there in the remaining photographs and videos. This indicate that it was Najeeb (A9) who have recorded that particular video. A meticulous examination of videos and photographs in other mobile phones reveals that accused Nos.2, 3, 5, 6, 7, 8, 9, 10, 12, 13 have went to Aandiyallachaal forest for apprehending Madhu. This particular video contains the relevant incident of bringing of Madhu from Aandiyallachaal. The places that is visible in that video file was identified by PW53 and PW62 (Panjan, Panali) as Aandiyallachaal forming part of reserved forest. These video files shows that A10 (Jaijumon) is putting the sack containing rice and other items to the shoulder of Madhu and bringing of Madhu by caught hold of him by the accused persons. At some point of time Madhu is caught hold by A3, Shamsudheen and some other time Madhu is caught hold by some other persons as well.

177. The audio recordings of that files also assumes very much importance in this case. At 27 seconds some of the accused is uttering a word “നടക്കടാ മൈരേ അങ്ങട്ട്”. At 2.58 minutes some of

the accused is saying "ഇനി ഒന്നും അടിക്കാനില്ലേ..... അടിക്കാനേ.....ഇല്ല". This conversation cannot be denied by the accused persons. It is true that who is the person who uttered those words cannot be distinguished. But it is to be noted that apart from these accused persons and Madhu there were nobody else at Aandiyallachaal at that relevant time. That also is evident from the photographs and videos produced before court. Thus, who had used the abusive term and who had used the sentence such as "ഇനി ഒന്നും അടിക്കാനില്ലേ..... അടിക്കാനേ..... ഇല്ല" is of no consequence in this case, because they have already formed themselves into an unlawful assembly. In such circumstances, the words used by each one of the accused persons will incriminate others, as all are members of unlawful assembly. In fact the sentence "ഇനി ഒന്നും അടിക്കാനില്ലേ..... അടിക്കാനേഇല്ല" itself reveal that before that time itself Madhu was attacked by these persons. The fact that in Aandiyallachal there was no scarcity of wooden stick is further evident from the video itself. The above mentioned video reveal there are plenty of wooden sticks in forest.

Even A8 is carrying a wooden stick. I am unable to find that the wooden stick carried by A8 was used for attacking Madhu. Anyway MO24 is not the one stick that was seen in the video file.

178. Apart from this the oral evidence of doctor (PW86) makes it clear that MO24 was not the only weapon used for attacking Madhu. According to the doctor injury No.1 to 3 cannot be caused by using MO24. But injury No.12 could be caused by MO24. As per the version of doctor injury No.1 to 3 can be caused by blunt weapon or a blunt force. It cannot be caused by MO24 which is *per se* a slender wooden stick. The nature of injuries stated in the postmortem certificate and oral evidence of PW86, Dr.Balram reveal that apart from MO24 some other weapons were also used by the accused persons for attacking Madhu. Altogether 44 injuries are there in the body of Madhu. During the course of examination the doctor deposed that injury No.1 to 3 and other injuries could be caused by blunt weapon/ blunt force and pointed out MO5 series wooden pieces . But these material objects were not produced by the prosecution as a weapon used by the accused for attacking

Madhu. These were produced as the material objects collected from the place occurrence at Aandiyallachaal. The video files further reveal that the accused persons have collected some material objects from the place where Madhu was apprehended and put some of them in the sack containing rice and all those to show that Madhu has stolen all those articles. The CCTV footage (Q2 file in pen drive) and video files that is collected from Mukkali reveal that these articles contained in the sack carried by Madhu was found to be showing to the person who gathered there at Mukkali.

179. The video files in file No.VID-20180222-WA0034 also contains visuals of MO1 sack. The other videos in MO27(b) [Q7 file in Ext.P92(a)] reveal that the accused persons are moving up towards Aandiyallachaal in search of Madhu. Thus, involvement of these accused persons except A14 and A15 in apprehending Madhu from Aandiyallachaal is evident from the above mentioned video file. The time of apprehension of Madhu will be in between 1 pm and 1.23 pm of 22.02.2018. (as evident from the properties of the photographs). The time is relevant because first photo in

Aandiyallachaal was found to be captured at 1.00 pm. This can be ascertained when we examine the properties of photographs in Q6 mobile phone (MO27(a) seized from Radhakrishnan. (File No.INR_20180222_130057). This means they have reached Aandiyallachaal before that time itself. The first photograph of Madhu is found to be taken at 13.23 pm wherein the hands of A2 is visible. (File No.IMG_20180222_132323 and IMG_20180222_132326 in Q6 file in Ext.P92(a) pen drive reveal these facts. The time can be ascertained from that photos by checking the properties. It reveals that these photographs were taken at 13.23 pm on 22.02.2018 by using very same camera of MO27(a) XIAOMI. The GPS location of the mobile phone at the time of capturing the photos is also there in the detailed properties of that photos. All these relevant facts were meticulously examined by PW95, the Expert (page 30). Thus, from the time of capturing of photographs of Madhu in the mobile phone of accused person reveal that Madhu might have been apprehended by these accused persons from Aandiyallachal forest at or about 1 pm or immediately

thereafter. In order to locate the place where the photographs were taken, the GPS location of the mobiles at the time of capturing the photos in the camera is stated in the report by PW95 for ready reference of the court (Page No.30). As per the GPS location, the longitude and altitude of that place reveal that, the area comes within Silent Valley National Park reserved forest. It is evident from the oral evidence of PW55 and Ext.P45(a) that Aandiyallachaal is an area forming part of the reserved forest of the Silent Valley National Park.

180. These mobile phones (Q4 to Q9) were seized from the custody of the accused persons as per Ext.P62 to P66 seizure mahazars and these seizure mahazars were formally proved by PW66, PW69 and PW72 etc. The customer application form, call data records etc reveals the IMEI number of these mobiles and that these mobile connections were subscribed by these accused persons. Those facts were already discussed earlier and it is evident from Ext.P40 series to P42 series electronic evidence such as CAF, CDR, 65B certificate etc. Thus even though the witnesses examined by the

prosecution have turned hostile, the photographs, videos found in the mobile phones seized from the custody of the accused persons clearly establishes the involvement of these accused persons in this crime. It is true that these video file does not depicts the overt act alleged to be committed by the accused persons such as causing hurt, grievous hurt etc to Madhu.

181. The video and photographs in these mobile phones reveal that during all this time A14 and A15 are not there in the Aandiyallachaal. Their role starts from Vandikkadavu forest area that is evident from photographs in Q5 file (IMG-20180222-WA0083). In that photos the picture to A14, A15 and Marshal Jeep belongs to A9 is very clear. Thus, the role of A14 and A15 can be attributed at least from that Vandikkadavu forest. This still photos reveal that A14 and A15 are there in the unlawful assembly. It is evident that A15 is caught hold of Madhu. A14 is also seen in that photograph. It is evident from the CCTV footages (Q1 file in Ext.P2(a) pen-drive) that at about 12.51.51 PM the vehicle of A9 is moving towards Vandikkadavu direction. Likewise, the CCTV footages at 13.50.28

pm (Q1 file) the vehicle bearing registration No.KL-32-B-5959 of A14 is moving towards Vandikkadavu forest area. The other CCTV footages in the very same Q1 file reveal that at 14.46.48 pm onwards the vehicle (KL-32-B-5959) belongs to A14 is moving towards Mukkali. (Time in CCTV may not be exact time.) Behind the back of that, yet another white colour Jeep is coming and immediately thereafter the group of persons along with Madhu is moving towards Mukkali direction. In that footage Madhu was found to be carrying a sack containing some articles. In that the picture accused Nos.2, 3, 5, 7, 8 etc are visible. Thus, a comparative study of these photos and videos made available before court reveal that at about 1 pm on 22.02.2018, the accused persons have apprehended Madhu from Aandiyallachaal forest. They brought Madhu at Anavai Forest check post at 2.46 pm. During all these period Madhu was within the custody of these accused persons.

182. It is come out from the oral evidence of PW86, the doctor who conducted postmortem examination that due to edema formed in brain as a result of injury Nos.1 to 3 the death was

caused. It is further evident from the testimony of doctor that in order to cause such brain edema and to reach the situation to become crucial or critical it will take minimum 2 - 3 hours. In such circumstance necessarily these injuries should have been caused before 2-3 hours from the time of death of Madhu. Admittedly Madhu died in between 3.30-4.15 pm more probably at around 4'O clock. If that be so, the injuries should have been caused in between 1.00 pm and 2.00 pm. The videos seized from the mobile phone of the accused persons reveal that during these period Madhu was with in the custody of these accused persons and hence they are answerable for the injuries sustained on the body of Madhu. No explanation is forthcoming from the side of the accused persons. There is no case for the defence that Madhu has sustained injuries even before these accused persons apprehended Madhu. There is no possibility for that, taking into account of the evidence of the doctor.

183. So long as the prosecution has brought convincing evidence to prove that Madhu was within the custody of these accused persons from 1 pm onwards, the burden is on the accused

person to explain as to what happened to Madhu during the time when Madhu was in their custody. In such circumstances, Section 106 of Evidence act come into play. It is for accused to reveal the facts which comes within the personal knowledge of these accused persons. Section 106 Evidence Act is very meticulously drafted putting the burden on the person who has got special knowledge of a particular facts.

184. It is to be noted that even though some bald denial was made during the cross examination of PW66, PW69 and PW72 who have proved Ext.P62 to P66 seizure mahazars, nothing was brought out to disbelieve the seizure made by the Investigating Officer. Even during the cross examination of the Investigating Officer also no suggestion was made so as to disbelieve the seizure of mobile phone, CCTV footages etc. other than a bald denial. But, nothing was elicited from PW97 to disbelieve the seizure made by PW97.

185. In this context, it is worthwhile to rely on a decision of the Hon'ble High Court of Kerala reported in **2018(3) KHC 725**. If the seizure of mobile phones from the custody of the accused is proved by the prosecution and the same was produced before court the only thing that remain is to make a formal request by the prosecution to view the contents of that videos and photos found in that mobile phones. The rest is for the court to view the contents and form an opinion. The court can ascertain the identity of the persons in the mobile phones by comparing the same with the identity of the accused persons who is there in the accused dock. In this case apart from that, the presence of these accused persons in CCTV footages were clearly proved by oral evidence PW2. Further the presence of accused persons in the mobile phones and the CCTV footages were clearly identified by PW95, the Expert with scientific aid by making use of Ext. P30 series photographs. A comparative study of the videos in mobile phones seized from the accused persons, the CCTV footages and the identification of the court in court reveal that these accused persons are there in the videos and

photographs found in the mobile phones seized from the custody of the accused.

186. Thus, in the absence of any explanation from the side of the accused, the prosecution case cannot be disbelieved for the sole reason that the prosecution failed to prove the manner in which how the accused persons caused hurt and grievous hurt to Madhu. Because these facts are coming within the personal knowledge of the accused.

187. The video in Q7 mobile taken from Aandiyalachal (file No. VID-20180222-WA0034) reveal that apart from these accused persons (10 in Nos) and Madhu there is no other persons in that place. That means at the material time when accused persons caused hurt and grievous hurt to Madhu there were Madhu and these accused persons only in Aandiyallachaal. In these circumstances, the decision of the Hon'ble Supreme Court reported in **AIR 2014 SC 1043 (2014 KHC 4036)** assumes importance. In that case the Hon'ble Supreme Court held as under :-

“Section 106 Evidence Act - Demand of dowry - Death of victim - Case of suspected poisoning - Viscera report absent - No other evidence of poisoning - When prosecution established that accused subjected the deceased to harassment for dowry, the accused ought to have disclosed the facts which were in their personal and special knowledge to disprove the prosecution case and the accused failed to discharge the burden which had shifted to them u/s.106 Evidence Act and the prosecution need not show the exact manner in which the deceased was killed - adverse inference to be drawn against the accused”.

188. The learned Special Prosecutor relied on a decision reported in 2023(0) Supreme (SC) 126. In that case, the Honourable Supreme Court held as under :-

“Burden to prove guilt of accused is always on prosecution. When any fact is within knowledge of

any person, burden of proving that fact is upon him. If the accused does not throw any light upon facts which are proved to be within his personal knowledge, in view of Section 106 of Evidence Act, such failure on part of accused may be used against accused as it may provide an additional link in chain of circumstances required to be proved against him – In the case based on circumstantial evidence, furnishing or non-furnishing of explanation by the accused would be a crucial facts, when theory of last seen together as propounded by prosecution was proved against him”.

189. Likewise, in the decision reported in 2022(10) SCC 321, the Honourable Supreme Court held as under :-

“In a case resting on circumstantial evidence the accused failed to offer a reasonable explanation in discharge of the burden placed on him, that itself

provides an additional link in the chain of circumstances proved against him.”

190. To the contrary the learned counsel for A2 and A5 relied on the following decisions :-

2004 ICO 7005, 2017 ICO 4376 and 2003 ICO 1135.

191. But when the facts are evaluated I find that these decisions are not beneficial to the accused.

192. Admittedly, there is no oral evidence available before court to prove the overt act committed by these accused. So long as the accused are not revealing the facts which comes within their personal knowledge all accused persons who formed themselves into an unlawful assembly are liable in view of Section 149 IPC. Section 149 IPC is so meticulously drafted to make all of them liable if the unlawful assembly is established. In this context, section 35 of IPC also assumes importance. It is worthwhile to reproduce Section 35 of IPC here under :-

“35. When such an act is criminal by reason of its being done with a criminal knowledge or intention:

Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention”.

193. The defence cannot take a contention that section 35 of IPC is not included in the court charge or in the final report, because section 35 of IPC is a substantive law and it need not be found a place in the charge.

194. The videos found in the mobile phones seized from the accused reveals that the accused persons have apprehended Madhu from Aandiyallachaal Reserved Forest after tying his hands and paraded him through public road from Aandiyallachaal to Mukkali

through Vandikkadavu, Anavai Forest Station etc. That too in half naked posture by making Madhu to walk by carrying a sack containing rice and other materials on his shoulder. These accused persons have no explanation with regard to the injuries found on the body of Madhu. In such circumstances it is to be found that it is these accused persons who have done all those atrocities on Madhu.

195. Incidentally the recovery of MO24 wooden stick at the instance of A3 was disputed by the counsel for the accused. According to them in the disclosure statement of A3 the term “weapon used for beating Madhu” was not used and hence the disclosure statement and recovery cannot be accepted. The seizure mahazar Ext.P52 was proved by PW62, Panjan. A reading of the recovery mahazar reveals that MO24 wooden stick was traced out by accused No.3 from the river shore in forest at a place near Pottikkal Teak Plantation. Though PW62 was vehemently cross examined by the counsel for the accused, nothing was brought out to disbelieve his testimony. The oral evidence of PW86, the doctor

who conducted postmortem examination reveal that injury No.12 can be caused by using MO24 weapon.

196. For the above reasons, I find that the by proving all the circumstances starting from motive, formation of unlawful assembly, apprehending of Madhu from Andiyallachaal, parading of Madhu through public road upto Mukkali and sheer silence of the accused, the prosecution has succeeded in establishing that it is these accused persons who are responsible for the death of Madhu.

197. **Point No.1 :-** During the course of trial and during the course of argument the counsel for the accused contended that Madhu was not a member of SC/ST community. That is why the court is constrained to formulate a point like this. In order to prove that Madhu belongs to ST community, the prosecution is relying on both oral evidence and documentary evidence. As per the version of PW71, the brother-in-law of Madhu, Madhu belongs to Mudukar community, a member of ST community. The mother of Madhu (PW70) deposed that they belong to Kurumba community. But as

per the version of PW51, the Tahsildar who is the competent authority under the provisions of Kerala (Scheduled Caste / Scheduled Tribe) Regulation for issue of Community Certificate Act-1996, Madhu belongs to Mudukar community, a member of ST community.

198. Taking advantage of this difference the accused persons contended that Madhu is not at all a member of SC/ST community. Ext.P39 is the so called caste certificate issued by PW51. In fact, caste certificate so issued is not in the prescribed form (Form No.III) as contemplated under the provisions of Kerala (Scheduled Caste / Scheduled Tribe) Regulation for issue of Community Certificate Act, 1996. In Ext.P39 document it is stated that Madhu belongs to Hindu-Mudukar community, a member of ST community. It is specifically deposed by PW51 that as per the report of the Village Officer and after conducting enquiry Ext.P39 certificate was issued. In fact, Ext.P39 is not in the prescribed form.

199. Accordingly, the prosecution has filed an application to issue summons u/s.91 Cr.PC calling upon the present Tahsildar to produce the caste certificate of deceased Madhu. Accordingly, the present Tahsildar who is having jurisdiction over the permanent address of Madhu namely Attappadi Tribal Taluk Tahsildar has produced Ext.P163 caste certificate and 163(a) back file of such caste certificate. The present Attappadi Tribal Taluk Tahsildar is examined as PW100. Ext.P163 caste certificate is in the prescribed form (in accordance with form III) as contemplated under the provisions of Kerala (Scheduled Caste / Scheduled Tribe) Regulation for issue of Community Certificate Act, 1996. As per Ext.P163 caste certificate also, Madhu belongs to Hindu- Mudukar community, a member of ST community. Ext.P163(a) contains the enquiry report of the Village Officer, the xerox copy of school admission register of Madhu, copy of ration card etc. These documents were formally proved by oral evidence of PW100, the present Attappadi Tribal Taluk Tahsildar. During cross examination PW100 deposed that the caste of father of Madhu is shown as the caste of Madhu and it is

further deposed by PW100 that as per the report filed by the Village Officer concerned Madhu had been living by following the caste of his father and that is why the caste of Madhu is stated as that of the caste of his father. In this context, it is to be noted that generally the children takes the caste of his father unless otherwise proved. **(2014(1)KHC 290).**

200. Ext.P39, Ext.P163 and Ext.P163(a) are the documents prepared by officials in their official capacity. In such circumstance, those acts carries a presumption as provided u/s.114 evidence act. In order to rebut that presumption there must be some material. Absolutely there is no material available before court to find that the caste certificate issued by PW51 and PW100 are not correct. Absolutely there is no material available before court to disbelieve the evidence of PW51 and PW100, Ext.P39, P163 and P163(a). In such circumstance, I find that a bald denial made by the accused regarding the caste of Madhu is of no consequence in this case. The oral evidence of PW51, PW100, Ext.P39, P163, P163(a) remain unchallenged. It is to be noted that both Mudukar and Kurumba

community belongs to ST community. In the absence of any other material the court is bound to accept the caste certificate issued by a competent authority under the provisions of Kerala (Scheduled Caste / Scheduled Tribes) Regulation for Issue of Community Certificate Act, 1996. For the above reasons, I find that the prosecution has succeeded in establishing that deceased Madhu belonged to Hindu-Mudukar, a member of ST community beyond shadow of any reasonable doubt. Point No.1 is found in favour of the prosecution.

201. **Point No.2:-** According to the counsel for A 2, 3, 5, 6 and 8 as Madhu is not a member of SC/ST community, this court does not have jurisdiction to try this case. This court being a Special Court established exclusively for the trial of cases under SC/ST (POA) Act, other sessions cases involving IPC offences only cannot be tried by this court . Hence, I am constrained to formulate this point. It is to be noted that immediately after framing charge or during trial none of the accused persons have raised such a contention and this contention was raised at the time of argument only. In fact, this court is an Additional Sessions Court under 9(3)

of Cr.P.C. As per the Official Memorandum issued by the Hon'ble High Court of Kerala bearing No.D7(B)-62345/14 dated 16.06.2017, the Hon'ble District Judge, Palakkad was directed to transfer Sessions Cases, Criminal Appeals, and Criminal Revision Petition pertaining to Mannarkkad Taluk to this court. Thus, in view of the Official Memorandum issued by the Hon'ble High Court of Kerala there is no merit in the contention taken by the counsel for these accused. It is brought to my notice that in this court apart from offences punishable under IPC, offences under the Abkari Act triable by Sessions Court are also being tried in this case. For the above grounds, I am constrained to reject such contention taken by the defence. Point no 2 found in favour of prosecution.

202. **Point No.3** :- The electronic evidence produced in this case assumes much importance for deciding this case. The electronic evidence produced before the court are detailed hereunder:-

- 1.(a) CCTV footages seized from Anavai Forest Station (Q1).

(b) CCTV footages seized from Sreerag Bakery Cool Bar, Mukkali alleged to be conducted by A14, Hareesh (Q2).

(c) CCTV footages seized from Ponniyammal Gurukulam (Q3).

(It is to be noted that as per the evidence of PW95, the expert, the time shown in the CCTV visuals may not be correct. Therefore, time referred by me in this judgment is only for easily locating the footage and for easy understanding).

2.(a) The mobile phone seized from accused No.4, Aneesh (Q4).

(b)The mobile phone seized from accused No.8, Ubaid (Q5).

c) The mobile phone seized from accused No5- Radhakrishnan (Q6).

(d) The mobile phone seized from accused No.9-Najeeb (Q7).

(e) The mobile phone seized from accused No.7, Sidhique (Q8).

(f) The mobile phone seized from accused No. A14 – Hareesh(Q9) with a memory card [MO27(e)].

3. The remaining documents which come with in the purview of electronic evidence are the Call Data Records, the Customer Application Forms of the mobile phones used by the accused persons and their 65B certificates produced by the nodal officers of mobile network service providers. (Ext.P40(series), [Ext.P41(series), Ext.P42(series), Ext.P83(series), Ext.P91(series), Ext.P161(series), Ext.P162(series)]).

4. Memory card containing postmortem videos, DVD containing videos of inquest, CDs containing photos of place of occurrence, accused, Madhu etc.

203. Altogether 6 mobile phones were seized from these accused persons. All these are kept in the custody of the court in its original form itself. Likewise, the CCTV footages are also in the original form. The DVR of the CCTV footages itself were seized in its original form.

204. The relevant CCTV footages in the DVRs and photos and videos in Mobile phones are extracted in Ext. P92(a) pen drive produced by PW95, the expert along with Ext. P92 Cyber Forensic Analysis Report.

205. The next thing is the call data records, customer application form, 65B certificates etc. These are secondary evidences, because the original is the server. It is evident from the oral evidence of Nodal Officer of Vodafone idea (PW52) that the server is kept at Pune and it was kept at an area of 2 lakhs square feet and hence the server cannot be brought to this place. That is why these secondary evidence of the relevant call data details, customer application form etc were produced before court and the

same is accompanied by 65B certificates of concerned Nodal Officers. Now coming to the evidentiary value of the electronic evidence.

206. According to the counsel for the accused nos 2 to 16 the CCTV footages and the videos and photos which were extracted from the mobile phones of the accused cannot be relied on because the examination of these CCTV footages and mobile phones were conducted by PW95, who do not have any authority to examine these computer equipments in view of section 79(A) of the Information Technology Act and section 45(A) of Indian Evidence Act. For that reason the counsel for the accused Nos. 2 to 16 have objected the relying of these electronic evidence produced before the court. It is to be noted that this being the contention taken by the accused Nos.2 to 16, accused No.1 is fully admitting these CCTV footages and A1 is relying on the CCTV footages to prove his innocence. According to the counsel for the accused the innocence of the accused No.1 can be proved by the contents of the CCTV footages and hence he blindly relied on the entire CCTV footages

especially the one that was taken from the Sreerag Bakery Cool Bar Mukkali(Q2) and other one that was taken from Valliyammal Gurukulam situated beside the Mukkali-Silent Valley road (Q3).

207. Now let me examine whether the report of examination conducted by Assistant Director, State Forensic Science Laboratory Thiruvananthapuram (PW95) can be accepted or not due to non recognition of such agency by issuing notification by the Central Government u/s. 79(A) of Information Technology Act at that time. Later this agency is recognised by issuing notification in 2021. In this context, it is worthwhile to reproduce section 79(A) of the Information Technology Act hereunder :-

79A. Central Government to notify Examiner of Electronic Evidence –

“The Central Government may, for the purposes of providing expert opinion on electronic form evidence before any court or other authority specify, by notification in the Official Gazette, any Department,

body or agency of the Central Government or a State Government as an Examiner of Electronic Evidence”.

208. Likewise, it is also beneficial to reproduce section 45(A) of Indian Evidence Act hereunder :-

Section 45A. Opinion of Examiner of Electronic Evidence –

“When in a proceeding, the Court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is relevant fact”.

209. Section 79(A) Information Technology Act merely says that the Central government may notify such and such laboratory/body department as competent authority for the purpose of this act. That doesn't mean that no other laboratory in the

country has any authority to examine any electronic evidence. It is further to be noted that the first notification was made only on 26.03.2018. What will be the fate of the examination of electronic evidence conducted by the State Cyber Forensic Laboratory till then?. It is to be noted that section 79(A) of the act that does not completely ignore the report submitted by the State Forensic Science Laboratory. The Information Technology Act is totally silent as to the legal validity of such examination of electronic evidence conducted by the State Cyber Forensic Laboratory till then. Can we say that till 2018 no electronic evidence was admitted in evidence by Indian Courts?. Can it be said that the whole electronic evidence produced before the courts till 2018 is to be completely eschewed from evidence?. It cannot be like that. That is not what is intended by section 79(A) of IT Act.

210. In fact, no decision of our Hon'ble Supreme Court is brought to my notice with regard to this interpretation of section 79(A) of the Information Technology Act and the legal effect of non compliance of section 79(A) of Information Technology Act. The

learned Special Public Prosecutor has brought a decision of Hon'ble High Court of Allahabad in Criminal Revision No.921 of 2022. In that case it was held that :-

“Section 79A of Information Technology Act or section 45A of Indian Evidence Act do not provide that in the absence of notification in respect of a laboratory, opinion based on scientific examination given by a person well versed or skilled in such science, is not admissible in evidence. Unless such a bar is specifically provided in law, it cannot be read as an extension of Section 79A of the Act that the report given by any other body/laboratory shall not be inadmissible in evidence in the absence of notification”.

211. Ext.P92 report is filed u/s.293 Cr.PC. In this context, it is beneficial to examine Section 293 of Cr.PC :-

Section 293 Cr.PC.

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceedings under this Code,

(2) The court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a court and he is unable to attend personally, he may, unless the court has expressly directed him to appear personally, depute any responsible officer working with him to attend the court, if such officer is conversant with the facts of the case and can satisfactorily depose in court on his behalf.

(4) This section applies to the following Government scientific experts, namely :-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosive;

(c) the Director of th Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director, (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the government;

(g) any other Government scientific expert specified by notification, by the Central Government for this purpose.

212. It is also beneficial to reproduce section 45 of Indian Evidence Act.

“45. Opinions of experts

When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impression are relevant facts”.

213. Neither S.79A of IT Act nor S.45A of Evidence Act mandates that with regard to electronic evidence, only the expert opinion made by a notified expert u/s. 79A of IT Act alone is admissible in evidence. Had that was the object of S. 79A of IT Act and S. 45A of Evidence Act, necessarily the corresponding amendments should have been made in section 293 Cr.P.C and section 43 of Evidence Act. These aspects were examined by the

Hon'ble Allahabad High Court and accepted the report of CFSL. PW-95 is the then Assistant Director, Forensic Science Laboratory Thiruvananthapuram. He is a competent expert with in the meaning of section 293 Cr.P.C (S.293(4)(e) Cr.PC).

214. Apart from that the learned Special Public Prosecutor has further relied on the decision of Hon'ble Madras High Court reported in **2019(0) Supreme (Mad) 831**.

215. The discussion made in that decision reveals that the CCTV footages or electronic evidences are to be treated as *“silent witnesses of facts and they cannot be eschewed from the purview of evidence. They are substantive evidence of what they portray”*. (para.115).

216. Quite contrary to that the counsel for the accused Nos. 2 and 5 has relied on a decision of our Honourable High Court reported in **2022(1) KLJ 848**. A meticulous reading of that decision reveal that no such law is declared by our Honourable High Court stating that only an expert under Section 79A of IT Act can examine

an electronic record. In fact the validity of these reports was not a question for consideration of the Honourable High Court of Kerala in that case.

217. In fact PW95 who produced Ext.P92 report and P92(a) pen drive and P92(b) 65B certificate is an expert coming within the ambit of section 293 Cr.P.C. Even the contents of Ext.P92 report reveals that it was filed u/s.293 Cr.P.C. Had the intention of the Central Government or the Law Makers was to avoid the examination of electronic records by State Cyber Forensic Science Laboratory coming u/s.293 Cr.P.C, that would have been found a place in Cr.PC as well by making corresponding amendments in section 293 Cr.P.C. In the absence any specific bar in conducting examination of electronic evidence by a State Cyber Forensic Laboratory section, S.293 of Cr.P.C is to be followed. It is to be noted that though section 79A was incorporated in the IT Act in 2009 by way of amendment, the first notification under S. 79A was made only on 26.03.2018. (for certain items of electronic records not for all). That too was digitally signed and uploaded in the e-gazette

only on 03.04.2018. It is to be noted that in this case the DVRs and mobile phones were produced before the State Forensic Laboratory on 27.03.2018. Thus, the Investigating Officer in this case cannot be blamed in producing the DVRs and mobiles before the notified laboratory itself.

218. In view of the above, I find that so long as section 45 of The Evidence Act and section 293 Cr.PC remain as such even now the report filed by State Forensic Science laboratory with regard to an electronic evidence is admissible in evidence in the absence of any prohibition / restriction in section 79A of IT Act and section 45A Evidence Act for accepting these reports. Therefore, I find that it is illegal to reject the Cyber Forensic Analysis Report produced by PW95 u/s.293 Cr.P.C.

219. Due to the advancement of technology the day to day life became impossible by totally ignoring these electronic devices and hence nowadays the Investigating Agency is primarily relying on these electronic evidence such as CCTV footages, mobile phones etc

for proving criminal cases and in fact such practice is to be encouraged due to the advancement of technology. Therefore, I totally disagree with the proposition made by the counsel for accused Nos.2 to 16 that the electronic evidence made available before this court is to be completely rejected.

220. Further, in support of the acceptance of the electronic evidence the counsel for the first accused relied on a decision of our Honourable Supreme Court reported in **2017(3)SCC Cri 663** and canvassed an argument that had they got any objection it should have been taken before marking these documents. As rightly pointed out by counsel for A1 none of the counsel for accused objected the marking of Exts.P92, 92(a), 92(b), marking of mobile phones, DVR etc.

221. It is further to be noted that all DVRs and mobile phones etc were produced before court in its original form. None of the accused persons have sought to play those hard-disk of DVR or to play the contents directly from the mobile phones itself. Thus

having conceded to play Ext.P92(a) pen-drive containing extracts of the CCTV footages, photos and videos in mobile phone etc now it is meaningless to contend that they have to be rejected from the evidence.

222. In this context, it is worthwhile to rely on decision to our Honourable Supreme Court reported in 2022(4) SCC 321 (2022 KHC 6241) In that case Hon'ble Supreme Court held that

“Material recovered from CCTV camera footages, hard disk and pen drive formed the basis of conviction- Hard disk produced in court were duly accompanied by requisite certification under 65(B) of Evidence Act. Hence mere objection that hard disk itself was not played in the court is not a reason to reject the case of prosecution and court below were not in error in relying upon CCTV footages”.(para 17,18).

223. Apart from that the facts of that case reveal that the Hon'ble Supreme Court has accepted the procedure followed by the Investigating Officer in hiring the service of a hardware engineer to transfer the relevant CCTV footages from a hard-disk to a pen-drive. (Paragraph 2 of that judgment makes it clear.)

224. In this case, none of the accused demanded the court to play the contents of hard disks and mobile phones directly before court. It is further to be noted that nothing was brought out during examination of the expert (PW95) or during examination of Investigating Officer (PW97) that these electronic evidences were in any way tampered.

225. Incidentally it is contended by the counsel for the accused that the Call Data Records, Customer Application Forms etc cannot be relied on because the Nodal Officers have not deposed before the court that such and such calls were made from such and such mobiles. According to the counsel for the accused Nos.3, 6, 8 to 10, 12 & 16 unless these Nodal Officers deposes before court that

such and such persons have called from such and such numbers to another numbers these call data records cannot be looked into. Needless to say that these are secondary evidence of data contained the server of service provider. In fact, in my view such argument canvassed by the counsel for the accused is against the spirit of section 22(A) of Indian Evidence Act which reads as under :-

“Oral admission as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question”.

226. In this context, it is worthwhile to rely on decision of our Hon'ble High Court of Kerala reported in 2019 (4) KHC 928. In that case the Hon'ble High Court has explored the scope of the electronic evidence of the present decades and the Hon'ble High Court held that a conjoint reading of section 22(A) of Indian Evidence Act and section 59 of Evidence Act reveals that *“the contents of electronic evidence are not expected to be proved by*

oral evidence and oral admission of contents of electronic records are not relevant unless its genuineness is questioned”.

227. Likewise, the call data records were produced by the Nodal Officer after attestation along with 65B certificates. There is no dispute that the Nodal Officers are the competent person authorised to issue call data records, 65B certificates etc. These documents are also formally proved by the Nodal Officers by deposing that these were issued by them. In such circumstances what else the nodal officer can depose against the contents of these call data records. Are they expected to depose against the contents of such call data records?. Therefore, in the light of the aforesaid decision, I find that the nodal officers are not expected to read the contents of these call data records or the customer application form etc. before court. Therefore, no such arguments canvassed by the counsel for the accused Nos.3, 6, 8 to 10, 12 & 16 can be accepted.

228. In this context, it is worthwhile to rely on certain decision reported in **2018(3) KHC 429** wherein Honourable High

Court of Kerala held that *“call data records being evidence of a conclusive nature, cannot be overlooked and even a serious discrepancy in oral evidence has to yield to such scientific evidence”*.

229. Likewise, in the decision reported in 2011(10 SCC 675, Honourable Supreme Court held that *“the IEMI of the handset, on which the accused – appellant was making calls by using a mobile phone (SIM) subscribed in his name, being evidence of conclusive nature, cannot be overlooked on the basis of minor discrepancies”*.

230. Likewise, it is also contended that the court cannot watch the CCTV footages and videos in mobile phones and photos therein and arrive at a conclusion unless the witnesses identify the accused from the CCTV footages and the videos in mobiles and then depose. It is to be noted that PW2 has clearly identified all the accused in the CCTV footages except A12. Apart from that PW-95 has also has identified all the accused except A1 as reported in Ext.

P92 report. PW8 and PW19 have also identified the A1. Several other witnesses such as PW10, PW11, PW15, PW27 etc. have also identified many of the accused by watching the CCTV footages and videos in mobile phones. More over electronic records are documents with in the meaning of Section 3 of Evidence Act (after amendment). That being the facts electronic records are not expected to be proved by oral evidence. **(2019(4) KHC 928)**. If that be so what prevent the court to watch and understand the contents of these electronic records by taking into account of the identification of accused in the accused dock. Can the court say that the Goddess of Justice is a blindfolded lady with a balance in one hand a sword in other hand . Can the court turn a Nelson's eye to all these electronic evidence ? Not at all. Rather, the court is bound to examine all these "**matters**" placed before it and arrive at a just conclusion. For that the judge has to open all his sense organs to perceive the entire facts place before it. The judge has to pay his attention to each and every bit of vital information placed before him.

231. In this context, it is worthwhile to reproduce paragraph 36 and 37 of the decision of our Hon'ble High Court of Kerala reported in **2018 (3) KHC 725**, the relevant paragraph reads as under :-

“The section makes it clear that (section 3 of Evidence Act) the court has to reach a conclusion not on the basis of evidence alone, but on the basis of matters before the court. Of course, these matters include evidence. There can be other matters also before court. The facts like identity of the person who is present before the court or presence or absence of a party before the court are matters before the court. The court need not examine anyone with regard to his identity or presence or absence. It has the authority to ascertain whether the person is present before it is the one seen in the visuals in the material objects like cassette, compact disk, pen drive”.

“A material object made part of evidence in the case is a matter before court. The court has the authority to examine it. The identity of the accused and victim who are present before the court is also a matter before it. The question whether those persons and the person seen in the visuals in the cassette marked in the evidence in the case are the same persons is one to be answered on the basis of matters before the court”.

232. Hence, I have no hesitation to reject the argument canvassed by the counsel for the accused that the court can not look into the CCTV footages and the videos in mobiles etc and arrive at a conclusion.

233. In a decision reported in **2015(7) SCC 178** the Hon’ble Supreme Court held that *“CCTV footages are best evidence to prove whether the accused were responsible for the crime”*. In fact, the Honourable Supreme Court has blamed the Investigating Officer in not producing the CCTV footages before the court. Though the

decision is overruled in **Arjun Panditrao's case** on other grounds this finding remain as such.

234. In this context it is worth to note that in the decision reported in **2019(0) Supreme (Mad) 831** Hon'ble Madras High Court has seriously criticised the trial judge in not examining the videos produced in that case by the judge himself and interrelating the accused who were present before court for the reason that all the material witnesses have turned hostile to the prosecution case.

235. In this case, I find that all the electronic records produced before court by the prosecution such as CCTV footages and mobile phones etc are in original form. The relevant files in these electronic records were extracted in Ext. P92(a) pen drive produced before court by an expert of State Cyber Forensic Laboratory (PW95) along with 65-B certificate, who is an expert coming with in the meaning of section 293 of Cr.P.C

236. There is no material to show that any of the electronic evidence is tampered. Once it is proved before the court through

testimony of expert that the photographs and the CCTV footages are not tampered, there is no reason or justification to perceive the same with the lens of doubt. (AIR 2017SC 2161) In that case also Hon'ble Supreme Court accepted the report of electronic evidence submitted by CFSL (without having that notification u/s 79 A of IT Act).

237. For the above reasons, I hold that all the electronic evidences made available before the court by the prosecution are acceptable in evidence. Point No.3 is found in favour of the prosecution.

238. **Point No.4** :- In fact, this point assumes much importance taking into account of the unanimous contention taken by all the accused person, rather the main defence setup by all accused. It is pertinent to note that invariably all accused (A1 to A16) have taken a contention that Madhu was manhandled by the police officials, when Madhu was taken into custody from Mukkali and he died due to impact of such injury caused by the Police officials. It is contended that Police officials have assaulted Madhu

not only in the police jeep but also in the Police station as well. Several suggestive questions were put to PW83, 84 and 89, who are the three police officials who have taken Madhu into custody from Mukali. It was suggested that they have taken Madhu to Police station as well and inflicted injury and hence these Police officials are to be held liable. It is further contended that the Investigating Officer, the doctor who treated Madhu, the Sub Collector who conducted inquest etc were influenced by the Police to hide the issue regarding police torture, to save the police and keep the image of the police department and put the entire liability on the shoulder of the accused persons who are totally innocent in this case. Thus, a meticulous examination of all these facts is very much important in this case.

239. On the basis of the principle of the last seen theory it is incumbent upon the Police officers (PW83, 84 and 89) to explain as to what happened to Madhu while he was in their custody. It is come out in evidence that Madhu died while he was under the custody of PW83, 84 and 89. Thus, under the principle of last seen

theory it is for these persons to explain as to the death of Madhu. These three persons are examined before this court and all of them deposed about the incident that happened on that fateful day. Simply because Madhu died while he was in the custody of Police persons, it cannot be concluded that the death of Madhu was due to police torture. The explanation offered by them while mounting the witness box that they are not responsible for the death of Madhu is to be evaluated in the light of the other materials placed before court.

240. It is to be noted that the last seen theory is of no universal application. It is context, it is worthwhile to rely on the following decisions :-

- 1) **2021(5) KHC 1** wherein the Honourable High Court held that *“last seen theory is always not reliable and time gap has to be tested on the facts and circumstances of each cases”*.

- 2) AIR 2017 SC 4839 wherein it was held by the Honourable Supreme Court that *“mere circumstance that accused was last seen with the deceased is an unsafe hypothesis to find a conviction on charge of murder”*.
- 3) AIR 2015 SC 3430 wherein the Honourable Supreme Court held that it is not prudent to base conviction solely on last seen theory – *“Last seen theory should applied taking into consideration the case of prosecution in its entirety and keeping in mind circumstance that precede and follow point of being so last seen”*.

241. In the light of these decisions, simply because Madhu was last seen with PW83, PW84 and PW89, they cannot be blindly held responsible for the death of Madhu. The court is expected to examine the circumstances which precede and follow the custody of Madhu with these police officials. In fact, the oral evidence of

PW86, the doctor rule out the role of PW83, PW84 and PW89 for cause of death of Madhu and therefore, I hold that these police personnel cannot be doubted for the sole reason that Madhu was last seen with these persons before his death.

242. As per the version of PW86, the doctor who conducted postmortem examination out of the 44 injuries, injury Nos. 1 to 15 are the cause of death. Out of these 15, injury Nos 1 to 3 have caused brain edema. Raised intracranial tension with flattening of gyri, narrowing of sulci and uncal grooving, a life-threatening neurological emergency situation is also referred in injury no 3. These are the main injuries which resulted in death of Madhu. According to the PW86, the doctor for this uncal grooving and for the formation of brain edema it will take at least 2-3 hours. Edema will be developed gradually after sustaining head injury and after 2-3 hours this edema will result in a situation of medical emergency. At that time if immediate medical support is not given the patient will become unconscious and ultimately death will be caused. That is the conclusion of the expert. Until then the victim can perform all

normal activities. According to doctor, even though Madhu sustained all those injuries he is able to stand, he is able to walk, he is able to take food, even behave like a normal person. Only at the stage when the edema attains such a saturated level it will result in death. Absolutely no material to disbelieve such version of doctor. Even though the doctor was cross examined at length apart from bringing some more explanation to his report nothing could be elicited to disbelieve him.

243. Thus, the evidence of the doctor who conducted postmortem examination reveal that the injuries caused on the body of madhu which led to brain edema should have been caused prior to 2 to 3 hours from the time of death of Madhu. At the worst if it is assumed that the Madhu died at 4.15 pm or on the other extreme possibility, immediately after 3.30 pm, even then necessarily these injuries should have been caused 2 to 3 hours prior to 3.30 pm or 4.15 pm as the case may be. It is come out in evidence that during all these time Madhu was in the custody of these accused persons. If that be so, hardly any chance to inflict these injuries by the police

personnel. If the police officials have inflicted injury on the body of Madhu,ie, in between 3.30 pm and 4.15 pm, necessarily the edema developed would cause death of Madhu only after that 2 to 3 hours from 3.30 pm, ie after 5.30 pm only. That is not the case here.

244. In this context, it is also worthwhile to analyse the opinion evidence tendered by PW86 with regard to injury Nos.26,28,31, and 33. According to doctor these injuries are caused by some spiky creepers in the forest. According to the doctor he has visited the place of occurrence in forest during the course of investigation. Doctor deposed that during his journey towards the place of occurrence, (Aandiyallachaal) he has seen such similar spiky stemmed herbs in that area and these injuries could be caused by such spiky stemmed herbs.

245. It is further to be noted that during examination the doctor further concluded that an over all evaluation of the entire injuries sustained by Madhu reveal that it is not a case of Police torture. But at the same time, the doctor deposed that these type of

injuries can also be caused by Police or anyone else. But the over all nature of the entire injuries, rather the “pattern of injuries” reveals that is not case of Police torture. That is the version of expert. Apart from that there is no material available court to find that after taking custody of Madhu, the Police personnel have taken Madhu to a place wherein spiky stemmed herbs are available. At the same time, when the Investigating Officer has taken the doctor who conducted the postmortem to the place of occurrence the doctor has seen such similar spiky stemmed herbs at forest. This evidence given by the doctor rule out chances of causing these injuries on the body of Madhu by Police in their journey towards Agali from Mukkali. This version of PW86 also strengthen the conclusion that Madhu sustained injuries while he was in the custody of these accused persons.

246. The evidence of the doctor who conducted postmortem examination (PW86) eradicate the possibilities of causing injury on the body of Madhu in between 3.30 pm to 4.15 pm of 22.02.2018. Thus, in fact the oral evidence of the doctor who

conducted postmortem examination cut the route of the defence contention that Madhu died due to Police torture. The oral evidence of the doctor put an end to defence set up by the accused. It just eradicate the unanimous contention taken by the defence that this is a case of police torture.

247. It is to be noted that for strengthening such contention of custodial torture of Madhu by the Police, it is even disputed that the body cremated by the relatives was not that of Madhu. Because the corpse / the dead body of Madhu was not identified by anyone and hence such benefit of doubt is to be given to the defence. It is true that the receipt signed by Rajesh who is a relative of Madhu issued to the police personnel, (PW73) at the time of receiving dead body of Madhu was not marked at the instance of Prosecution due to some omission. During examination, PW73 deposed that after postmortem, he has released the dead body to the relative of Madhu namely Rajesh as per the instruction of Dy.SP (Investigating Officer). It is to be noted that 5 relatives of Madhu was there at the time while conducting inquest by the Sub Divisional Magistrate

Ottapalam. None of them has not raised any objection regarding the identification of the body by relatives. In the inquest report it is very specifically stated that the dead body is identified by such relatives including blood relatives. Apart from all these neither the unfortunate mother of Madhu nor the sister of Madhu or any other relatives of Madhu have not raised by any contention that what they cremated is not the body of Madhu but body of someone else. Is it probable to believe that the mother, siblings and other close relatives will remain silent had they received the body of someone else instead of body of Madhu ? Not at all. It is to be noted that when PW70, the unfortunate mother of Madhu was examined, no such question was put to her contending that what was cremated by them is not the body of Madhu but body of someone else. The mother of the Madhu is the most competent person to identify the body of Madhu. If she does not have a case that they have not cremated body of Madhu, there is no meaning in contending otherwise by these accused persons.

248. In this context, it is worthwhile to rely on the decision of the Honourable Supreme Court reported in 2000(8) SCC 382 wherein the Honourable Supreme Court held as under :-

“Sister of victim who saw the dead body before it was cremated having no doubt that it was her brother's - nephew of victim also was first to identify the dead body of his uncle – plea of identity dispute cannot be allowed”.

249. It is to be noted that as part of rituals conducted during the burial of body, the body will be washed and the face will be kept open for offering the last prayer by the relatives. No such dispute is seen made by any of the family members during all these time. Therefore, I find that the contention taken by the defence that the dead body of Madhu was not identified is devoid of any merit and is only to be rejected.

250. In order to substantiate their argument that it is a case of Police torture, the defence disputed each and every aspects

starting from Mukkali itself. According to the counsel for the accused at the time of taking custody of Madhu the police has not complied with any of the formalities for arresting a person or taking custody of a person. The police has violated the directions of Hon'ble Supreme Court in D.K.Basu case. **(1996 ICO 816)**. Thus even non compliance of the formalities by the police while taking Madhu into custody itself is taken as a ground for supporting their claim that Madhu was assaulted by Police. It is to be noted that these three police officials such as PW83, PW84 and PW89 have taken Madhu into their custody as per the instruction given by his superior officer Subin (PW91) (the then Sub Inspector, who was on leave on the relevant day). In fact, Subin got information regarding the bringing of Madhu to Mukkali from A3. That is evident from the oral testimony of Subin and the call data records of A3. Thereafter, Subin, Sub Inspector who was on leave on that day has given immediate information to the GD charge in police station. Accordingly, GD charge Rejimon has informed Prasad Varkey and team, who was on patrol duty at Kakkuppadi and accordingly these

police party have reached Mukkali at about 3 pm. All these are brought out in evidence. The police can very well take a person into custody without formally arresting him. **(1983 Cr. LJ 1559)**.

251. It is come out in evidence that the police party have taken custody of Madhu at 3.30 pm. It is further come out in evidence that at about 4.15 pm the Madhu was medically examined by the doctor Lima Francis (PW56) of CHC Agali. According to that doctor she might have taken about 5 minutes to examine Madhu and after examination she has written the OP ticket in her own handwriting. Thus, at the worst scenario it could be find that Madhu was in the custody of the Police personnel from 3.30 pm to 4.15 pm on 22.02.2018. Some entries/corrections in the OP ticket register, postmortem register etc were highlighted by the counsel for the defence to create an impression that there is some manipulation in the records and that Madhu was brought to CHC, Agali only after 4.40 pm only. In support of such contention the defence relied on Ext.D6, D8, D12 and D13 documents and oral evidence of DW1, the present senior nursing officer of CHC Agali. But entries in these

registers reveals that apart from this correction there are ever so many other corrections in the registers in time, name etc. All these alterations or correction in the OP ticket register is not sufficient to disbelieve the evidence of PW56, the doctor Lima Francis who examined Madhu. She has emphatically deposed that she had examined Madhu at about 4.15 pm on 22.02.2018. She deposed that she herself has written in the OP ticket, she further admitted the correction she made in the OP ticket etc. According to her by watching the casualty clock she corrected the time in Ext P46, corrected the time as 4.15 pm instead of 4.12 pm. There is no reason to disbelieve the version PW56, the doctor. Even though the doctor was vehemently cross examined by the counsel for the defence nothing was brought out to disbelieve her version that she has examined Madhu at about 4.15 pm itself.

252. Incidentally the counsel for the accused has vehemently disputed the registration of manual FIR by PW83 . According to police they are justified in registering FIR manually due to power failure at the relevant time, canvassing circular

No.25/2016 dated 08.11.2016 issued by DGP. The non-registration of FIR in the CCTNS, the allegation that the CCTV camera was not working at the relevant time due to power failure etc were highlighted by the defence to show that all these things were manipulated by police only to put the liability on the accused persons herein. It is to be noted that as per the version of Prasad Varkey and other police officials as and when the doctor certified that Madhu was brought dead, the body was shifted to the Mortuary and they proceeded to police station. As per the version of Prasad Varkey he himself has manually registered Ext.P80 FIS and P81 report. In Ext.P80 FIS name, phone nos and address of 7 persons were stated as it was so stated by Madhu that these persons have attacked him. In fact, there is no probability of mentioning Phone nos by Madhu. Thereafter the report was registered in the CCTNS at about 7.50 pm. It is to be noted that on that day at 5.02 pm itself Rejimon, GD charge has already made entry in the CCTNS stating that Madhu died while he was bringing to Agali in Police Jeep. Ext.P90 proves this fact. In such circumstances, can the police do

anything quite contrary to such entry made in CCTNS at 5.02 pm. It can never be.

253. According to Prasad Varkey, to avoid delay in registering FIR in CCTNS due to power failure, he has registered EXt.P81 report manually. Because the delay for registration of FIR may be answerable by police. Even if it is assumed that the police has not registered the manual report at 5.15 pm and has registered CCTNS only at 7.50 pm, that is nothing to do with the case. Because even Ext.P81 report was registered only u/s. 174 Cr.P.C. At the same time, the counsel for the accused contended that Ext.P81 report should have been registered incorporating penal provisions by canvassing Lalitha Kumari case **(2008(3) SCC (CrI) 17)**. It is to be noted that at the time of registering Ext.P81 report the cause of death of Madhu is unknown to anyone. Cause of death is revealed only after postmortem. Even though Prasad Varkey has made some statement in Ext.P80 FIS that Madhu has told him that around 7 persons have attacked him and brought him from forest etc, later the Investigating Officer found that all these statements written by

Prasad Varkey in Ext.P80 FIS is not correct. The voice recording in Q5 in Ext.P92(a) pen-drive (file VID_20180222_151957) reveal that while taking Madhu from Mukkali, police collected the name and details of shop owners wherein theft took place. Taking advantage of these details Prasad Varkey has prepared Ext.P80 FIS. That is the only conclusion that can be gathered. Later the Investigating Officer realised the mistake committed by Prasad Varkey, exonerated the innocent persons and implicated these accused person after collecting details from mobile phones, CCTV footages etc. It is to be noted that even in Ext.P81 report these 7 persons were not arrayed as accused. It was registered only for reporting about death of Madhu u/s.174 Cr.P.C. It can never be equated with an FIR u/s.154 Cr.PC. There is no rule that whenever information regarding death of a person is received, the same is to be registered as an FIR u/s.154 with penal provisions. It is to be noted that the crucial question is what exactly was the cause of death of Madhu. Without having any materials regarding cause of death of Madhu the Police can not be blamed in not registering FIR for an offence punishable u/s.302 IPC.

Even at the time of examination of Madhu by doctor Lima Francis, the cause of death of Madhu was not ascertained. In such circumstances, the non-registration of the FIR incorporating penal provision at the time of registering Ext.P81 report cannot be taken as a ground for disbelieving the whole prosecution case. It is to be noted that when the PW97 taken over Investigation all these persons named in Ext.P80 FIS who are not responsible for death of Madhu were exonerated and the real persons were booked after verifying the CCTV footages, call data details, videos in mobile and the statement of witnesses etc.

254. In order to find fault with such defects in the FIR, delay in registering FIR etc the counsel for the accused relied on the following decisions :-

(2006)1 SCC (Cri) 678, (2008)3 SCC (Cri) 17, (2014)

1 SCC (Cri) 524, (2007) 1 SCC (Cri) 193 and 1992

SCC (Cri) 426.

255. It is true that had PW83 got material details such as cause of death of Madhu, who all are persons responsible for such act which resulted in death of Madhu, the exact details of person who died etc. then PW83 could have been blamed in not registering F.I.R under Section 154 of Cr.P.C at the time when Ext.P81 report under Section 174 of Cr.P.C was registered. Here in this case, cause of death was revealed only when postmortem examination was conducted by PW86 on 24.02.2018. Till then nobody has got clear idea about the cause of death. I have already found that the statement made in Ext.P80 F.I.S alleging that Madhu has given mobile numbers of seven persons cannot be believed. Later it was found by the Investigating Officer that what is stated by PW83 in Ext.P80 F.I.S was wrong. Accordingly, the actual accused persons were implicated. Therefore, I hold that in the absence of any sufficient materials required for registration of an F.I.R under Section 154 of Cr.P.C, PW83 cannot be blamed. In such circumstance, I hold that the decisions canvassed by the learned counsel for the accused will not help any of the accused and I hold

that the whole prosecution cannot be disbelieved on the sole ground that PW83 has not registered F.I.R under Section 154 of Cr.P.C at the very inception itself.

256. In this context, the decision of our Honourable High Court reported in **2013 KHC 798** wherein it was held that "*F.I.R could not have been registered on vague information*" – Court found that there was no delay at all and circumstances have been clearly explained by prosecution. Though the sentence imposed by the Honourable High Court in that case was modified by the Honourable Supreme Court, this finding remain untouched. Therefore, I don't find any merit in the contention taken by the counsel for the accused that the prosecution case is to be disbelieved for non registration of FIR u/s. 302 IPC at the very inception.

257. Yet another contention is that the police officials who have taken Madhu into custody have not noted the injuries that was found in the body of Madhu. Similarly, the doctor who treated Madhu at 4.15 pm at CHC, Agali has also not noted the injuries on

the body of Madhu and same is the case with Sub Collector, Ottapalam when he conducted inquest on the body of Madhu. Later when the doctor who conducted postmortem on the body of Madhu on 24.02.2018, 44 injuries were noted by the doctor. Now the question is from where these injuries occurred on the body of Madhu, when there was no such injury on the body of Madhu at the time of taking Madhu at Mukkali, at the time of examination by doctor Lima Francis and during the conducting of the inquest by the Sub Collector. These facts create doubt in the prosecution case and contended that it is a case of police custody. It is true that at the time of taking Madhu into custody by police or during the time when doctor Lima Francis examined the body of Madhu etc. none of the injuries were noticed. But during the course of inquest, some minor bruises were noted by SDM. Even at the time of taking Madhu into custody from Mukkali, none of the injuries were noted. As per the evidence of Prasad Varkey there was only some swelling on the lips of Madhu, there was no other injury.

258. Now comes the importance of the video recorded during the course of postmortem examination. In fact, the video recorded during the postmortem examination (Ext.P167) give light to the doubts as to why these injuries were not noted by the doctor or the Sub Collector. It is to be noted that Madhu was a man of dark complexion. In such circumstances, the injuries on the body of Madhu may not be visible just like a man of white complexion. When the postmortem examination was conducted the body was cleaned by using cotton and even at that time also the injuries are not visible. The video footages reveal these facts. (File No.0530, 0531, 0532, 0536, 0536, 0538 in Ext.P167 postmortem video). But when the doctors who conducted postmortem cut the doubtful areas of body of Madhu by using surgical knife it is found that some contusions are skin level and some contusions are muscle deep and so on. So the video taken at the time of postmortem examination reveal that the contusion that is mentioned in the postmortem report are not visible when the body is kept as such and can be revealed only when such contusions were cut by using surgical knife. Then

only the impact of such contusion can be understood by the doctor. (File No.0575, 0577, 0596 onwards in postmortem video). Had Madhu was a man of white complexion, the contusions on his body would have been visible. Even the doctor who conducted postmortem examination has cut some doubtful portions of contusions to understand the injury. Then only the doctor could understand that it is a case of contusion, some of them are muscle deep, some of them are at skin level only etc. Even the discussion between the doctors who conducted postmortem examination assumes importance. The conversation between the doctors are also audible in Ext.P167. Thus, the video footages taken at the time of postmortem examination reveal that the injuries that was noted by the doctor who conducted postmortem examination may not be visible by naked eye. It is well settled that postmortem report takes precedence over medical certificate. In a decision reported in 2019 Cr. LJ 4506, it was held that *“difference in number of injuries as reflected in MLC and PM report – PM report noted 11 injuries on the deceased, whereas MLC observed only 2 injuries – because*

MLC is only a preliminary examination whereas PM report is a detailed examination, the latter takes precedence over the observation made in MLC”.

259. Incidentally the Magisterial inquiry report prepared by Judicial First Magistrate, Mannarkkad u/s.176(1A) Cr.P.C. and another inquiry report by the Sub-Divisional Magistrate, Ottapalam u/s.176 Cr.P.C etc was brought on record by the prosecution to prove that it is not a case of custodial torture. The result of all these inquiry report are that this is not a case of Police torture. In answer to these two inquiry conducted by two competent authorities, it is contended by the counsel for the accused that the statement recorded by these authorities are behind the back of these accused and hence these reports are not binding on them. It is true that while recording the statement of witnesses in these inquiries none of the witnesses were subjected to the cross examination by the counsel for the accused. In such circumstances, they can very well ignore such enquiry report. But at the same time, as far as the court is concerned the court cannot simply ignore all these inquiry report.

These inquiry reports are relevant. In the decision reported in **2012 Supreme (Bom) 685**, Honouroable Bombay High Court held as under :-

“The report of judicial Magistrate concerned pursuant to judicial inquiry can prove handy and useful for the trial court to reach a correct conclusion when the trial is concluded. (Para 13)”.

260. Likewise, in a decision reported in **2014 Supreme (Mad) 4387**, the Honourable High Court of Madras considered the statement given by witnesses to the Magistrate during the course of inquiry under Section 176(1A) of Cr.P.C as identical to 164 statement and held that these statements could be used for corroboration or for contradiction of the maker of the statements during trial.

261. It is to be noted that the inquiry report conducted by the Sub Collector (SDM) was sent to Honourable National Human Rights Commission along with video taken at the time of

postmortem examination. Thereafter, the Honourable Human Rights Commission have sent a reply stating that they have accepted the inquiry report and video footages recorded at the time of postmortem examination and the finding of the inquiry officer (Sub Collector).

262. In this context, it is worth beneficial to reproduce the contents of Ext.P166 letter addressed by the Honourable National Human Rights Commission to the District Police Chief, Palakkad.

“The Commission received an intimation dated 24.02.2018 from the District Police Chief, Palakkad, Kerala regarding the death of one Madhu in te custody of police station, Agali, District Palakkad, Kerala. On 22.02.2018.

The Commission on 13.03.2018 took cognizance of the intimation and called for requisite reports including inquest report, Post-mortem report,

magisterial enquiry report etc. from concerned authorities.

Pursuant to the directions of the Commission, requisite reports were received from concerned authorities and the Investigation Division after analyzing various reports has suggested closure of the case as no foul play regarding the death of the deceased person has come on record. It is also submitted that the victim's family has also been paid a compensation of Rs.18,25,000/-.

The Commission independently well considered the various reports. On a perusal of those reports, the Commission finds no foul play on the part of Police. Moreover the victim's family has been paid a compensation of Rs.18,25,000/-. The Commission has no reason to take any other view on

the conclusion reached by the Investigation Division which has independently examined the reports.

In view of this, the case is closed along with the linked file, if any. The Video Cassette/CD of autopsy, if any, be sent back to the concerned authority”.

263. It appears that in the letter addressed by Honourable National Human Rights Commission, there is a mistake in paragraph No.1. It seems that instead of custody of police, it is typed as “te custodya” of police station. So long as the evidence leads to the only conclusion that Madhu was not taken to police station, but Madhu died while he was sitting in police jeep along with police personnel, this mistake can only be treated as a clerical mistake.

264. The report of the Honourable National Human Rights Commission is also a relevant fact to find that it is not a case of police torture. But it is true that all these inquiry reports are not binding on the accused. This court is expected to conduct a

comprehensive trial to unravel the truth and it is the duty of this court to ascertain whether it is a case of custodial torture.

265. Thus, on the basis of aforesaid discussion I find that it is not a case of custodial torture. This conclusion is supported by the inquiry report of the then Judicial First Class Magistrate, Mannarkkad and the inquiry result of Sub Collector, Ottapalam and subsequent acceptance of these inquiry reports by the Honourable National Human Rights Commission. Therefore I hold that it is not a case of custodial torture by police. Point No.4 found in favour of the prosecution.

266. **Point No.5** :- In order to decide this point the evidence of PW86, the doctor who conducted postmortem and Ext.P82 postmortem report is sufficient. The doctor has formally proved postmortem certificate. As per the postmortem certificate and the evidence of the doctor injury No.1 to 15 are the cause of death. During examination before court the doctor, PW86 deposed that injury No.1 to 3 can cause brain edema and over a period of time,

means a minimum of 2 or 3 hours this brain edema leads to unconsciousness, and this brain edema increases gradually and at a particular peak time it will cause brain damage and comes to situation as stated in injury No.3 ie, uncal grooving. It is further evident from page 11 of the evidence of PW86 that the injuries can only be caused by two or more persons. Thus it is evident from the testimony of PW86 that the injury No. 1 to 15 caused by two or more persons is the cause of death of Madhu. There is nothing in the evidence of doctor that it is a case of natural death. Therefore, I find that the cause of death of Madhu is homicide. Point No.5 is found in favour of prosecution.

267. **Point No.6** :- Motive, preparation and execution are the three main stages of a crime. Motive being the first stage of a crime, it is worthwhile to examine the motive behind the commission of crime at first itself. In the final report itself it is specifically stated that deceased Madhu had the habit of taking away food articles from shops of several persons at Mukkali and adjacent places. The fact that theft took place in shops at Mukkali, Kakkupadi, Kalkkandi etc is

evident from testimony of PW28-Mathachan, PW29-Ummar, PW30-Manoj and PW31- Latheef. These witnesses have deposed that from their shops theft occurred in several occasions. It is to be noted that as per Ext.P143(a) series screen shot of whatsapp it is stated that a person who is involved in more than 300 theft case has been apprehended in Mukkali. Thus, the evidence of PW28, 29,30 and 31 clearly reveal that in several occasions theft took place in that area. Even if it is assumed that the 300 number stated in Ext.P143(a) whatsapp screen shot is an exaggerated figure, there is no reason to disbelieve the oral evidence of PW28, 29,30 and 31.

268. It is further to be noted that during examination before court the Sub Inspector of Police, Agali Police Station (PW91 Subin) deposed that he has filed the final report in Cr.No524/16 wherein the deceased Madhu was the accused. The final report produced in that case is marked as Ext.P89. It reveals that CW2 in that case is none other than accused No.16 Muneer in this case. As per Ext.P89 final report CW2 Muneer in that case is expected to depose the identification of the accused in that case in CCTV footages. During

examination PW31 (father of A16 in this case) deposed that during course of investigation of the theft case in his shop the CCTV footages were seized by the Police. In Ext.P89 final report accused No.16 in this case is cited as CW2. That means in the CCTV footages accused No.16 in this case might have seen the person who have committed theft in his shop. But, during examination PW31 deposed that he is quite unaware of the person who has committed theft. Infact none of the witness including PW28, PW29, PW30,and PW31 has stated that the person who committed theft in their shop is Madhu. It seems that they are not revealing those facts to shut down the evidence from court that Madhu has committed theft. If it is so brought out in evidence the motive will be established very clearly. Any how it is come out from that oral evidence of PW28, PW29, PW30 PW31 and PW91 (Subin) that a lot of theft occurred in that area and the people in that area is fed up with such instances of theft, even though the subject matter of theft are mostly food items and other articles such as battery, torch, mobile phone charger, cigarette etc. It is further to be noted that most of the material

objects collected and produced before the court which are alleged to be recovered from the sack carried by Madhu reveal that apart from food items some items such as battery, torch, cigarette, some steel plates, cooking vessels etc were also there. Whatever may be the value or whatever may be the subject matter of the theft, a theft is always a theft. It is a nuisance to the public. Whether it is committed Madhu or whether it is committed by someone else is a matter of evidence. Based on the material produced, this court cannot arrive at conclusion that all the so called theft alleged by PW28, PW29, PW30, PW31, and PW91 (Subin) was committed by Madhu. Without having any convincing material or without having a finding by a competent court this court cannot brand Madhu as a habitual thief. But the prosecution evidence made available before court leads to a conclusion that there were a series of theft took place in these places. This series of theft in Mukkali, Kakkupadi, Kalkandi etc. became a nuisance to the public. This prompted the accused persons to form an assembly and to apprehend Madhu believing that the person behind this theft is Madhu and this

ultimately resulted in the commission of this crime. In fact, there may not be any direct evidence to prove the motive behind the crime. The motive is to be inferred from the attending circumstances. Here the motive is evident from the aforementioned circumstances discussed. Therefore, I find that the prosecution has succeeded in establishing the motive behind the crime. Point No.6 is found in favour of the prosecution.

269. If the motive behind the crime is established it supplies an additional link to the chain of circumstantial evidence in a case which is primarily relying on circumstantial evidence. That was the dictum laid down by our Hon'ble Supreme Court report in **2023 SC online 2 (2023 KHC 6002)**.

270. **Point Nos.7, 8, 9, 10 & 11** :- The prosecution case is that accused Nos. 3, 5, 6, 7, 8 and 12 formed themselves into an unlawful assembly at Mukkali, with the common object of abducting Madhu from reserve forest, cause grievous hurt to him and then to murder him. This unlawful assembly was formed after getting

information from A2 that Madhu is there in Aandiyallachaal forest. It is further alleged that subsequently other accused persons have joined in the unlawful assembly with the knowledge of the common object of such unlawful assembly, and hence all of them are liable for the act done by each one of them. In order to establish the common object of an unlawful assembly there may not be direct evidence. It has to be gathered from the circumstances of the case. It may reasonably be gathered from the nature of the assembly, arms carried by the members of such unlawful assembly, behaviour of accused at or before or after the crime etc.

271. First let me ascertain what exactly was the common object of such unlawful assembly. As per the prosecution case, the common object of unlawful assembly was for abducting Madhu from reserve forest, cause grievous hurt to him and then to murder him. Had the common object of unlawful assembly was for murdering Madhu, why they have brought Madhu to Mukkali junction?. They could have finished Madhu in the reserve forest itself, where a lot of rocky area is there, as evident from the video collected from the

mobile phones seized from the accused persons. They could have finished Madhu by a mere push from that steep rocky place in reserved forest itself and come back. The very fact that the accused persons have brought Madhu to Mukkali and entrusted him to Police itself reveal that they have no idea or common object to put an end to the life of Madhu. It is to be noted that even before the accused persons reach Mukkali A3 has called PW91, Subin, SI of police and informed that they are bringing Madhu to Mukkali. After reaching Mukkali also A3 has again called PW91 and informed that Madhu is brought to Mukkali. All these facts reveals that the common object of such unlawful assembly was not to put an end to the life of Madhu but to apprehend him cause some injury /grievous hurt on his body and then to entrust him to the Police. Perhaps the causing of injury to Madhu was to teach him a lesson. That was the only common object that can be inferred from the available materials placed before court. Therefore, I find that the common object of unlawful assembly so formed by the accused persons was only to apprehend Madhu, cause some injury / grievous hurt on the body of

Madhu and then to entrust Madhu to the Police. But due to the impact some of the injury the condition became worst and that ultimately resulted in his death.

272. In order to prove those unlawful assembly first thing that was relied on by the prosecution is the telephone calls made by the second accused over mobile phone of 9th accused. It is evident from Ext.P42 call data records that on 22.02.2018 at about 12.17 pm, and 12.21 pm and 12.22 pm the second accused has called the 9th accused. As per the prosecution case the second accused came to know about the presence of Madhu in the forest from Kakki (PW11). During examination PW11 deposed that he has seen Madhu on that day in the reserved forest. Even though initially PW11 turned hostile to the prosecution case, subsequently when he was recalled, he deposed this particular fact. But in the light of the decision of the Hon'ble High Court of Kerala reported in **2022 (2) KLD 581 (DB)**, I have no hesitation to accept the testimony of PW11. According to him, Marakkar has enquired him about Madhu.

273. There are evidence of other witnesses (PW10) to find that A2 was there in the reserved forest on the relevant day. It can be inferred from the entire circumstances that A2 got information about the presence of Madhu from PW11. Accordingly, A2 shared the information to the 9th accused. Who in turn has contacted the remaining accused persons over phone and directly also. Thereafter, 9 accused persons have joined at Mukkali. The very fact that the accused persons ie accused No.3, 5, 6, 7, 8, 9,10, 12 and 13 have joined there at Mukkali is evident from the CCTV footages that is produced before the court. The CCTV footages seized from Ponniyammal Gurukulam contained in Q3 file of Ext.P92(a) proves that fact. At time interval from 12.41.24 onwards the accused persons are gathering there. At 12.44 pm 8 accused persons are entering into a Marshal Jeep and they are proceeding towards the Silent Vally road from Mukkali. At that time accused No.13 is also moving towards Silent Valley road in a Bullet. All these facts are crystal clear in the CCTV footages produced in this case. The same is formally proved by the Expert PW95.

274. It is to be noted that the identification of the accused persons were clearly established by PW2, Unnikrishnan after seeing the CCTV footages and also he has separately identified accused persons from the dock. The photographs of the accused persons are made available before court and these photographs were marked as Ext.P33 series. Who all are the persons shown in the photographs are clearly denoted by the Expert, PW95 in Ext.P92 report. He has also identified the accused persons in the dock also. Thus, from the oral evidence of PW2 and PW95 the identity of the accused persons is clearly established. With that materials, I have ascertained these accused persons in the CCTV footages. From all these materials the gathering of the accused persons at Mukkali can be clearly identified and recognized.

275. Thereafter, these persons have entered in the reserve forest and they proceeded to Aandiyallachaal along with second accused. In Aandiyallachaal these accused persons (A2, A3, A5, A6, A7, A8, A9, A10, A12 and A13) have apprehended Madhu and they have brought Madhu to Mukkali through Anavai Forest

Station. The fact that the accused persons have brought Madhu through Anavai Forest Station is also evident from the CCTV footages seized from the Anavai Forest Station. (Q1 file in Ext.P92(a) pen-drive).

276. The fact that these accused persons have apprehended Madhu from Aandiyallachaal Reserve Forest is evident from the videos found in the mobile phones of the accused itself. The video file in mobile phone that was seized from the accused No9 reveal that these accused persons have apprehended Madhu from the forest. (Q7 file in Ext.P92(a) pen-drive). The evidence of Panali (PW53) and Panjan (PW62) reveal that the area that is shown in the mobile phone videos is nothing but Aandiyallachaal. These persons were working in Forest Department in that area. After viewing these videos played before court, they easily recognized that the place is nothing but Aandiyallachaal. It was further identified by other Forest Range Officer who produced the notification with regard to the reserve forest. Apart from all these in Ext.P92 report also it is very clearly reported by PW95 that while recording the videos the

mobile phone were located at reserved forest. That is evident from Page No30 of Ext.P92 report. By taking the GPS tracking system he clearly located the place, as one within the reserved forest. In the meantime accused No.14 and 15 have also joined the unlawful assembly from Vandikkadavu. CCTV footages seized from Anavai forest station reveals that the Marshal jeep of A9 is proceeding towards Vandikkadavu. (12.51.51 pm in Q1 file.) CCTV footages at 13.50.28 pm in Q1 file reveal that the xylo car of A14 is moving towards Vandikkadavu. The CCTV footages seized from Anavai Forest Station during the subsequent duration (14.46.50pm onwards) reveals that accused persons including A14 and 15 are also bringing Madhu towards Silent Vally-Mukkali road by keeping a sack on the shoulder of Madhu.

277. PW27 Lakshmi also deposed about the bringing of Madhu towards Mukkali and she identified the CCTV visuals at Anavai Forest Station. Followed by this the subsequent CCTV footages in Ponniammal Gurukulam, Mukkali reveal that these accused persons have brought Madhu to Mukkali. The CCTV

footages at time 2.52 pm of Q3 file contains the relevant visuals. CCTV footages seized from Sreerag Bakery conducted by A14 (Q2) reveals that Madhu was brought to Mukkali junction and he was made to sit in front of treasure box situated in front of Sreerag bakery. All these facts are evident from the CCTV footages and evidence of Lakshmi etc reveal that the accused persons have brought Madhu to Mukkali. Absolutely there is no material available before court to disbelieve the CCTV footages and evidence of Kakki, Lakshmi etc. The CCTV footages further reveal that after reaching Mukkali accused No.1,4, 11 and 16 have joined the group.

278. The very act of doing an overt act by A1 make it succinctly clear that he has joined that unlawful assembly by doing some overt act to cause injury to Madhu. (As evident from CCTV footages at Mukkali for the time 3.36.10-13pm). That itself is sufficient to find that he has joined the unlawful assembly by knowing the common object of such unlawful assembly. It is to noted that A1 is not a man of that place he came to that place all the way from Pakkulam. The presence of A1 at Mukkali is admitted by

him. The explanation offered by him that he has got some reason to visit his daughter's house at Mukkali in connection with the love affair of the grand daughter is already found to be a cooked up story. Therefore, I find that A1 has joined the unlawful assembly fully knowing the common object of such unlawful assembly. According to the counsel for A1, he has not committed any overt act and hence, it cannot be said that he joined in the unlawful assembly and shared common object of such unlawful assembly. In support of such argument, the learned counsel for the A1 relied on a plethora of decisions which are listed hereunder :-

**(2013)2 SCC (Cri) 530, 2003 SC (Cri) 506,
1979 SCC (Cri) 14, (2011)2 SCC (Cri) 632,
(2007)3 SCC (Cri) 578, 1981 SCC (Cri) 595,
(2010)1 SCC (Cri) 413, (2009)3 SCC (Cri) 431,
1195 KHC (Cri) 873, 2013 KHC 3949,
2021 KHC 6776, 2008 KHC 7116,
1956 KHC 391, 1993 KHC 710,
1989 SCC (Cri) 490, 1991 SCC (Cri) 1059,**

1978 SCC (Cri) 54 & 1978 SCC (Cri) 549.

279. Likewise, the learned counsel for A2 and A5 relied on the following decisions :-

1) 2003 ICO 959, 2) 2017 ICO 829

3) 2018 ICO 2900 & 4) 1981 ICO 88

and canvassed argument that they have not joined the unlawful assembly and hence the accused persons cannot be held liable canvassing S.149 IPC.

280. But, on going through all these decisions it is found that once it is come out in evidence that overt act is committed by a member of unlawful assembly there is no chance to escape from the clutches of law. Whether a person is held to be a part of unlawful assembly, not only the overt act committed by that person, but his conduct and surrounding circumstance are also guiding factor. Therefore, I find that none of the decisions will help these accused except A4, A11, and A16.

281. As far as the role of A11 is concerned, throughout the CCTV footages in Mukkali A11 is there in the group along with other public. But absolutely there is no evidence available before court to find that A11 has committed any overt act either to attack Madhu or to wrongfully confine Madhu or even for abusing Madhu. There is no case for the prosecution that A11 has taken the photographs of Madhu. Even though an allegation was made that A11 has called Madhu “as thief” none of the witness has deposed about those facts. In the CCTV footages there is no voice recordings and in the videos in mobile phones also such voice is not audible to find that A11 has abused or insulted Madhu while he was sitting at Mukkali junction. In the absence of such positive evidence and in the absence of any evidence to show that A11 has committed any overt act either to insult Madhu or to wrongfully confine Madhu it cannot be said that he knowingly joined the unlawful assembly. It is evident from the CCTV footages produced in this case that there are several persons gathered there in that place and most of them are silent spectators. That innocent persons who are simply watching

that incident cannot be implicated in this case by canvassing S. 149 IPC unless it is established that those persons have committed some overt act.

282. It is to noted that as per the prosecution case the accused persons have abducted Madhu with the common object of committing murder, committing grievous hurt etc. How can A11 who remained as a silent spectator in the gathering along with other innocent persons be made liable for a charge of u/s. 302 IPC or 326 IPC without having any overt act being proved against A11 ?

283. In this context, it is worthwhile to rely on the decision of our Hon'ble Supreme Court reported in **2013(2) SCC (Cr1) 530**. The dictum laid down in that case reveal that innocent bystanders are to be differentiated from persons who commit overt acts while bringing accused persons canvassing S.149 IPC.

284. Similar view was taken by the Honourable Supreme Court in a decision reported in **2013 KHC 3949**.

285. In a decision reported in 2010(1) SCC (Cr1.) 413, Honourable Supreme Court held that *“persons who are merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the unlawful assembly is to be distinguished”*.

286. Law does not permit such a contingency to implicate an innocent person who remain as a silent spectator in an incident. Therefore, in the absence of any overt act A11 cannot be said to have joined the unlawful assembly. Therefore, I hold that A11 has not joined in the unlawful assembly.

287. The next is with regard to A16. Admittedly A16 has not went to the forest along with other accused for apprehending Madhu. The only allegation made against A16 is the so called hit alleged to be made by him on the back side of Madhu while he was standing at Mukkali. Video recordings in Q7 file in Ext.P92(a) extracted from the mobile of A9 Najeeb proves that A16 has hit Madhu behind his back. It is obvious from that video that A16 has

hit Madhu behind his back and Madhu is instantaneously turning back. The facial expression of Madhu reveal that such act has not caused much pain rather than a mere annoyance. None of the injury stated in the postmortem certificate can be attributed with such act of A16. Had he shared any common object he could have caused somewhat grave injury just like others. In the absence of such injury it is injustice to drag A16 to a charge of 302 IPC by canvassing 149 IPC. Whether the act done by A16 will attract any other penal provision individually will be discussed separately.

288. In decision reported in 1979 SCC (Crl.) 14, the Honourable Supreme Court held that “*innocent curious spectator*” is to be distinguished from others who committed overt act. In the very same decision, Honourable Supreme Court held that “*a stray assault by any one accused on any particular witness could not be said to be an assault in prosecution of the common object of the unlawful assembly*”.

289. Therefore, I hold that A16 has not joined in the unlawful assembly knowing the common object of such unlawful assembly.

290. The next question is regarding A4, Aneesh. Admittedly, A4, Aneesh has not caused any bodily injury to Madhu. He has not went to the forest for apprehending Madhu. The only allegation made against A4, Aneesh is that he has captured some photos of Madhu in his mobile phone and circulated the same in social media. In this context, it is to be noted that the common object of such unlawful assembly was to apprehend Madhu, cause grievous hurt and then to entrust Madhu to the Police. The unlawful assembly did not have a common object to take photographs of Madhu. But it was so happened during the course of that incident. In such circumstances, simply because A4 has taken the photographs of Madhu or video-graphs of Madhu it cannot be said that he has shared the common object of such unlawful assembly and joined that unlawful assembly. In such circumstances, in the light of the decisions referred above I find that he cannot be incriminated for a

charge u/s.302 IPC by canvassing 149 IPC. Whether A4 is liable for taking photographs and posting the same in social media will be dealt with separately.

291. Incidentally, the counsel for the accused Nos.3, 6, 8 made an argument with regard to section 141 IPC. According to the learned counsel, in view of definition of 141 IPC the accused in this case cannot be said to have formed themselves into an unlawful assembly unless it is established that they have formed an assembly to overawe by criminal force against Central government or the State government or to resist the execution of law, committed any mischief or criminal trespass and so on. Thus according to the counsel for these accused for committing offence against human body alone an unlawful assembly cannot be formed in view of S.141 IPC. Only offences against property can be brought under the purview of unlawful assembly. In my view, such argument canvassed by the counsel for the accused is quite surprising and is against the spirit of the third limb that is provided in section 141 IPC. In my view, the word other "offence" used in the third limb of section 141

IPC is inclusive of offence against human body as well. The definition of term “offence” in section 40 of Indian penal code also overrule such argument of the learned counsel. In this context, it is worthwhile to rely on a decision of our Hon'ble Supreme Court reported in **AIR 2012 SC 2875**, in that case the offences charged against the accused are only offences against body. There was no offences against property. The Hon'ble Supreme Court held that all the accused persons are liable for offence punishable u/s.326, 324 r/w 149 IPC. Hence, such an argument is rejected in limine.

292. Thus, on evaluation of the electronic evidence, oral evidence and circumstances made available before court, I came to the conclusion that the prosecution has succeeded in establishing that the accused persons except A11, A16 and A4 formed themselves into an unlawful assembly with the common object of apprehending Madhu from reserve forest and cause some bodily injury / grievous to Madhu and then entrust him to the Police. Point Nos.7 to 11 found accordingly.

293. **Point No.12** :- While discussing point Nos.7 to 11, I have already found that accused Nos.3, 5 to 10, 12 and 13 have initially formed unlawful assembly at Mukkali itself before going to Aandiyallachaal forest. Later, I found that A2 joined the unlawful assembly and thereafter accused Nos.14 and 15 have joined the unlawful assembly at Vandikadavu. Thereafter, these unlawful assembly reached at Mukkali. By that time, A1 has also joined the unlawful assembly. The CCTV footages and circumstances of the case reveal that the unlawful assembly used force and violence to attack Madhu in prosecution of the common object of such unlawful assembly. It is true that there is no oral evidence or other CCTV footages to prove the overt act committed by the accused persons except A1. But the fact that these accused persons have attacked Madhu and pursuant to that Madhu sustained injuries is evident from the materials placed before the court. In such circumstances, it is to be held that the prosecution succeeded in establishing the ingredients of the offence punishable under Section 146 of the Indian Penal Code and hence, the penal provision under Section 147 of the

Indian Penal Code is clearly attracted. Therefore, I hold that the accused persons who have formed unlawful assembly and subsequently joined in the unlawful assembly have committed the offence punishable under Section 147 r/w Section 149 of the Indian Penal Code. Point Nos.12 is found in favour of the prosecution.

294. **Point No.13** :- The materials placed before the court reveal that most of the accused persons except A1, A4, A11 and A16 have brought Madhu to Mukkali from Aandiyallachaal forest and kept him in Mukkali till the police reached at that place. It is further evident from the videos recorded in the mobile phones and CCTV footages that the hands of Madhu was tied by using MO2 zip. The manner in which Madhu was brought to Mukkali by these accused persons by making him to walk all the way from Aandiyallachaal forest to Mukkali through Aanavai check post is evident from the CCTV footages seized from Aanavai Forest Station (Q1) and the oral evidence of PW27. The CCTV footages in Mukkali reveal that the accused persons were standing around Madhu or nearby Madhu in such a way as to prevent Madhu from escaping from their custody.

This is apparent in the CCTV footages. Even though all the accused persons are not there in the gathering formed around Madhu, it can be clearly inferred that these accused persons have control over Madhu so as to prevent Madhu from escaping from their custody. Thus, the prosecution has clearly established the ingredients of wrongful confinement as defined under Section 340 of the Indian Penal Code. Needless to say, they are liable for the offence under Section 342 of the Indian Penal Code.

295. Even though in the CCTV footages, there is no evidence to show that A1 has caught hold of Madhu so as to wrongfully confine him, it is apparent that he has also shared the common object of the unlawful assembly. After reaching Mukkali, A1 was there in that group until Madhu is taken by the police. The videos recorded in VID-20180222-WA0094 in Q5 file reveal that A1 has taken active role in entrusting Madhu to the police. The very presence of A1 near to the police jeep and giving some instructions himself reveal that he also had got the intention to wrongfully confine Madhu at Mukkali till the police reaches that place. Therefore, I hold

that A1 is also liable for having committed the offence punishable under Section 342 r/w Section 149 of the Indian Penal Code. Point No.13 is found in favour of the prosecution.

296. **Point Nos.14, 17 & 18** :- The oral evidence of PW86 and Ext.P82 postmortem certificate reveal that in injury No.12, there is ribs fracture. Injury No.12 in Ext.P82 postmortem reads as follows:-

Tramline contusion 12.5x2.5x1 to 2 cm, with a central pale area of 1 cm breadth in its long axis, obliquely placed on left side of back of trunk, lower inner end 6.5 cm outer to midline and 32 cm below top of shoulder. Underneath, the XIth rib was seen fractured on back aspect with blood infiltration over an area 8x6 cm. Perinephric haematoma seen on lower pole of left kidney.

297. During examination, PW86, the Doctor deposed that injury can be caused by MO24. Fracture of ribs bone comes within

the definition of grievous hurt as defined in Section 320 of the Indian Penal Code (the 7th limb is fracture or dislocation of a bone or tooth). Therefore, I hold that the ingredients of offence punishable under Section 326 of the Indian Penal Code is clearly made out in this case.

298. During examination, PW86 further deposed that injury Nos.1, 3 and 4 to 8 etc. can also be formed by using blunt weapons. It is true that those blunt weapons were not recovered by the Investigating Officer. The fact that there is plenty of weapon in the place at Andiyallachaal is evident from the videos in mobile phone seized from accused (Q7 file). It is true that apart from MO24, no other weapons were recovered. There is no rule that invariably in all case recovery of weapon should be there. **(2021 CrI.LJ 771, 1997 CrI.LJ 3607)**. But, as per the evidence of the Doctor, the expert, such injury can be caused by blunt force or blunt weapons. Thus, as per the evidence of the Doctor, these injuries can be caused only by weapons. If that be so, it is to be found that ingredients of offence

punishable under Section 324 of the Indian Penal Code is made out in this case.

299. The other injuries such as contusion and abrasion etc. can be caused even without weapons. Here also, there is no evidence to show that who all are the persons who have caused these injuries. As all accused except A4, A11 and A16 are members of unlawful assembly, every members of the unlawful assembly is liable for the act done by any other member of such an unlawful assembly.

300. It is to be noted that as per the evidence of PW86, the Doctor and Ext.P82 postmortem certificate, injury No.2 alone can be attributed to the overt act committed by A2. The remaining injuries can only be caused before bringing Madhu to Mukkali Junction from Aandiyallachaal forest. Apart from the overt act committed by A2 as evident from Q2 file at 3.36.10 to 13.00 pm, there is no other evidence before the court to find that any other injury was caused by A1 to Madhu at Mukkali. So long as, there is no evidence to find

that any injury was caused by A1 on the body of Madhu other than injury No.2, the only possible inference that can be formed based on the materials placed before the court is that all the remaining injuries were caused either at Aandiyallachaal forest or on the way to Mukkali. The voice recordings in Q7 file (“ഇനി ഒന്നും അടിക്കാനില്ലേ... അടിക്കാനേ... ഇല്ലേ”) reveal that considerable portion of injury was inflicted at Aandiyllachaal forest itself. Admittedly, A1 has not went to the reserved forest. Even as per the CCTV footages, A1 came to the scene of occurrence at Mukkali at 3.35 pm onwards only. (Q2 file). In such circumstances, A1 cannot be fastened with the criminal liability of offence which was committed by the remaining accused at Aandiyallachaal forest or on the way to Mukkali from Aandiyallachaal forest. In order to fasten A1 with the liability of the acts committed by the other accused persons by canvassing Section 149 of the Indian Penal Code, the physical presence of A1 should be there in the Aandiyllachaal forest or on the way to Mukkali from Aandiyallachaal forest. Unless it is established that A1 was present during all these period along with

the unlawful assembly, he cannot be fastened with the liability by canvassing Section 149 of the Indian Penal Code. In this context, it is worthwhile to rely on the decision reported in **2006(3) SCC 752** where it was held by the Honourable Supreme Court that *“it is essential to prove that the person sought to be charged with an offence with the aid of Section 149 of IPC was a member of the unlawful assembly at the time the offence was committed”*. Likewise, it is also beneficial to rely on the decision reported in **1993 KHC 2476** wherein it was held that *“only such members of unlawful assembly who were members at the time of commission of the offence that are made constructively liable under Section 149 of Indian Penal Code. The effect of Section 149 of IPC on members may be different on different members of the same unlawful assembly”*.

301. Therefore, I find that the liability of A1 is confined to the act done by him at Mukkali. The overt act of stamping of Madhu at Mukkali by A1 will attract offence punishable under Section 323 of IPC. Whether his act lead to death of Madhu will be

dealt with separately while discussing point No.22. Therefore, I find that the accused Nos.2, 3, 5 to 10, 12 to 15 have committed the offences punishable under Sections 323, 324 and 326 r/w Section 149 of the Indian Penal Code and accused No.1 committed the offence punishable under Section 323 r/w Section 149 of the Indian Penal Code. Whether the acts done by these accused lead to death of Madhu will be dealt with separately. Point Nos.14, 17 and 18 are found in favour of the prosecution.

302. **Point No.15** :- The matters placed before the court reveal that the acts done by accused except A16, A4 and A11 will attract graver offences. The ingredients of criminal force is attracted in the act done by accused no 16 only. As per the final report A16 has also joined in the unlawful assembly at Mukkali along with other accused persons and at Mukkali A16 has hit on the back side of Madhu by his leg. While discussing Point Nos.7 to 11 I have already found that A16 has not joined in the unlawful assembly. The manner in which A16 hit behind Madhu at Mukkali is evident from the video files seized from Ubaid. (MO27(c)). The video file that is

found in Q5, (file No.VID 20180222-WA0091) reveal that at 1.05 seconds A16 is found hitting Madhu behind his back and at that time Madhu is turning back and Madhu was unable to react towards A16 because A14 is caught hold in the zip tied on the right hand of Madhu. I have played and watched the relevant video file repeatedly. It is evident from the video file that, while Madhu was standing in front of Sreerag Bakery at Mukkali A16 has hit Madhu on his back side and spontaneously Madhu is turning back. The facial expression of Madhu reveal that due to such hit made by A16 no serious pain or injury is caused to Madhu. It is true that pain is subjective in nature whether the hit made by A16 caused pain to Madhu is known to him only. But when severe pain is caused to a person that will be revealed from that person's facial expression, gestures etc. Not even a single injury in the postmortem report can be attributed to the so called hit made by A16. Nothing was brought out during examination of PW86, the doctor that the so called hit made by A16 caused any injury to Madhu. The video containing visuals of hitting Madhu by A16 was not brought to PW86. In order

to attract section 323 IPC, there should be pain, disease, or infirmity. In the absence of any material that the act done by A16 caused pain, disease or infirmity, I find that the act done by A16 will come within the purview of criminal force as defined u/s.350 IPC punishable u/s.352 IPC. No other penal provision can be attributed to A16.

303. As A16 has not joined the unlawful assembly no other penal provision can be fastened on A16 by canvassing section 149 IPC. Therefore, I hold that based on the video file seized from mobile phone of A8, Ubaid (Q5 file) in Ext.P92(a) pen-drive, A16 can be fastened with liability of having committed offence punishable u./s. 352 IPC alone. Therefore, I hold that A16 alone has committed offence punishable u/s. 352 IPC only. Point no 15 found in favour of the prosecution.

304. **Point No.16** :- As per the prosecution case the accused persons have abused Madhu by using obscene words and thereby committed offence punishable u/s. 294(b) IPC. But the

CCTV or video recordings found in mobile phones does not disclose any inference to find that the accused persons have abused Madhu in any public place. In the final report, the so called abusive words is not seen reiterated. However, the audio recordings in file No. VID-20180222-WA0034 in Q7 reveal that some of the accused persons are using the term “നടക്കടം മൈദേ അങ്ങട്ട്”. But at that time apart from Madhu and these accused persons (10 in Nos) there is no other person. In this context, it is worthwhile to rely on the decision of the Honourable High Court of Kerala reported in 2021(6) KHC 357 wherein it was held that *“when the final report does not mention exactly as to the words of statement uttered by the accused, it cannot be said that ingredients of offence under Section 294(b) of the Indian Penal Code are attracted”*. Moreover, there is no material available before court to find that the term “നടക്കടം മൈദേ അങ്ങട്ട്” has got some obscene meaning so as to attract offence punishable u/s. 294(b) IPC and hence I am unable to find that offence punishable u/s. 294(b) IPC is also attracted in this case.

305. Point Nos.19, 20 & 21 :- These points can be considered together as these are intrinsically connected to each other and also for sake of convenience of appreciation of evidence. In order to attract offence punishable u/s.364, 367 and 368 IPC, first of all the prosecution has to establish that there is either kidnapping or abduction. Admittedly there is no charge framed for kidnapping of Madhu from lawful custody of guardian. The charge framed is abduction of Madhu from lawful guardianship from Vandikkadavu. When we go through section 359 to 374 of IPC these are offences relating to kidnapping, abduction, slavery and forcible labour etc. it can be found that abduction as such is not an offence, though it is defined in section 362 of IPC. It is crystal clear that the purpose for which a person is abducted that create the criminal liability. For what purpose a person was abducted. In fact, that ingredient creates the criminal liability on the accused persons.

306. First let me examine whether any offence punishable u/s. 364 IPC will be attracted on the facts of this case. In order to attract offence punishable u/s. 364 IPC, the abduction should be for

the purpose of murdering Madhu. The very wordings of section 364 IPC make it clear that only if it is established by the prosecution that kidnapping or abduction of Madhu was made in order to murder him, then only offence punishable u/s. 364 IPC will be attracted. When we go through the ingredients of offence punishable u/s. 364 IPC the purpose of abduction should be for murdering. In view of my finding in point Nos.7 to 11, I have already found that the common object of unlawful assembly formed by the accused person was not for murdering of Madhu but to apprehend Madhu from reserved forest, caused some injury and then entrust him to the Police authorities. That was the only common object of the unlawful assembly formed by the accused persons. It is to be noted that had the accused persons got any intention to commit murder of Madhu they could have very well finished Madhu in the forest itself or else they could have abducted Madhu to some other secret place and commit murder. Without doing all these what the accused persons have done is Madhu was apprehended from forest and subjected him to cruelty by causing some grievous hurt etc and then brought to

Mukkali. There also Madhu was subjected to cruelty and then entrusted to Police. These acts will not attract the ingredients of offence punishable u/s.364 IPC, unless there is evidence to show that the Madhu was abducted for the purpose of murdering. Absolutely there is no direct or circumstantial evidence available before court to find that Madhu was abducted by these accused persons for the purpose of murdering him and hence I find that offence punishable u/s.364 IPC will not be attracted on the given set of facts.

307. In order to attract offence punishable u/s. 367 IPC, first of all it is to be established there was abduction of Madhu by the accused persons. In order to attract ingredients of abduction there must be force rather compulsion from the side of the accused to bring Madhu from a place where he dwells. Here it is come out in evidence from the video file in Q7 and also apparent from circumstance that Madhu was occupied in reserved forest in some cave etc. As a member of ST community Madhu has got dwelling right in forest. The accused persons have want to apprehend Madhu

from the reserved forest and bringing him to the Police authority, for the so called series of theft alleged to be committed by Madhu. It is crystal clear that Madhu was taken from the reserved forest against his will. In other words compulsion was there from the side of the accused persons to bring Madhu from reserved forest to Mukkali for entrusting him to Police. That is apparent from the videos in mobile phones. Had Madhu voluntarily joined with accused persons, the offence of abduction would have been attracted. Here the photographs and video that was taken in the mobile phone of some of the accused (A3, A7, A8, A9 etc.) reveal that these accused persons have grabbed Madhu from reserved forest and inflicted some injury brought to Mukkali against his will by using force, that too by tying his hand. Thus, the act of abduction is fully established. It is come from the medical records that Madhu was subjected to cruelty by causing hurt in several ways. The nature of injuries inflicted on the body of Madhu reveals that the accused persons have the intention to cause hurt and grievous hurt. It is come out in evidence from the medical records such as Ext.P82

postmortem certificate and oral evidence of the doctor who conducted postmortem that one of the ribs on the back side of the Madhu was fractured. Needless to say that a fracture of a bone amounts grievous hurt within the meaning of section 320 IPC. Thus, though the accused persons were not having the common object to murder Madhu, it is clear that the common object of the unlawful assembly formed by the accused persons was to apprehend Madhu from forest cause some hurt and grievous hurt on him and bring him to Mukkali and then entrust him to Police. In such circumstances, the ingredients of offence punishable u/s.367 IPC is made out in this case. Therefore, I find that the prosecution has succeeded in establishing that the accused persons have committed offence punishable u/s. 367 IPC.

308. In order to attract offence punishable u/s.368 IPC either there should be concealing of Madhu or keeping of Madhu in confinement after committing abduction. Here, it is come out an evidence that Madhu was not concealed in any secrete place so as to hide his presence from the outside world. In fact, after bringing

Madhu from forest accused persons have paraded Madhu through public road and brought to Mukkali and then entrusted to police. It is to be noted that even before reaching Mukkali A3 has informed the Police authority (PW91-Subin) that they are bringing Madhu to Mukkali. Even after reaching Mukkali also A3 has again informed Sub Inspector of Police, Subin (PW91) that Madhu was brought to Mukkali. In such circumstances, it cannot be held that the accused persons have concealed Madhu in some secret place so as to attract offence punishable u/s. 368 IPC. Therefore, I hold that the ingredients of offence punishable u/s. 368 IPC are not made out in this case.

309. As A1, A4, A11 and A16 never went to reserve forest for apprehending Madhu. A4, A11 and A16 have not joined the unlawful assembly, in such circumstance, they can never be implicated with offences punishable under Sections 364, 367 and 368 of IPC. Though A1 has joined the unlawful assembly at Mukkali, he cannot be implicated with the incident that occurred at a reserve forest as he never went to reserve forest. He cannot be

fastened with liability of these offences canvassing Section 149 of IPC in view of the decision reported in **1993 KHC 2476 and 2006(3) SCC 752**. Point Nos.19, 20 and 21 are found accordingly.

310. **Point Nos.22 & 23** :- In view of my finding in point No.5, I have already found that the death of Madhu is homicide. Further, in view of my finding in point Nos.7 to 11, 14, 17 & 18, I have already found that accused persons except A4, A11 and A16 are the persons who have caused injuries on the body of Madhu. Now, coming to the most important aspect whether the act done by the accused persons causing death of Madhu is murder coming under the definition of 300 IPC or it will amount to culpable homicide not amounting to murder punishable u/s.304 IPC. It is come out from Ext.P82 postmortem report and oral evidence of PW86 that injury No.1 to 15 found on the body of Madhu was the cause of death of Madhu. In the aforesaid paragraphs I have already found that accused Nos.1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14 and 15 are responsible for causing such bodily injury on the body of Madhu being members of unlawful assembly. The overt act committed by

A1 at Mukkali has contributed to the cause of death of Madhu. The evidence of PW86, doctor and Ext.P82 postmortem certificate reveal that injury No.2 stated in the postmortem report can only be attributed to the overt act committed by A1. It is come form the evidence of the doctor that injury No.2 can be caused when the head of Madhu hits on a hard surface. While discussing the evidence against A1 I have already found that the CCTC footages lead to the conclusion that A1 has stamped Madhu while he was sitting in front of treasure box of Ponmala temple at Mukkali near Sreerag Bakery.

311. Thus, next question is whether the accused persons had the intention to cause death of Madhu. In fact it is the degree of intention of the accused persons to cause death or to cause such bodily injury to Madhu, that determines the liability of the accused persons under section 302 IPC.

312. Had the intention of the accused persons was to put an end to life of Madhu they could have done it in the Aandiyallachaal forest itself. It is evident from the video found in

mobile phones seized from the custody of the accused persons (Q7) that the Aandiyallachaal is a place of rocky area with steep rocky terrain. Had these accused persons wanted to kill Madhu, even a mere thrust of Madhu by one of the accused from the top of that Aandiyallachaal is more than enough to cause Madhu to fall down from the top of that rocky area and come down by rolling over that rocky place. For that not much effort is required. The very fact that the accused persons have brought Madhu to Mukkali and entrusted him to the Police itself reveal that there have no intention at all to put an end to the life of Madhu. It is pertinent to note that immediately after apprehending Madhu, A3 has informed PW91 Subin, SI of police that Madhu was apprehended and he is being brought to Mukkali. After reaching Mukkali A3 has again contacted Subin and informed that Madhu was brought to Mukkali. Does any prudent man who wanted to kill a person will bring that person and entrust that person to Police by causing some injury ? Not at all. In order to finish Madhu these accused persons had several options even in the Aandiyallachaal reserved forest itself. It is to be noted

that at the time when these accused persons apprehended Madhu from Aandiyallachaal forest apart from these 10 accused persons (excluding A14 and A15) there is nobody else. Had they got the evil intention to kill Madhu they could have done it then and there itself and could have easily left that place. There is no other witnesses in the Aandiyallachaal forest to see the act committed by the accused persons. Sometimes the body of Madhu might have been taken away by some wild animals.

313. It is to be noted that the accused persons themselves have recorded the apprehension of Madhu in their own mobile phone and circulated the same. Photographs of Madhu and some selfie photographs containing some accused persons and Madhu was also taken in their mobile phones and these were circulated among them. The prosecution could not prove that who has circulated these photographs and videos in social media. Had the accused persons intended to kill Madhu, will they circulate photos and videos ? Will they share these photos and videos to anyone else ? Obviously, out of the entire evidence brought by the prosecution, these photographs

and videos recovered from the mobile phone of accused are the most valuable piece of evidence incriminating the accused persons. Usually, only terrorist will circulate the photographs which contain visuals of torturing militants and detainees to create an impression of threat in the mind of authorities. It is to be noted that these accused persons have very confidently handed over Madhu to police without any hesitation. Even before they reach Mukkali, A3 has intimated the Sub Inspector of Police, Agali. It seems that the accused persons were having the confidence that they could do something which the Agali police could not do during all these time. Considering all these aspects, it can never be believed the allegation of prosecution that the accused have intentionally killed Madhu.

314. Thus, the very fact that the accused persons have intimated the Police authority that they are bringing Madhu to Mukkali and the very fact of bringing Madhu to Mukkali along with material objects which are alleged to be stolen by Madhu reveals that the only intention of these accused persons was to apprehend Madhu, cause some hurt and or grievous hurt, teach him a lesson

and then hand over him to the Police. That is the only inference that can be gathered based on the available matters placed before court. It is to be noted that the Police was also in search of Madhu for his alleged involvement in theft case, but they could not find Madhu. That may be the reason why the accused persons have formed themselves in to an unlawful assembly and taken the role of a moral police to nab Madhu believing that Madhu is the person behind the theft in their place. No other conclusion can be arrived based on the available matters placed before court. I find that these accused persons never intended to kill Madhu.

315. Whether the accused persons have intended to kill Madhu is to be gathered from nature of injury, nature of weapon used by the accused persons for committing injury to Madhu, the circumstances under which it was committed etc.

316. It is worthwhile to examine whether the act committed by these accused persons comes within the definition of murder as defined u/s.300 IPC. In order to find that the acts done by the

accused persons come within the definition of murder as defined u/s.300 IPC, first of all it should be established that the act by which death was caused was done with the intention to cause death of Madhu. Secondly the act should be done with the intention of causing such bodily injury which the accused know to be likely to cause the death of Madhu. Thirdly the act should be done with the intention of causing such bodily injury to Madhu and such bodily injury intended to be inflicted should be sufficient in the ordinary course of nature to cause death of Madhu. Fourthly it is to be established that the accused person have committed any acts with a knowledge that it is so imminently dangerous that it will in all probability cause death or such bodily injury as is likely to cause death of Madhu.

317. In this context, the oral evidence of PW86, the doctor and Ext.P82 postmortem certificate assumes importance. The doctor has categorically deposed that when each injury are taken individually not even a single injury is sufficient to cause death (page 41). In fact this answer was given to a question put by court

u/s. 165 Evidence Act. According to the doctor several factors contribute together forming these factors into a vicious cycle and contributed to the death of Madhu. Now when we examine the postmortem report, it is to be noted that out of the 44 injuries narrated in the postmortem certificate, injury Nos. 1, 2, 3 and 12 are serious in nature. All remaining injuries that is injury No.4 to 11 and 13 to 44 are minor injuries such as contusions, abrasions etc. It is further to be noted that it is evident from the oral evidence of PW86, doctor that even after sustaining all these injuries the victim can behave normally, he can stand up, he can walk, he can drink, take food etc. Thus an over all evaluation of the postmortem report and oral evidence of PW86 reveal that not even a single injury found in the body of Madhu is fatal in nature when these injuries are taken individually. It is the conjoint effect of all these injuries which resulted in death of Madhu. Apart from that Madhu was not died while he was in the custody of these accused persons. Thus, in the absence of any material to prove that the accused persons have intentionally caused any fatal injury on Madhu, it is to held that the

accused persons never intended to kill Madhu and the act done by these accused persons will not come within the definition of murder as defined in S.300 IPC.

318. I have already found that the accused persons never intended to kill Madhu. In such circumstance it can not be held that the act by which death was caused was done by the accused persons with the intention to cause death of Madhu. If that be so the act done by these accused will not attract offence punishable under the first part of section 304 IPC. Because in order to attract the first part of offence punishable u/s.304 IPC the act should have been done with the intention of causing death or causing such bodily injuries as is likely to cause death. These two ingredients are totally absent in this case. Anyhow, death was caused to Madhu due to the act committed by the accused persons excluding A4 and A11 and A16. At the same time taking into account of the nature of injuries found on the body of Madhu, Knowledge is to be attributed to the accused that the act done by the accused is likely to cause death. It is to be noted that A1 has stamped Madhu, while the later was sitting in

front of the treasure box, that too very close to the wall of concrete treasure box. Knowledge is to be attributed to A1 that if such a strong kick or stamping is made, the head of Madhu may hit on the concrete wall of that treasure box and it may cause severe head injury. The position in which Madhu was sitting at that place is relevant. The doctor, PW86 deposed that injury No.2 can be caused if head of Madhu hit on a hard surface.

319. The learned counsel for A1 argued that at the worst if the court finds that A1 has committed any overt act that will come only within the purview of Section 323 of Indian Penal Code. In support of that, the learned counsel relied on the decision of the Honourable High Court of Kerala reported in **1991 KHC 392** wherein it was held that ***“accused hit the victim on the head and he died due to subdural hematoma – held that offence would fall under Section 323 and not for under 300 and 304 of the Indian Penal Code”***. I have gone through the facts of that case. The facts discussed in that case is entirely different from the facts of this case. In that case, on 17.02.1985 the accused therein fisted the deceased

twice or thrice above right eye. The victim / deceased went to hospital undergone some treatment. His condition became worst. Accordingly, he was taken to Medical College Hospital on 20.02.1985 and subjected him to an emergency operation. While so, the victim died on 21.02.1985. Here, the situation is entirely different due to the impact of stamping, injury No.2 is to be attributed to the act done by A1. This resulted in edema and ultimately Madhu died on the very same date itself. In such circumstance, I am unable to find that the facts discussed in the decision relied on by the learned counsel for A1 is similar to the facts of this case. The impact caused on the head of Madhu when his head forcibly hit on a hard concrete surface as a result of the heavy stamping made by A1 is to be distinguished with the impact caused on the head by a hit by hand. Therefore, I am unable accept the argument canvassed by the learned counsel for A1 that offence punishable under Section 323 of the Indian Penal alone is attracted against A1.

320. Likewise, as the remaining accused who inflicted head injury (injury Nos.1 and 3) and injury No.12 are also attributed with the knowledge that these injuries are likely to cause death. They are expected to know that these injuries are likely to cause death, as these injuries are on head and other vital parts. Therefore, I find that they are also to be attributed with the knowledge that their act is likely to cause death to Madhu but without intention to cause death. Taking into an account of the nature of injury found in the body of Madhu and the evidence of doctor, I find that the over all factors formed into a vicious cycle and contributed death of Madhu.

321. In this context, it is worthwhile to rely on some precedents to ascertain what exactly is the penal provision attracted in the given set of facts.

- 1) 2019 9 SCC 529 - *“In a case wherein there exist doubt as to whether the injury in question was sufficient to cause death in normal course of nature*

then such benefit is to be given to the accused”.

Conviction altered from section 302 IPC to 304 IPC.

- 2) AIR 2022 SC 4250 - *“The deceased was assaulted by three accused persons with wooden log on his head and pushed him down – Cause of the death of the deceased due to shock or hemorrhage on account of head injuries and due to subdural hematoma on the left frontal parietal region with left frontal intracerebral hemorrhage, though deceased had also suffered rib injuries – Appellant committed the offending act only with the knowledge that such act was likely to cause death”. Conviction altered from section 302 IPC to 304(ii) IPC.*

- 3) AIR 2018 SC 3568 - *“The intention appears more to have been to teach a lesson due to loud playing of tape recorder -in nature of weapon used, the assault made in the rib cage area, knowledge that the death*

was likely to ensure will have to be attributed. Conviction altered to 304 Part II IPC from 302 IPC”.

- 4) AIR 1996 SC 372 - *“Death of deceased caused by inflicting several injuries - Absence of evidence as to who inflicted fatal injuries resulting in death of deceased – Arms possessed by the accused are not inherently dangerous to infer that the intention of the accused was to cause death – Acts of accused amounts to culpable homicide”.*
- 5) AIR 1994 SC 1302 - *“Several accused persons are involved in attack-Eye witness revealing that appellant accused inflicted a blow with blunt side of axe on head of deceased during scuffle. Conviction altered to 302 IPC to 304 Part II IPC”.*
- 6) AIR 1993 SC 777 - *“No sufficient evidence to prove common intention to cause death”. Deceased succumbed several injuries, only one injury was fatal*

as a result of which he died. Failure to attribute 'injury proving fatal '. Conviction altered from 300 IPC to 304 Part II IPC”.

- 7) AIR 1992 SC 987 - *“Intention to cause death not proved several accused involved - One accused causing injury to deceased with the knowledge that it was likely to cause death. Other accused causing injury but not on vital parts of deceased. Conviction altered from 302 IPC to 304 part(ii) IPC”.*
- 8) AIR 1964 SC 1263 - *“Several offenders by diverse act and with prior concert chasing the deceased throwing him to the ground and beating him to death” - Conviction u/s. 304(ii) is found legal.*

322. When the ratio decidendi in the above judicial precedents is applied to the facts, the act done by these accused persons will come u/s. 304 part(ii) of IPC only and it will not meet

the requirements of offence punishable under section 302 IPC. Point Nos.22 & 23 are found accordingly.

323. **Point No.24** :- As per the prosecution case, accused Nos. 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14 and 15 have apprehended Madhu from reserved forest at Aandiyallachaal and brought to a place called Mukkali through Anavai Forest Station through Silent Vally - Mukkali road by tying his hands and after putting a sack containing the articles alleged to be stolen by Madhu on his shoulder and paraded Madhu through that public road in a half naked posture. The CCTV footages seized from Anavai Forest Station and the CCTV footages seized from Ponniyammal Gurukulam reveal that Madhu was brought to Mukkali by making him to walk through the public road in a half naked posture. In that video the presence of these accused persons are also visible. It is to be noted that the CCTV footages at the time interval of 12.42 pm in Ponniyammal Gurukulam reveal that these accused persons have proceeded to Aandiyallachaal in vehicles ie one Marshal Jeep and one Bullet. When they came back from forest along with Madhu some of the

accused persons were walking along with Madhu by way of a parade and a few of the accused persons were travelling in a Jeep. It is evident from CCTV footages that while parading Madhu through the public road Madhu was made to carry a sack containing articles alleged to be stolen by Madhu on his shoulder and the shirt of Madhu is found to be partly opened also. Apart from all these the photographs that is taken from the reserved forest that is captured in the mobile phones of accused Nos.5, 7, 8,9 etc reveal that initially the hands of Madhu was tied by using his own dhothi. Later his hands were tied by using a black zip that is marked as MO2. Thus, the parading of Madhu through that way in a half naked posture by the accused is evident from CCTV footages and the video clippings in mobile phones seized from the accused persons etc. Apparently these CCTV footages which are treated as silent witnesses, proves the ingredients of offence punishable u/s.3(1) (d) of SC/ST (POA) Act. These CCTV footages were identified by PW27 (Lakshmi) in court. She also deposed about these facts that the bringing of Madhu through public road by a group of persons and identified some of the

accused. It is to be noted that in order to attract offence punishable u/s. 3(1) (d) of SC/ST (POA) Act intention or knowledge are not warranted. The only thing that is required is mere parading of a member of SC/ST community in a naked or half naked manner by a person who does not belong to SC/ST community. The very wordings of section 3(1)(d) of SC/ST (POA) Act reveals that in order to attract offence punishable under this section it is not necessary to establish intention or knowledge. In other words intention is totally immaterial as far as this offence is concerned. A reading of other penal provisions in SC/ST POA Act reveal this fact. Therefore, I hold that the prosecution succeeded in establishing that the accused persons 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14 and 15 have committed offence punishable u/s.3(1)(d) of SC/ST (POA) Act r/w Section 149 of IPC. Point No. 24 is found in favour of prosecution.

324. **Point No.25** :- As per the prosecution case, accused Nos.4, 5, 7, 8 and 9 have recorded the photographs and videos of Madhu in their mobile phones and circulated those photographs and videos in social media with intent to humiliate and insult Madhu in

public view. It is further alleged that accused persons have abused Madhu by calling him as “thief” in public view with intent to humiliate and insult Madhu in public view . These are the overt acts alleged to be committed to attract offence punishable u/s 3(1) (r) of SC/ST POA Act. The fact that the accused Nos.4, 5, 7, 8 and 9 have recorded the photographs and videos of Madhu in their mobile phones is evident from the mobile phones that is produced before court. MO27(d) is the mobile phone seized from A4, Aneesh as per Ext.P66 seizure mahazar. It was formally proved by PW69. Likewise, MO27(c) mobile phone was seized from A8, Ubaid as per Ext.P65 seizure mahazar and the same is formally proved by PW69. Similarly, MO27(a) mobile phone was seized from A5, Radhakrishnan as per Ext.P63 seizure mahazar and the same was formally prove by PW69. Likewise, MO27 mobile phone and MO27(e) memory card were seized from A7, Sidhique as per Ext.P62 seizure mahazar and the same was formally proved by PW69. MO27(b) mobile phone was seized from A9, Najeeb as per Ext.P64 seizure mahazar and the same was also proved by PW69. Ext.P92

FSL report reveal that these mobile phones seized from Accused Nos. 4, 5, 7, 8 and 9 were examined by Expert (PW95) and it is discussed in Ext.P92 Cybre Forensic Analysis Report in detail. These material objects (mobile phones) were narrated in Ext.P92 report as Q4, Q5, Q6, Q7, Q8. All these were scientifically examined by PW 95 and it is stated that these mobile phones contain photographs and videos of Madhu taken from the Mukkali junction, Attappadi Reserved Forest etc. Out of these photos and videos some of them are captured by the accused persons and some others were sent to their mobile phone by way of whatsApp media post.

325. It is further to be noted that Ext.P68 series documents are the Face book business record of Ubaid and Aneesh. Ext.P68 is the face book business record of Ubaid and Ext.68(a) is the face book business record of Aneesh. Ext.P68(b) is the 65B certificate for these documents. Ext.P143 series are the screen shots of the whatsApp chat and facebook post. Ext.P68 series documents are formally proved by PW72. Ext.P143 series are marked through PW97, the Investigating Officer. The person who produced

Ext.P143 series screen shots of whatsapp chat is CW63, Nikhul. CW63 was not examined in this case. From the available records court can safely arrive at conclusion that both Ubaid and Aneesh have got face book accounts. The fact in issue is whether Aneesh and Uabid (A4 and A8) have posted these Ext.P143 series whatsApp chat and facebook post and not whether these persons have face book account or whatsApp account. Only if it is proved by convincing evidence that Ext.P143 series visuals are uploaded by Aneesh oro Ubaid, they can be implicated in this case. Either CW63 series Nikhul or admin of that group depose before court that Ext.P163 whatsApp chat was posted by Aneesh. Or else the whatsApp authority has to depose that Ext.P163 visuals were posted by Aneesh. No such evidence is forthcoming to prove these facts. The evidence of PW97, Investigating Officer cannot be taken as evidence to prove those facts. His version is only his personal opinion rather result of his investigation (1997 SCC (Cr) 857). Thus, the documents made available before court is not sufficient to conclude that Aneesh and Ubaid have posted any photographs or

videos of Madhu in social media domain so as to insult Madhu, a member of ST community in public view. The evidence made available in the case reveal that the mobile phones of accused persons contain photos and videos of Madhu. That is evident from Ext.P92 report filed by PW95, the expert. Unless it is established that it is the accused persons who have posted the whatsapp chat in social media they cannot be implicated in this case for the offence punishable under Section 3(1)(r) of SC/ST (POA) Act. It is admitted by the Investigating Officer, PW95 and several other witnesses examined in this case that several persons in Mukkali have taken photos and videos of Madhu. The question is who is the person who has posted these visuals in social media. According to Investigating Officer he also received videos and photos of Madhu in his whatsapp chat. Can he be held liable ? Likewise, out of these 103 witnesses not even a single deposed that any of these accused persons have called Madhu as a thief in public view. The CCTV footages and videos in mobile phones are totally silent with regard to this fact. All these documents reveal that Aneesh has got face book

and WhatsApp accounts and Ubaid has got facebook account. In such circumstance it can never be held that the accused persons have committed offence punishable u/s. 3(1) (r) of SC/ST (POA) Act. Point No.25 is found against the prosecution.

326. **Point No.26** :- As per the prosecution case, the accused persons have committed the offence with knowledge that Madhu belongs to a member of SC/ST community and hence, it will come within the purview of Section 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act as the case may be. Obviously, in order to attract Section 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act, it must be incumbent upon the prosecution to prove that the accused had got knowledge of the caste identity of Madhu at the time of committing the acts. It is to be noted that out of 103 witnesses examined by the prosecution, not even a single witness including close relative of Madhu deposed that accused persons have attacked or apprehended Madhu from forest with the knowledge regarding the tribal identity of Madhu. By perceiving CCTV footage or the videos recorded in the mobile phones seized from the accused persons, the court cannot

arrive at a conclusion that the accused persons have attacked Madhu with the knowledge regarding the tribal identity of Madhu. Knowledge is a personal feeling of a person. It cannot be perceived from a video footage.

327. It is to be noted that the motive behind the commission of crime is that, the accused persons were under the belief that Madhu has committed a series of theft in that place. The circumstance leads to the conclusion that the accused persons will definitely do this act whether such an act was committed by Madhu, "X" or "Y". This will be done by the accused persons whether Madhu belongs to a member of ST community or forward caste. In such circumstances, the court cannot infer from the circumstance that the accused persons were having the knowledge regarding the tribal identity of Madhu and with that knowledge the accused persons have attacked Madhu. In the absence of any foundational evidence to prove that the accused have personal knowledge or whereabouts of Madhu or his family, the court cannot rely on the presumption contemplated in Section 8(3) of SC/SC (POA) Act.

328. Simply because Madhu was apprehended by the accused persons from the reserved forest, it cannot be inferred that Madhu is a member of ST community, having got dwelling right in forest. Assuming a situation wherein a person after committing an offence hiding himself in a forest and some body is apprehending that person from the forest, can it be said that, that person belong to ST community for the sole reason, that the offender was apprehended from reserved forest ? During the course of trial, it is found that some special protection measures were taken in Agali Police Station due to the presence of Maoist in the reserved forest area. Can it be inferred that Maoist persons, if any in forest are also member of SC/ST community simply because they are dwelling in forest ? Likewise, based on the dark complexion of Madhu also, court cannot infer that Madhu is a member of ST community. We have white complexioned person in ST community. Like that we have dark complexioned persons in forward caste. Hence, colour of an individual cannot be said to be a determining factor to ascertain

his caste. There must be positive evidence to prove that the accused persons had got knowledge regarding the caste identity of Madhu.

329. One may feel that as the court has already found that some of the accused persons are guilty of offence punishable under Section 3(1)(d) of the SC & ST (POA) Act, then why can't Section 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act ?

330. In this context, it is worthwhile to re-produce Section 3(1)(d) of the SC & ST (POA) Act hereunder :-

“3. Punishments for offences of atrocities

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(a) x x x x x x

(b) x x x x x x

(c) x x x x x x

(d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled

Tribe shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine”.

331. Likewise, it is also worth beneficial to re-produce Sections 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act hereunder :-

“(2). Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) x x x x x x

(ii) x x x x x x

(iii) x x x x x x

(iv) x x x x x x

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or Scheduled Tribe or such property

belongs to such member, shall be punishable with imprisonment for life and with fine;

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;”

332. Thus, when we analyse both these provisions, it can be inferred that that in Section 3(1)(d) of the SC & ST (POA) Act neither intention nor knowledge is a relevant fact. Mere parading, naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe itself is an offence. The word “intention” or “knowledge” is not there in this section. On the other hand, knowledge is specifically stated in Sections 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act.

333. It is further to be noted that Section 3(1)(d) of the SC & ST (POA) Act is a substantive penal provision and Section 3(2)(v) and S.3(2)(va) of the SC & ST (POA) Act is an enabling provision warranting enhanced punishment for commission of grave offence against a member of SC/ST community (**2019 KHC 3633**).

334. In such circumstance, simply because offence u/s. 3(1)(d) of SC/ST Act is found against accused persons, it cannot be held that automatically they will be held responsible for offence under Section 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act. The prime ingredients of knowledge of the accused persons with regard to the caste identity of the victim is to be proved by the prosecution in the case of offence under Section 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act. . Then only the enabling provision under Section 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act will come into play.

335. In this context, it is worth important to rely on the decision of the Honourable Supreme Court reported in **AIR 2021 SC**

2190. In that case, the Honourable Supreme Court has held as under :-

“Section 3(2)v) – Offence of atrocity – Accused allegedly committed rape on blind girl who belongs to SC and ST communities – Prosecution's case would not fail merely because PW1 did not mention in her statement to the police that the offence was committed against her daughter because she was a Scheduled Caste woman – However, there is no separate evidence led by the prosecution to show that the accused committed the offence on the basis of the caste identity of PW2 – Though he was aware about her caste, knowledge by itself cannot be said to be the basis of the commission of offence, having regard to the language of S.3(2)(v) – Evidence not establishing that offence committed on ground that victim is

member of SC or ST – Conviction under S.3(2)(v), set aside.”

336. The facts of the case reveal that in that case the incident took place even before the amendment of the SC & ST (POA) Act in 2016, as rightly pointed out by the learned Special Public Prosecutor. Even then, that decision is relevant because in that case Honourable Supreme Court held that there is no evidence for establishing that offence was committed on the ground that the victim is a member of SC/ST community. The discussions in that case reveal that Honourable Supreme Court examined whether there was “evidence” to prove that the accused have committed the offence due to the tribal identity of the accused. Likewise, here also absolutely, there is no “evidence” to find that the accused persons have apprehended and attacked Madhu having got knowledge that he is a member of SC/ST community. It is true that Madhu is a member of SC/ST community. This was already found by me while answering point No.1. The fact in issue while deciding the liability of the accused under Section 3(2)(v) of the SC & ST (POA) Act is

not whether Madhu is a member of a SC/ST community, the fact in issue is whether the accused persons have got knowledge regarding the caste of Madhu.

337. In this context, it is also beneficial to canvas the decision of the Honourable High Court of Kerala reported in **2020(1) KHC 100** wherein it was held that knowledge or awareness of culprit that victim is a member of Scheduled Caste / Scheduled Tribe is a mandatory requirement to attract the offence. If that be so, the knowledge of the accused persons is to be proved by the prosecution. Based on the electronic evidence made available before the court such as CCTV footage, video recordings in mobile phones and photographs etc, the court cannot infer or presume that the accused persons have got knowledge regarding the caste of Madhu by simply watching these visuals. To prove the knowledge, there must be oral evidence of the witnesses.

338. For the above grounds, I hold that the prosecution miserably failed to prove that the accused persons are liable for

enhanced punishment in view of enabling provisions under Sections 3(2)(v) and 3(2)(va) of the SC & ST (POA) Act. Point No.26 is found against the prosecution.

339. **Point No.27** :- Admittedly, absolutely, there is no evidence of eye witnesses to prove the overt act committed by the accused persons except PW8 and PW9. There are electronic evidence and other circumstantial evidence. Can it be said that simply because the eye witnesses turned hostile to the prosecution case, the hands of the court is tied to look into the other matters placed before the court and arrive at a right conclusion ?

340. In this context, it is to be noted that whether a particular fact is said to be proved or not, is not being decided on the basis of oral evidence alone. It is crystal clear from the words employed in Section 3 of the Indian Evidence Act. The term “proved” is defined as under :-

“A fact is said to be proved when, after considering the matters before it, the court either believes it to

exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists”.

341. This definition of the term “proved” itself reveal that the court is not supposed to examine the oral evidence alone while deciding a case. The court is examining the “matters” before it. It is true that the evidence also form part of wider term “matters” and not vice versa. (2022(1) KHC 812).

342. In this context, it is worth beneficial to rely on the decision of our Honourable High Court of Kerala reported in 2018(3) KHC 725. It is beneficial to re-produce relevant paragraphs hereunder.

“Section 3 of the Indian Evidence Act. The term “proved” makes it clear that the Court has to reach a conclusion not on the basis of evidence alone. But on the basis of matters before the Court. Of course,

these matters include evidence. There can be other matters also before the Court. The facts like identity of the person who is present before the Court or presence or absence of a party before the Court are matters before the Court. The Court need not examine anyone with regard to his identity or presence or absence. It has the authority to ascertain whether the person who is present before it is the one seen in the visuals in the material objects like cassette, compact disk, pen drive. The material object made part of the evidence in this case is a matter before the court. The court has authority to examine the identity of the accused and the victim who are present before the court. The question whether those persons and the persons seen in the visuals in the cassette marked in evidence in the case are the same person is one to be answered on the basis of the matters before the court.”

343. Thus, from the definition of the term “proved” employed in Section 3 of the Indian Evidence Act makes it clear that the oral evidence of eye witnesses is not the sole determining factor to decide a case.

344. The court is expected to pay attention to each and every bit of vital information placed before it. It is well settled that criminal trial is a quest for truth. Neither the witnesses nor the accused can be permitted to subvert and undermine criminal justice system by scourge of witnesses turning hostile. We are witnessing acquittals time and again and those acquittals are obtained as vital witnesses turned turtle, abandoning their respective stand. Every erroneous acquittal in criminal cases result from witnesses turning hostile. In fact, the very edifice of the criminal law is being compromised due to the unpleasant practice followed by the witnesses for reason best known to them. In high profile cases this unfortunately became the norm. In this context, the observation of the Honourable Supreme Court in the decision reported in **2012(8)**

SCC 450 assumes importance wherein the Honourable Supreme Court held as under :-

“Witnesses turning hostile is a major distributing factor faced by the Criminal Courts in India. Reasons are many of the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and the powerful can always get away from the clutches of law thereby, eroding people's faith in the system”.

345. In the case on hand, there are reasons to find that most of the witnesses turned hostile due to the influence of the accused. That is evident from Ext.P161(series) and P162(series) call data records. The evidence of PW16 that “ഞങ്ങൾ ഒന്നും

വാങ്ങിച്ചിട്ടില്ല” reiterate such conclusion. The context under which the witness has given such statement is also relevant.

346. While trying a criminal case, the court is bound to render justice to the victim. Presumption of innocence will have to be balanced with the rights of the victim and above all the societal interest for upholding the rule of law.

347. It is also to be noted that simply because a particular witness / witnesses turned hostile to the prosecution case, there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence. The court is justified in relying on the evidence of hostile witnesses which appears to be relevant and corroborate it with other materials placed before the court for forming a right conclusion. In this context, it is also worthwhile to re-produce the decision of our Honourable Supreme Court reported in **2008(11) SCC 722** which reads as under (Para 56) :-

“It is settled that even if a major portion of the evidence is found to be deficient, in case the residue is sufficient to prove the guilt of an accused, conviction can be maintained”.

348. It is the duty of the court to separate grain from chaff, where chaff can be separated from grain it would be opened to the court to convict an accused notwithstanding the fact that the evidence of some of the witnesses has been found to be deficient. Falsity of a particular material witnesses would not ruin the case from beginning to the end. None of the parties whether it is witnesses or the accused can be permitted to derail the quest of justice, the paramount object of every court trying criminal cases.

349. In this context, I am constrained to compare the facts of this case with the facts of the case reported in **2019(0) Supreme (Mad) 831**. In that case, out of the 83 witnesses 49 witnesses have turned hostile to the prosecution case including Government officials, media peoples, other high profile persons.

Ultimately, the trial court acquitted all the accused. When the matter reached before the Honourable High Court of Madras in appeal, the Honourable High Court of Madras has seriously criticized the trial Judge in not examining the video footage made available before the trial court due to the sole reason that the eye witnesses turned hostile to the prosecution case. In that case, Honourable High Court of Madras convicted most of the accused solely based on the video recordings made available in that case. The Honourable High Court of Madras has verified the identity of the accused persons in that case by comparing their visuals in the video recordings produced before the court by playing the videos in open court in the presence of the accused. In that case, not even a single witness identified any of the accused persons in the video recordings produced before the court. Fortunately, in this case, PW2 has identified all the accused persons except A12 by watching CCTV footage in court though he turned hostile to the prosecution case with respect to some other overt act of A1. PW2 has also identified the accused persons in the dock. Likewise, many of the witnesses

such as PW10, PW11, PW15, PW17 have also identified many of the accused in dock.

350. Thus, simply because the eye witnesses turned hostile to the prosecution case, the court cannot deviate from its ultimate duty or responsibility to find out the truth by bestowing its attention to each and every pinch of “matters” placed before the court. The court can never stay away from that responsibility. Court can not remain as a silent spectator of all these mockery happened during the course of trial by saying that the eyes of Goddess of justice is a blind folded one. After all, the law of evidence is a adjectival law intended to promote and not subvert the cause of truth and justice.

351. Thus, on an evaluation of the aforesaid settled law and the broad scope of the term “**matters**” in the Indian Evidence Act. I have no hesitation to hold that not even in single case the accused cannot be set scot free for the sole reason that the eye witnesses turned hostile to the prosecution case. The whole judicial system is

not established for rendering unwarranted or unmerited judgment of acquittals. I find that in every such unmerited acquittals, there is miscarriage of justice. Unmerited acquittals results in miscarriage of justice just like convicting an innocent. Point No.27 is found in favour of the prosecution.

CONTENTIONS TAKEN BY THE DEFENCE COUNSEL

352. Contentions taken by learned counsel for A1 :-

1) PW8 and PW9 are not credible witnesses.

As rightly pointed out by the counsel for A1 the court has not fully accepted the evidence of PW8 and PW19. While appreciating evidence against accused No.1, I have already found that evidence of PW8 and PW19 with regard to the overt act of A1 can only be viewed with doubt. Needless to say that, such benefit goes to A1.

2) The identification made by PW8 and PW19 of A1 before court is not proper.

According to the counsel for A1 the identification made these witnesses are not acceptable. It is to be noted that PW8 has got prior acquaintance with A1. According to him, he knows A1 around 5-10 years ago and hence I don't find any fault in identification of A1 by PW8. It is true that no test identification parade was conducted by the Investigating Officer. The reason is that immediately after the incident the photos and videos of the incident was circulated in social media. Accordingly, the photos of accused persons were made public and hence there was no meaning in conducting test identification parade. I find justification for such reason offered by the Investigating Officer. Moreover, it is well settled law that the absence of test identification parade is not a ground to disbelieve the substantive identification of accused by witness in court. (**AIR 2009SC 1729**). As far as the identification made by PW19 there exists some doubt. It is to be noted that apart from PW8 and PW19, PW2 has

identified all accused, except A 12. That is sufficient. All the witnesses need not identify A1.

3) A1 has not shared any common object with other accused persons.

I have already found that the reason narrated by A1 for his arrival at Mukkali for his personal affair is only a cooked up story. There is no probability to arrive Mukkali on the relevant day for that so called family affairs. There is no evidence of purchasing of bakery items such as bill etc. Apart from that during examination DW6 deposed before court that his brother A1 has informed his name and details to the Police. That itself reveals that theft occurred in his shop and that A1 is very much interested in apprehending Madhu. The very fact that A1 was very near to the Police Jeep at time of taking of Madhu by police from Mukkali and giving some instruction by raising his right hand by making some gestures etc further strengthen that conclusion. The

time spent by A1 at Mukkali, the committing of overt act of stamping of Madhu by A1 etc are circumstances leading to find that A1 has shared the common object of the unlawful assembly. As it is come out in evidence that A1 has committed overt act he cannot be treated as an innocent bystander. Hence this contention is rejected.

4) The non-registration of FIR u/s. 154 Cr.PC at the very inception.

This non registration of FIR u/s.154 Cr.PC at the very inception, was criticized by all accused and contended that it was intended to hide the allegation of the custodial torture by police. This was discussed while discussing point No.4. Contention rejected.

5) Out of the persons whose names were stated in Ext.P80 FIS, only one witness (Mathachan) was examined.

This is not correct. Not only Mathachan(PW28), others were examined as PW29,PW30,PW31.DW6. Other two persons

named in FIS are A1 and A11. In fact these witnesses were examined to prove that theft occurred in their shops. Actually their evidence proves motive. Therefore, I find that there is no merit in such contention.

6) The witnesses' statement recorded by Sub-Divisional Magistrate and Judicial First Class Magistrate, was not cross examined.

It is true that the witnesses examined by these dignitaries were not subjected to cross examination. But, 8 out of 18 persons who have given statement before Magistrate and SDM were examined by this court and they were subjected to lengthy cross examination. In this detailed inquiry also the finding is not different from that of JFCM, SDM. Apart from all, this court has not taken the report of JFCM and SDM as a substantive piece of evidence to prove the role of Police in this case. The court has taken these reports only as

a corroborative evidence. Hence, such contention is of not much relevance.

7) It is contended by the counsel for the accused that the act done by A1 at the most will attract offence punishable u/s.323 IPC only in the light of the decision of our Hon'ble High Court reported in 1991 KHC 392.

I am unable to accept such contention, it was already discussed and rejected while answering Point Nos.22 & 23.

8) Madhu was a social evil in that locality.

The accused persons might have believed that Madhu was a social evil. But court can not accept it in the absence of any concrete material to prove those facts. Even if it is assumed that it was so, is it a ground for the accused for taking law into their hands or to take the role of a moral police and cause hurt to Madhu? Not at all. There is no finding of competent court that Madhu is a thief. In the absence of any such materials, based on such mere allegations this court

cannot declare him as a thief. It is true that at the time of apprehending Madhu some articles were recovered from him. But that alone is not sufficient to declare him as a thief without seeking an explanation from Madhu. In order to declare a person as a thief there must be a formal inquiry for finding him guilty of thief. There is only a final report filed by PW91 (Ext.P89). That is his opinion only, rather the result of his investigation. That can never be equated with the Judgment of conviction of Madhu as a thief. Hence I reject such contention taken by A1.

9) The doctor (PW86) has not deposed that injury Nos.1 to 3 could be caused due to stamping of Madhu while he was sitting in front of treasure box at Mukkali.

It is true that, the learned Special Public Prosecutor could not elicit from PW86 that injury No.1 to 3 can be attributed to the so called stamping had such person sit in front of a treasure box. But during the course of cross examination it

was brought out in evidence of PW86 that injury Nos 1 to 3 can be caused if the head of Madhu hit on a hard surface. (page 26). It need not me in the exact words as expected by the learned counsel for the accused. Hence, I am not inclined to accept such contention.

10) In statement given before Magistrate (PW96), Sub Collector (PW67) and in FIS and FIR (Ext P80 and P81) etc there is no statement that A1 has stamped Madhu at Mukkali.

On examination of these records it is found that in Ext.P80 and P81 or in the statement given before the JFCM and SDM there is no whisper that A1 has stamped Madhu when latter was sitting in front of the treasure box at Mukkali. But it is come out in evidence, rather apparent from the CCTV footage that A1 has stamped Madhu. Hence, the mere fact that those statements were not found a place in FIS, FIR or in the earlier statement given before JFCM and SDM are not material. These statements are there in the 161 statements

of witnesses such as PW3, PW3, PW8, PW19 etc. Most of them turned hostile to the prosecution case. After all FIR and FIS are not an encyclopedia of all these facts. Hence, contention rejected.

11) A1 was not having the common object to commit murder of Madhu.

I have already found that none of the accused have intended to kill Madhu or put an end to the life of Madhu. The common object of the unlawful assembly was not to murder Madhu but to apprehend him cause hurt and grievous hurt and then to entrust Madhu to the police.

12) The injuries that found a place in the postmortem report were not found on the body of Madhu while his body was examined by the doctor Lima Francis, SDM, JFCM etc.

In fact the video recorded at the time of postmortem examination will give answer to this question. It was discussed in detail while discussion point No.4.

13) Incidentally it was contended by the counsel for the accused that the court should not be carried away by the news circulated by the media.

It is true that court should never carried away by the news circulated by media. The court should be confined to the materials placed before court and arrive at a right decision. The court has not relied on any of the news circulated in any media and hence this contention does not require much discussion.

14) In the FSL report (Ext P92) the role of A1 was not detected by PW95 in the CCTV footages and even the photograph of A1 was not identified by PW95.

It is true that in the FSL report (Ext P92) the role of A1 was not detected by PW95 in the CCTV footages and even the photograph of A1 was not identified by PW95. The evidence of PW95 is an opinion evidence. PW95 has identified A1 during examination before court. Apart from that simply

because an expert omitted to identify a person from the CCTV footages while comparing the same with photographs of A1, can it be said that the court is not expected to examine the CCTV footages produced before court and to find out the role of A1. **(2018(3) KHC 725)**. It is crystal clear from CCTV footages that A1 has done some overt act at 3.36.10-13 pm and subsequent impacts on the gathering. The gestures of the bystanders of that gathering also clearly proved the role of A1. In such circumstances, there is no merit in such a contention canvassed by learned counsel for A1, especially when A1 is the only person who admit the CCTV footages at Mukkali. Therefore, I don't find any merit in such argument canvassed by the learned counsel for A1.

15) A1 has not contacted with any of the accused persons and hence it can never be held that A1 has shared common object of the unlawful assembly.

It is true that there is no documentary evidence available before court to find that before arriving at Mukkali there was any call to the mobile phone used by son of A1 with any of the accused persons. As per the prosecution case, A1 was using the mobile phone connection subscribed in the name of his son (PW45). But on the same day after the commission of offence that is at 19.06.19 pm there was a telephonic call between the son of A1 and A3 in this case. It is to be noted that in most of the cases, to prove the sharing of common object of unlawful assembly there will not be any positive evidence. That has to be inferred from the attending circumstances. The very presence of A1 from his time of arrival at Mukkali till the time of taking of Madhu from Mukkali reveal that he has got information regarding the apprehension of Madhu by other accused. It is to be noted that A1 reached Mukkali only after bringing Madhu to Mukkali. The CCTV footages reveal that after boarding from his xylo car A1 straight away came to the place where

Madhu was sitting. The very presence of A1 close to the police jeep at the time of taking Madhu by the Police and the gestures of A1 in giving some instructions, the revealing of his name and details to Police, (evident from testimony of DW6) etc reveal that he had got prior information regarding the apprehension of Madhu from forest and bringing of Madhu to Mukkali. All the defence evidence adduced by A1 justifying his visit at Mukkali for some other purpose was found to be a cooked up story. Therefore, based on the materials available before court, simply because the prosecution failed to produce any documentary evidence to prove the communication between A1 with other accused persons, it cannot be said that A1 has not shared common object of unlawful assembly with other accused.

16) There is no evidence to prove that theft took place in the shop of A1.

To prove those aspects PW63 has examined, he turned hostile to the prosecution case. As per the version of PW28, and PW30 some shop owner in whose shop theft was occurred have revealed their name and address to police. The fact that A1 has also revealed his name and address to the police was proved by the evidence of DW6, brother of A1. According to DW6, he was also present at Mukkali at the time when Madhu was taken by Police and he has also shared his name and details to police. Had no theft took place in the shop of A1, why he shared his name and details along with mobile number of his son to the police ? Therefore, such an argument is disproved by the oral evidence of DW6, the witness examined at instance of A1. Incidentally it is contended that if that be so, why Abdul Rahman (DW6) was also not made as an accused? Abdul Rahman has not done any overt act to cause hurt to Madhu, that is the only reason why DW6 was not arrayed as an accused. That is apparent from the CCTV footages itself.

17) A1 was quite unaware of the fact that Madhu was already tired by sustaining injury caused by other accused persons.

In fact that is not warranted to bring A1 under the purview of 149 IPC. The moment he joined the unlawful assembly by committing overt act for attacking Madhu by sharing common object, he is responsible along with other accused persons. The circumstances lead to the conclusion that he has joined the unlawful assembly by sharing common object. In such circumstance, the knowledge of A1 that what all are the injuries sustained by Madhu due the act of other accused persons is of no consequence at all.

18) Disturbance in the gathering seen in CCTV footages if any is to be proved by the prosecution, should have been elicited from the witnesses.

The CCTV footages are wholeheartedly admitted by A1. Court can very well watch the same directly and arrive at a right conclusion, even though the witness have not deposed

about such disturbances in gathering **(2018(3) KHC 725)**.

Hence, the contention is rejected.

19) Madhu was taken into custody without preparing any records.

It is true that at the time of taking Madhu into custody by the Police no records such as arrest memo, arrest intimation and inspection memo etc were prepared. It is to be noted that the police can very well take a person to custody on suspicious grounds even without formally arrest him. **(1983 Cr.LJ 1559)**. Therefore, simply because the arrest records are not prepared that is not a ground to disbelieve the whole prosecution case.

20) The postmortem examination was conducted on 24.02.2018 only, why such a delay ?

It is come out from the evidence of Sub-Divisional Magistrate (PW67), Prasad Varkey (PW83) etc and also from the Investigating Officer that there was a huge aggression

from public in front of CHC Agali, where body of Madhu was kept in taking out the body from Agali CHC without arresting the persons responsible for the death of Madhu. Apart from that Madhu died in the evening of 22.02.2018. In the morning at 10.37 am of 23.02.2018 inquest was conducted. On the very next day ie, on 24.02.2018 at 8.45 AM to 12.15 PM, postmortem examination was conducted in Medical College Hospital, Trissur, a place at a distance of 110 Kms. Nothing unusual.

21) Agali Police Station is a sensitive police station and hence it can not be believed that there is no generator, CCTV, computer backup etc.

It is come out in evidence that C.C.T.V cameras are there in Agali Police Station. Admittedly, the Investigating Officer has not examined the C.C.T.V footages. According to him, on his enquiry, Madhu was not brought to Agali Police Station and hence, he has not verified the C.C.T.V footages.

It is to be noted that while proceeding towards Agali from Mukkali at first Agali C.H.C will come – then only Agali Police Station come – As per the evidence of PW83 and PW84 etc., they brought Madhu to Agali C.H.C and found that he is dead. How can it possible to bring the body of Madhu to the police station ? In the absence of any evidence to find that Madhu was brought to Agali Police Station, the Investigating Officer cannot be blamed in not verifying the C.C.T.V footages. Apart from all these, the contentions of custodial torture is ruled out. Hence, contention rejected.

22) Inspector General of Police visited Agali police station and recorded the statement of Prasad Varkey, what happened to it ?

It is come out from the evidence of Prasad Varkey that in connection with the incident, his statement was recorded by I.G of Police. Admittedly, the statement given by Prasad

Varkey before Inspector General of Police was not produced before court. Whatever may be the statement recorded by IG that is nothing more than that of an inquiry conducted by Sub-Divisional Magistrate and Judicial First Class Magistrate. After all based on the material placed before this court, I have already found that there is no custodial torture in this case. Hence, non-production of the statement recorded by IG in this case is of no consequence at all.

353. Contention taken by learned counsel for A2 & A5 :-

1) Body of Madhu/corpse was not identified.

This was discussed in detail while answering Point No.4.

Contention rejected.

2) The mobile phone of A2 was not seized hence it cannot be said that A2 has contacted other accused on that relevant day.

It is true that the mobile phone of A2 was not seized. But the CAF, CDR etc. were seized and that was marked as P40

series, P42 series etc. Ext.P42 call data records reveal that A2 has contacted A9 on 22.02.2018 at 12.17 pm, 12.21 pm and 12.22 pm. Absolutely, no evidence available before the court that to find that A2 has not used the mobile phone SIM subscribed by him. It is to be noted that the mobile phones of other accused persons were seized, when they were holding the same at the time of their arrest. A2 was not holding his mobile phone at the time of his arrest, that was the version of Investigation Officer. As rightly pointed out by the counsel for A2 the mobile phone of A2 could have been obtained by conducting search in his house. But simply because his mobile phone was not seized, it is not a ground to disbelieve the whole prosecution case. The dresses of the accused persons were also not seized, that also was explained by the Investigating Officer that those dress were destroyed by the accused by fire. It is to be noted that there is no allegation of presence of blood stains of Madhu in the dress of the accused. In such circumstances, the seizure of

dress of the accused persons in this case is not at all warranted in this case.

3) The conversation in the video recorded in the mobile phones (Q4 to Q9) was not proved.

The conversations available in the video file of mobile phones are there, but during the course of playing the contents of those videos in open court that was not audible due to poor sound quality of LCD projector. When it was heard by using head phone the voice is very clear. As the voice recordings were also forming part of video file recorded in mobile phone, it need not be proved by the examining any other witness. (section 22A of Evidence Act).

It is to be noted that copy of Ext. P92(a) pen drive was given to all accused. They can very well hear it.

4) No evidence of committing overt act by accused Nos.2 to

It is true that there is no oral evidence of witnesses to prove the overt act of causing injuries by these accused persons. In the CCTV footages and in the video files in mobile phones there is no visuals regarding the overt acts causing hurt or grievous hurt to Madhu. So long as prosecution established that Madhu was within the custody of these accused persons at least from 1.10 pm onwards on that day till Madhu was taken by police at about 3.30 pm, taking into account of the evidence given by doctor(PW86) that the injuries which resulted in the death of Madhu should have been caused at least 2-3 hours before the time of death of Madhu, it is for the accused to give explanation as to what happened to Madhu while he was within their custody during all these time, at least from 1.10 pm of 22.02.2018 till 3.30 pm of 22.02.2018. In view of Section 106 of the Evidence Act, it is for the accused to reveal the facts which came within their personal knowledge. This was discussed in detail while appreciating evidence against these accused Nos.2 to 16. All

along the accused persons remain silent. Hence it is meaningless in contending like this.

5) There is no evidence of prove that the accused persons have carried any weapons when they went to the reserved forest at Aandiyallachaal.

The videos in the mobile phones reveal that there are plenty of wooden sticks available in that place. That is evident from the video itself. (Videos in Q7). A7 is found carrying a long stick with him (not MO24) that is also evident from the video recordings in mobile phones seized from the accused.

6) As per the prosecution records the address of Madhu is Chindakki. How can it be said that Madhu is dwelling in forest ?

It is deposed by the mother of Madhu and several other witnesses such as PW1, PW10 etc. that for the last several years Madhu is dwelling in forest. The very fact that Madhu was apprehended by these accused persons from Aandiyalachal forest itself reveals that he is dwelling at

Aandiyalachal forest. Moreover the photographs available in the mobile phones reveal the presence of human dwelling at that place. There was evidence of recent cooking in that area. The evidence of human dwelling at the place wherein Madhu was apprehended is evident from the testimony of PW17. Apart from all Madhu being a member of ST community has got dwelling right in forest in view of Section 3(1)(a) of the Scheduled Tribes and Other Traditional Forest Dwelling (Recognition of Forest Rights) Act, 2006. Considering all these facts, I don't find any merit in the argument canvassed by the learned counsel for A2 and A5.

7) The police officials have not afforded immediate medical assistance to Madhu.

It is true that during trial, it is come out in evidence that in between Mukkali and Agali, there are several private hospitals. As per the version of PW83 and PW84 etc.,

Madhu vomitted at Thavalam / Mela Thavalam, at a distance of 10 KM away from Mukkali. From that Thavalam to CHC Agali there is only 8km. How can the court blame the police officials in hospitalising Madhu in Agali C.H.C itself. There is no evidence available before the court to find that in Thavalam, there is other good Hospitals like CHC Agali. Therefore, the police officials cannot be blamed in bringing Madhu to Agali C.H.C. Hence, contention rejected.

8) The Investigating Officer has not verified the C.C.T.V footages in Agali Police Station.

This was already discussed while answering contention No.21 raised by the learned counsel for A1.

9) Time gap in between the C.C.T.V footages in Q2 and Q3 ?

It is come out in evidence of PW95 that the time noted in C.C.T.V footages may not be correct. The time noted in the C.C.T.V footages will be the system time. It may not always be correct. Even PW95 could not identify the exact time.

When we watch the CCTV footages in Q2 and Q3 file, it can be inferred that there is time difference. Because these are recorded in two different system. That is why there is time difference. The difference in the system time in these two DVR installed at different place is reflected as such in the CCTV footages. But, at the same time, it is deposed by PW95 that the time shown in the properties of photos and videos captured in the mobile phone, the time will be reflected and that will be correct. The video files in Q4 mobile phone reveal that, that video was recorded at about 3.19 pm. It contains incident of taking of Madhu to police jeep etc. In the circumstances, the police party can leave Mukkali thereafter only. In such circumstances, simply because, there is some difference in the time recorded in Q2 and Q3 C.C.T.V footages that is of no much consequence. Hence, contention rejected.

354. Contentions taken by the learned counsel for the A4, A7, A14 and A15 :-

1) The prosecution cannot rely on both direct and circumstance evidence at a time.

According to the learned counsel, the prosecution has to either stick on to the circumstantial evidence or on the direct evidence. That has to be made it clear. They cannot rely on both these types of evidence simultaneously to prove their case. I find that such an argument does not bear any legal support. There is no hard and fast rule that the prosecution cannot rely on both direct evidence and circumstantial evidence at a time to prove their case. The very definition of the term “proved” in Section 3 of the Indian Evidence Act reveals that court is forming an opinion that a particular fact is said to be proved based on the entire “matters” including oral evidence, documentary evidence, electronic evidence,

admissions, confession, facts having judicial notice etc. No straight jacket formula is provided to pick and choose particular type of evidence for a particular type of case. The court has the liberty to rely on the entire matters placed before court, which are permitted by law for arriving at a right conclusion. Hence, I am rejecting such argument canvassed by the learned counsel for the accused Nos.4, 7, 14 and 15.

2) There is no substantive evidence in this case to incriminate the accused. The only evidence made available before the court is corroborative piece of evidence.

According to the learned counsel for the accused Nos.4, 7, 14 and 15, the entire electronic records can only be used for corroboration. It is to be noted that the term “substantive evidence” is not used anywhere in the Evidence Act. These are all creations of precedents. In the decision reported in **2019(0) Supreme (Mds) 831**, the Honourable High Court

of Madras treated the video recordings produced in that case which were examined by the Central Forensic Science Laboratory as substantive piece of evidence holding that these documents itself speak the truth. Here also, the electronic records produced before the court itself speak the truth and hence no further proof is required for relying those evidence. The electronic evidence itself can be viewed by the court and form an opinion. As the document speaks itself, I find that it can be treated as substantive evidence. It can never be said that the oral evidence alone can be treated as substantive evidence. Therefore, simply because there is no eye witnesses, it cannot be held that the remaining materials place before court is of no consequence. Hence, I do not find any merit in the argument canvassed by the learned counsel for the accused Nos.4, 7, 14 & 15.

3) The motive of accused Nos.4, 7, 14 and 15 are not proved. Hence, the prosecution case will fail as against them.

The prosecution established by cogent and convincing evidence that except A4, A11 and A16, the remaining accused persons formed themselves into an unlawful assembly with a common object. Some of them have subsequently joined the unlawful assembly. In view of the finding in point No.6, I have already found that the prosecution succeeded in establishing the motive behind the commission of the crime. There is no question of proving motive against each and every individual members of an unlawful assembly. Only thing the prosecution wanted to prove is the motive and common object of unlawful assembly. That is enough. Hence, contention rejected.

4) Charge framed against accused Nos.4, 7, 14 and 15 is defective.

Had these accused persons are in any way prejudiced by the charge framed by the court, they could have very well brought this fact to the attention of the court immediately

after framing charge or during trial etc. It is for the first time, these accused persons are contending that they are prejudiced by the charge framed by this court without explaining how they are prejudiced. In this circumstance, it is worthwhile to rely on Section 215 of Cr.P.C, which reads as under :-

“No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice”.

A bald allegation is not sufficient. It is to be explained as to how they are misled by the charge framed by the court. In this context, it is worth beneficial to reply on the decision of

our Honourable High Court reported in **2022(2) KHC 473**.
“An error or omission in a charge will not be regarded as material, unless accused was misled by such error or omission, and it has occasioned failure of justice”
(2022(2) KHC 473).

Till final argument of this case is advanced, none of the accused persons has contended that they are in any way misled by the charge framed or even if there is any error in the charge, that has resulted in failure of justice. Therefore, this contention is rejected.

5) The principle of last theory is applicable in this case and hence the police personnel are answerable for the death of Madhu.

This point was elaborately discussed while answering point No.4. Hence, contention rejected.

6) Hash value of the electronic records were not taken, hence the accused persons are entitled to get benefit of doubt.

The circumstance under which the Investigating Officer was

unable to note hash value is explained by the Investigating Officer as well as PW72. According to the Investigating Officer, uninterrupted power supply is required for noting the hash value. In the meanwhile, if there is power failure, there are chances of loss of entire data. Hence, hash value of hard disk of DVR was not recorded. During examination, it is deposed by PW95 that there is no method to record hash value of mobile phone devices. Apart from all these, the question is whether the electronic records are tampered? Absolutely no materials to find that the electronic records were in any way tampered. In such circumstance, simply because hash value was not noted while seizing these electronic records, that will not affect evidentiary value of the electronic records.

Apart from that, original hard disk of DVR is produced before the court. Had the accused got any contention that there is manipulation in the hard disk of DVR and mobile phone etc., they could have requested the court to play the hard disk

itself or the mobile phone itself in the open court. None of the accused persons made such a request. Therefore, I am unable to accept such argument canvassed by the learned counsel for the accused persons.

7) 65B certificate issued by PW95 is not issued along with Ext.P92 report.

It is not necessary in the light of the decision of the Honourable Supreme Court reported in **Arjun Panditrao's** case (**AIR 2020 SC 4908**).

8) PW97 has continued investigation in this case even after transferring him to Thrissur.

It is properly explained by PW97 that even after transferring him, he was authorised by the Inspector General of Police to conduct investigation in this case as per order of the Inspector General of Police.(Ext.P149). Therefore, I find that PW97 is justified in conducting investigation.

9) There is delay in producing the material objects seized by

the Investigating Officer. That create doubt in the prosecution case.

The Investigating Officer emphatically deposed that these material objects were in his safe custody during all these periods and hence, there is no chance for tampering of these material objects. The Investigating Officer may be in need of these material objects for showing it to the witnesses. As the Investigating Officer deposed that it was in his safe custody, there is no need to doubt the delay caused in producing MOs.

10) The caste of Madhu is not proved in accordance with law.

Discussed elaborately while answering point No.1.

11) The hair found in the finger of Madhu while conducting inquest is not collected.

It is true that the existence of a hair in the hands of Madhu was deposed by the Sub Divisional Magistrate. Admittedly, he has not collected it. But when nail clippings were

collected by PW86 while conducting postmortem examination, such hair was not noticed. Absence of a hair and examination of the same by the Scientific Laboratory cannot itself be treated as a ground to disbelieve the whole prosecution case. The court is evaluating the entire matters produced before the court. After examining the entire facts, the court arrived at a conclusion that it is not a case of custodial torture. Therefore, I am not inclined to disbelieve the whole prosecution case on the sole reason of non-examination of a hair found in the left hand of Madhu. Hence, contention rejected.

12) In inquest report, there is no external injury. But, when postmortem examination is conducted, there are 44 injuries.

How it happened ?

This was elaborately discussed while answering point No.4. Moreover, in the light of the decision reported in **2019 CrI.LJ 4506**, this disparity is of no consequence.

13) There is no evidence to prove that on whom the body of Madhu was released.

The mother, brother-in-law and the close relatives of the deceased Madhu were examined before the court. None of them complained that they have not received the dead body of Madhu for burial. Apart from that, it is deposed by PW73, that he has released the body of Madhu to one Rajesh, the relative of Madhu. It is true that the receipt signed by Rajesh was omitted to be marked at the instance of prosecution even though the receipt is there along with prosecution records. Apart from all these the most competent person to dispute these fact is the mother of Madhu. The mother has not raised her little finger contending that she has not received the body of Madhu. There is no meaning in discussing much about this argument. In the light of the decision of the Honourable Supreme Court reported in 2000(8) SCC 382.

14) Irregularity in registering the First Information Statement.

This was elaborately discussed earlier while discussing point No.4.

355. Contentions raised by the learned counsel for A3, A6 and A8 :-

1) Section 149 of the Indian Penal Code will not be attracted in the absence of any allegation of commission of offence against State and property.

This argument was elaborately discussed and rejected in page Nos.7 to 11.

2) Section 34 of the Indian Penal Code is not incorporated in the charge and hence, the accused persons cannot be implicated.

The number of persons involved in this case exceeds five.

Hence, Section 149 of the Indian Penal Code is incorporated.

Section 149 of the Indian Penal Code has got wider scope

than Section 34 of the Indian Penal Code to make all accused persons liable who are member of unlawful assembly. Hence, contention rejected.

3) Accused persons are justified under Sections 76 and 79 of the Indian Penal Code in apprehending Madhu from forest.

If the accused persons believed that Madhu was involved in several theft cases, they could have pointed out him to the police. If the police at grass root level has not given attention to their complaint, they could have very well approached higher police official. At any rate they have no right at all to take the role of a moral police to apprehend Madhu. Such moral policing can never be encouraged in a civilized society. Apart from all these, the accused persons would not have been implicated in this case, had they simply brought Madhu from forest without subjecting him to any cruelty. The moment the accused persons attacked Madhu, the situation changed. There is no evidence

available before the court to find that Madhu had committed any cognizable offence in front of these accused persons or that Madhu is a proclaimed offender. In such circumstances the accused persons can never be justified in apprehending Madhu from forest canvassing Section 43 of the Cr.P.C. At any rate, none of the accused persons are justified in apprehending Madhu taking the role of a moral police. Hence, contention rejected.

4) How Madhu can behave like this as seen in the CCTV footages, had he sustained such grave injuries including ribs fracture?

This is explained by PW86, the Doctor that even if the person who sustained all these 44 injuries, he can behave normally, take food, stand up, drink water etc. during the initial stage. Edema develops over a period of time and at a particular peak time the situation will become worst and at that time, it will become a case of medical emergency. This

answer given by PW86 clarify the doubt.

5) Why police has registered 174 report instead of F.I.R under Section 154 Cr.P.C with penal provisions.

This was discussed while answering point No.4.

356. Contention raised by the learned counsel for the A9, A10, A12 and A16 :-

1) Digital evidence are not admissible due to non-compliance of Section 79A of the Information Technology Act.

This was elaborately discussed while discussing point No.3.

2) PW95 has not deposed that he is an expert.

PW95 was the then Assistant Director in State Forensic Science Laboratory, Thiruvananthapuram. As per Section 293 of the Cr.P.C, Assistant Director of State Forensic Science Laboratory is a Scientific Expert. [**Section 293(4)(e)**]. When law recognize the Assistant Director of State Forensic Scientific Laboratory as a Scientific Expert, how can

his evidence be rejected for the sole reason that during examination, he has not deposed that "I am an expert". The official seal affixed in Ext.P92 FSL report also reveals that PW95 is the Assistant Director of State Forensic Science Laboratory, Thiruvananthapuram. The contents of Ext.P92 also reveals that he has filed the report under Section 293 of the Cr.P.C. In these circumstances, how can court reject his evidence for the sole reason that PW95 has not stated during examination that "I am an expert". It cannot be. Hence, contention rejected.

3) The prosecution has not established that electronic evidence were not tampered with.

No circumstance brought before the court to find that electronic evidence were tampered with. That means the electronic records were not tampered with. If the accused have a case that electronic records were tampered, they should point out how it was tampered, when, how far that

affected the case etc. A bald denial is of no consequence. There should be material to show that the DVR or videos in mobile phone are doctored or morphed. (Paragraph 113 of **2019(0) Supreme (Mad) 831**). Hence, contention rejected.

4) No evidence to prove that Q4 to Q9 mobile phones belong to accused persons.

The call data records, CDR etc. along with 65B certificate (Ext.P41 series, P42 series, P83 series, P91 series, P161 series and P162 series) prove that these connections are subscribed by these accused persons. The mobile phones were seized from the custody of the accused persons as per Exts.P62 to P66 seizure mahazars. These documents were proved by PW66, PW69, PW72 etc. What is the evidence to find that these mobile phones are used by some one other persons ? When these documents prove that the connections were subscribed by accused persons, it is for them to prove that it is not being used by these accused persons. In this

context it beneficial to rely on the decisions reported in **2011(10) SCC 675** and **2018(3) KHC 429**. Hence, contention rejected.

357. **Point No.28** :- Thus, in view of my finding in point Nos.1 to 27 and on evaluation of the entire matters placed before the court by the prosecution such as oral evidence, electronic evidence and other circumstantial evidences, I came to a conclusion that the prosecution succeeded in establishing the guilt of accused Nos.1, 2, 3, 5 to 10, 12 to 15 and 16 for most of the offences charged against them beyond the shadow of any reasonable doubt. The prosecution succeeded in establishing all the chain of circumstances starting from the motive behind the commission of crime, forming of unlawful assembly, abduction of Madhu from Aandiyalachal forest, causing hurt and grievous hurt to Madhu, bringing of Madhu to Mukkali, causing injuries to Madhu at Mukkali by A1 and then to entrust Madhu to the Police. Likewise the prosecution succeeded in establishing that it is not a case of custodial torture. It is worth

beneficial to describe the sequence of events in a tabular form for easy reference.

358. **Sequence of Events** :-

Sl. No.	Point/Event	How proved
1.	Motive to put an end to the series of theft in Mukkali.	Evidence PW28 to PW31, PW91 and Ext.P89.
2.	Inquiry by A2 regarding presence of Madhu in forest.	PW10 and PW11.
3.	Communication between A2, A7, A9 and A15 at about 12.17 pm onwards dated 22.02.2018.	Exts. P40 series, P41 series and P42 series.
4.	A9 to other accused persons.	Exts. P40 series, P41 series and P42 series
5.	Forming unlawful assembly at Mukkali at about 12.30 pm on 22.02.2018.	CCTV footages at Ponniammal Gurukulam (Q3).12.41 pm onwards.
6.	Unlawful assembly moving towards Silent Valley road.	CCTV footages at Ponniammal Gurukulam (Q3) at about 12.44 pm onwards.
7.	Unlawful assembly passing to forest through Anavay forest	CCTV footages (Q1) at about 12.51.50 pm

	check post.	onwards.
8.	Unlawful assembly entering Aandiyallachaal forest.	Photo in Q6 (IMG_20180222_130057).
9.	Unlawful assembly finding out Madhu.	Photo of Madhu at 1.23 in Q6 file (IMG_20180222_132326).
10.	Apprehending Madhu by unlawful assembly of 10 accused persons.	Video file in Q7 file VID-20180222-WA0034.
11.	Unlawful assembly moving towards Vandikkadavu along with Madhu	-do-
12.	A14 and 15 passing through Anavai forest check post for joining unlawful assembly	CCTV in (Q1)(13.50.30pm)
13.	A14 and A15 joining unlawful assembly.	Photo in Q5 file (IMG_20180222-A0083).
14.	A3 calling PW91.	Exts.P41 series & P42 series
15.	Unlawful assembly reaching Anavay forest along with Madhu	CCTV footage in Q1 at 14.46.48 pm onwards.
16.	Unlawful assembly moving towards Mukkali through Silent Vally road along with Madhu	PW15 and PW27
17.	Unlawful assembly is reaching	CCTV file in Q3.

	Mukkali in front of Ponniyammal Gurukulam	
18.	Unlawful assembly reaching Mukkali junction along with Madhu	CCTV file in Q2 after 3.00 pm.
19.	A4, A11 and A6 joining assembly.	CCTV footage in Q2 file + video file in Q5 mobile phone.
20.	A16 hitting Madhu.	-do-
21.	A1 reaching Mukkali in Xylo car and joining unlawful assembly.	CCTV footage Q2 file at 3.35 pm onwards.
22.	A1 stamping Madhu.	CCTV footage Q2 file 3.36.10 to 13 pm.
23.	Shifting of Madhu to waiting shed.	Photograph in Q7 mobile phone.
24.	Police reaching Mukkali and taking Madhu at about 3 pm.	Video file in Q5 mobile phone
25.	A1 actively participating to send Madhu to Police.	-do-
26.	Gathering in Mukkali junction disbursing	CCTV footage in Q2 file after 3.40 pm
27.	A1 moving towards Anakatty road.	CCTV footage in Q2 file at 3.52.50 pm onwards.

28.	Police bringing Madhu to Agali CHC at about 4.15 pm.	Dr.Lima Francis (PW56), PW83, PW84 and PW89.
29.	Entry in CCTNS regarding death of Madhu at 5.02 pm.	PW92.
30.	Registering FIR manually at 5.15 pm u/s. 174 Cr.PC.	PW83, Exts.P80 and P81.
31.	Registering FIR in CCTNS at 7.50 pm.	Ext.P90, PW93.
32.	Inquest on 23.02.2018.	PW1, PW67.
33.	Postmortem examination on 24.02.2018.	PW86, Ext.P82.
34.	Investigation by incorporating penal provision.	PW97.
35	Accused persons contacting witnesses for influencing them during trial	Exts.P161 series and P162 series.

359. In this context, the learned counsel for the accused persons relied on the following decisions and canvassed an argument with regard to the heavy burden cast on the prosecution to prove the case on the basis of circumstantial evidence.

**2022 Livelaw SC 461, 1954 ICO 167, 2019 ICO 1599,
2022 ICO 522, 2022 KHC 6432, 2021 KHC 6457,
2022 KHC 6188, 2013 KHC 4926 & 2018 KLT 4697.**

360. It is to be noted that in this case the prosecution is not completely resting upon the circumstantial evidence to prove the case. There are strong electronic evidences inspiring confidence of court.

361. In this context, it is also to be noted that the prosecution is not required to meet each and every hypothesis put forward by the accused. The prosecution only wanted to rule out every possible hypothesis leading to the innocence of the accused. The prosecution is not expected to rule out each and every imaginary hypothesis suggested by the defence (**AIR 1992 SC 840**).

362. In this context, it is worthwhile to rely on the decision of the Hon'ble Supreme Court reported in **AIR 1978 SC 1091** which reads as under :-

“Credibility of testimony, oral 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. If a case is proved too perfectly, it is urged that it is artificial. If a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilt men must be callously allowed to escape. Proof beyond reasonable doubt is guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool proof concoction. Why fake up ? Because the court

asks for manufacture to make truth look true ? No, we must be realistic”.

363. In this context, it is also worthwhile to reply on the decision of the Honourable Supreme Court reported in **2022(7) KHC 647** where it is held as under :-

“It is trite law that in cases dependent on circumstantial evidence, the inference of guilt can be made if all the incriminating facts and circumstances are incompatible with the innocence of the accused or any other reasonable hypotheses than that of his guilt, and provide a cogent and complete chain of events which leave no reasonable doubt in the judicial mind. When an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of

circumstances to make it complete. If the combined effect of all the proven facts taken together is conclusive in establishing the guilt of the accused, a conviction would be justified even though any one or more of those facts by itself is not decisive”.

364. On examination of all these matters placed before the court, I find that the prosecution succeeded in establishing that all the circumstances and links connecting them were sufficiently established by the prosecution. The prosecution successfully ruled out all possible hypothesis suggesting the innocence of the accused. The matters placed before the court leading to the only conclusion that these accused persons alone have committed these offences.

365. For the sake of convenience, it is worth beneficial to discuss offences proved against each accused / groups separately.

366. **Offences proved against A1** :- In view of my findings on point Nos.7 to 11, I have already found that the first accused has joined in the unlawful assembly at Mukkali. A1 never went to the

reserve forest for apprehending Madhu. So long as, A1 joined the unlawful assembly fully knowing the common object of such unlawful assembly, he is liable for the act done by every member of such unlawful assembly at Mukkali in view of Section 149 of the Indian Penal Code. . However, he cannot be fastened with the penal liabilities of acts done by the members of such unlawful assembly at reserve forest, as A1 was not present at the reserved forest. **[2006(3) SCC 752, 1993 KHC 2476].**

367. It is evident from the oral evidence of PW86 and Ext.P82 postmortem certificate, that the acts done by A1 is to be attributed with injury No.2 stated in Ext.P82 postmortem certificate. As per the evidence of PW86, the doctor, injury Nos.1 to 15 are the cause of death of Madhu. Out of these 15 injuries, in my view, injury Nos.1 to 3 and injury No.12 are serious injuries. I have already found while answering point No.22 and 23 that the accused persons including A1 have got the knowledge that the act done by them is likely to cause death of Madhu. The oral evidence of PW86 and Ext. P82 postmortem certificate reveal that injury no 2 caused

due to the act done by A1 has also contributed the death of Madhu. In such circumstances, in view of my finding in point nos 22 and 23 the overt act of stamping of Madhu by A1 also attracts offence punishable under Section 304 Part II of the Indian Penal Code. Even though the learned counsel for A1 canvassed an argument that at the most the act done by A1 may attract offence punishable under section 323 IPC only in the light of the decision of our Hon'ble High Court reported in **1991 KHC 392**. But such contention was already rejected while answering Point Nos.22 & 23.

368. In view of my finding in point no 10, as the accused No.1 joined the unlawful assembly by knowing the common object of such unlawful assembly to apprehend Madhu from the reserve forest, to cause hurt / grievous hurt and then to entrust Madhu to the police, accused No.1 is to be held to have committed offence punishable under Section 143 of the Indian Penal Code.

369. Needless to say that riot and wrongful confinement was there at Mukkali as well and hence, accused No.1 is also liable

for the offence punishable under Section 147 and section 342 of the Indian Penal Code in view of my findings in point nos.12 and 13.

370. Likewise, in view of my finding in point no 14 I have already found that the act done by A1 will also attract offence punishable under section 323 IPC. Therefore, I find that the prosecution has succeeded in establishing that accused No.1 has committed offences punishable under Sections 143, 147,323,342 and 304 Part II of Indian Penal Code r/w Section 149 of the Indian Penal Code.

371. **Offences proved against accused Nos.2, 3 to 5, 10, 12 to 15 :-** In view of my finding on point Nos.7 to 11 the accused Nos.3, 5 to 10, 12 and 13 formed themselves into an unlawful assembly. A2 has joined the unlawful assembly at forest and thereafter A14 and 15 have subsequently joined the unlawful assembly at reserve forest near Vandikkadavu. They have apprehended Madhu from reserve forest and caused hurt / grievous hurt. The evidence of PW86 and Ext.P82 postmortem certificate

reveal that when all the injuries are taken together it contributed to the death of Madhu. This can only be caused by several persons ie, at least 2 or three persons. There is concrete and convincing evidence available before the court that these accused persons have brought Madhu from reserved forest. This was discussed while appreciating evidence against these accused. The evidence further leads to the conclusion that at least from 1.00 to 1.10 pm, onwards Madhu remained within the exclusive custody of these accused persons. Conversation by some of these accused persons in these group “ഇനിയൊന്നും അടിക്കാനില്ലേ... , അടിക്കാനേ...ഇല്ല.” reveal that the accused persons have manhandled Madhu in the forest. It is further alleged that the accused Nos.14 and 15 have also caused hurt. Though it is contended that they have not entered the reserve forest, the CCTV footages (Q1) and photographs in Q5 file in Ext P92(a) pen-drive (IMG-20180222-WA0083) reveal that even before the unlawful assembly returned to Aanavai Forest Check post, accused Nos.14 and 15 have joined in the unlawful assembly. In

such situation, they are also to be held responsible for the entire act committed by the unlawful assembly.

372. In view of my findings in point Nos.7, 8, 9, I have already found that accused Nos.2, 3 to 5 to 10, 12 to 15 have committed offence punishable under section 143 r/w 149 IPC.

373. In view of my findings in point no.12 I have already found that these accused persons have committed offence punishable under section 147 r/w 149 IPC.

374. In view of my findings in point no.13 I have already found that these accused persons have committed offence punishable under section 342 r/w 149 IPC.

375. In view of my findings in point no.14,17 and 18 I have already found that these accused persons have committed offence punishable under section 323,324 and 326 r/w 149 IPC.

376. In view of my findings in point no. 19,20 and 21 I have already found that these accused persons have committed offence punishable under section 367 r/w 149 IPC.

377. In view of my findings in point nos. 22 and 23 I have already found that these accused persons have committed offence punishable under section 304 part II r/w 149 IPC

378. In view of my findings in point no. 24 I have already found that these accused persons have committed offence punishable under section 3(1)(d) of SC/ST (POA) Act r/w 149 IPC.

379. Thus, based on my finding in the above points I find that the prosecution has succeeded in proving that accused Nos.2, 3 to 5 to 10, 12 to 15 have committed offences punishable under Sections 143, 147, 323, 324, 326, 342, 367, 304 Part II read with Section 149 of the Indian Penal Code and Section 3(1)(d) of the SC & ST (POA) Act read with Section 149 of IPC.

380. **Offences proved against accused No.16** :- In view of my finding on point Nos 7 to 11 I have already found that the prosecution has miserably failed to prove that accused No.16 has joined the unlawful assembly by sharing the common object of such unlawful assembly. Therefore, he cannot be held responsible for the

offence committed by the accused persons who were members of unlawful assembly. At the same time, he is responsible for the individual act committed by him for offence punishable u/s 352 IPC. In view of my finding on point No.15, I have already found that the act done by accused No.16 come within the definition of criminal force. Therefore, I find that accused No.16 has committed the offence punishable under Section 352 of the Indian Penal Code alone.

381. Offences proved against accused Nos 4 and 11 :- In view of my finding on point Nos 7 to 11 I have already found that the prosecution miserably failed to prove that accused nos 4 and 11 have joined the unlawful assembly or committed any of the offences charged against them.

382. In the result,

- 1) Accused No.1 is found guilty of offences punishable under Sections 143, 147, 323, 342 and 304 Part II read with Section 149 of IPC and convicted

thereunder. Accused No.1 is found not guilty of offences punishable under Sections 324, 326, 302, 364, 367, 368 of IPC and Sections 3(1)(d), 3(1)(r), 3(2)(v), 3(2)(va) of SC/ST (POA) Act.

- 2) Accused Nos.2, 3, 5 to 10, 12 to 15 are found guilty of offences punishable under Sections 143, 147, 323, 324, 326, 367, 304 Part II read with Section 149 of IPC and Section 3(1)(d) of SC/ST (POA) Act read with Section 149 of IPC and convicted thereunder. These accused are found not guilty of offence punishable under Sections 302, 364, 368 and 352 of IPC and Sections 3(1)(r), 3(2)(v), 3(2)(va) of SC/ST (POA) Act.
- 3) Accused No.16 is found guilty of offence punishable under Section 352 of IPC and convicted thereunder. Accused is found not guilty of any other offences charged against him.
- 4) Accused Nos.4 and 11 are found not guilty of any of

the offences charged against them. Therefore, accused Nos.4 and 11 are acquitted under Section 235(1) of Cr.P.C. Their bail bonds stand cancelled and they are set at liberty.

Dictated to the Confidential Assistant, transcribed and typewritten by her, corrected by me and pronounced in open Court this the 4th day of April 2023.

Sd/-
Judge,
**Special Court for SC/ST (POA) ACT/
Additional Sessions Court
Mannarkkad.**

383. **Hearing on Sentence** :- In view of Section 360(1) of Cr.P.C and Section 19 of SC/ST (POA) Act, the accused are not entitled to get any benefit under the benevolent provisions of Probation of Offenders Act.

384. All the accused who are found guilty and the prosecution are heard on question of sentence as provided under Section 235(2) of Cr.P.C.

385. The learned Special Public Prosecutor argued that the accused persons have brutally attacked Madhu, a member of SC/ST community for mere allegation of theft of some food items. The learned Special Public Prosecutor argued that Madhu is a person suffering from mental illness. The accused persons without paying attention to these facts mercilessly attacked Madhu and therefore, the accused are not entitled to get any leniency while awarding sentence. It is further argued that when A2, A3, A5 to A10, 12 to A15 brought Madhu to Mukkali by inflicting severe injury, A1 inflicted heavy stamping at Mukkali such act triggered the death of Madhu. It is further argued by the learned Special Public Prosecutor that every person in this country has got right to live with dignity. In such circumstances, the parading of Madhu in half naked posture through public road can never be lightly brushed aside. It is further argued by the learned Special Public Prosecutor that the accused persons have influenced the witnesses of this case during trial and highlighted this incident as a reason for awarding maximum punishment in this case. The learned Special Public Prosecutor

argued that age and family background of the accused persons are not paramount mitigating circumstances while awarding sentence and relied on the decision of our Honourable Supreme Court reported in **2015(0) Supreme (SC) 394**. Therefore, the learned Special Public Prosecutor canvassed an argument to award maximum punishment while awarding sentence.

386. While hearing on sentence, A1 stated that he is doing some business, he has got a lot of liabilities and he is not involved in any other case. Hence, he sought to shower maximum leniency.

387. A2 stated that he has got two kids and age old mother. According to him, he is the only earning member to look after the family. He is a driver by profession. He also sought maximum leniency.

388. A3 stated that he is an auto rickshaw driver, has got three children and nobody is there to look after the family and hence pleaded maximum leniency.

389. A5 stated that he is a carpenter by profession and he has got age old mother. Nobody is there to look after his mother. Hence, he pleaded to shower maximum leniency.

390. A6 stated that he is also an auto rickshaw driver. His family consist of age old parents, two kids and wife. He is the only earning member of his family. Therefore, he sought maximum leniency while awarding sentence.

391. A7 stated that he is also a driver by profession. He has got four children, wife and age old mother depending on him. He has also pleaded to shower maximum leniency while awarding sentence.

392. A8 stated that he is also a driver by profession. He has got a three year old child and nobody is there to look after the child. Hence, pleaded to shower maximum leniency.

393. A9 stated that he has got a six month old child and another two children. Nobody is there to look after them. Hence, he sought to shower maximum leniency.

394. A10 stated that he is an auto rickshaw driver. He has got three children. Out of these, one child has cardiac disease and nobody is there to look after the child. Hence, he pleaded mercy of the court.

395. A12 stated that he is also an auto rickshaw driver. According to him, due to the pendency of this case, he found it difficult to get married and recently only he got married. Hence, he also pleaded to shower maximum leniency.

396. A13 stated that he is also an auto rickshaw driver. He stated that he has not committed any offence and pleaded to shower maximum leniency.

397. A14 stated that he is conducting a bakery. He has got three children. According to him, he is the only person to look after his family. Thus, pleaded to shower maximum leniency.

398. A15 stated that he is also an auto rickshaw driver. His family is solely depending on him. Hence, pleaded to shower maximum leniency while awarding sentence.

399. A16 also stated that he has got two minor children and hence, sought to shower maximum leniency.

400. The learned counsel for the accused have also argued about the social and financial background of the accused, the circumstances under which they happened to be involved in this case. It is further argued that the accused persons do not have any criminal antecedents. According to them, all these factors may be taken into account while awarding sentence. The learned counsel for A4, A7, A14 and A15 argued that absolutely, there is no evidence to find that who has inflicted injury leading to the offence punishable under Section 326 of IPC and hence, it is injustice to award severe punishment to all the accused persons by canvassing Section 149 of IPC.

401. In this context, it is worth beneficial to rely on the following judicial precedents :-

2021 KHC 203 - *“While considering the sentence to be imposed upon the accused, it is necessary to appreciate*

that the sentencing must have a bearing on the conscience of the society and must reflect a response to society's crime for justice. A liberal attitude in sentencing policy by imposing meagre sentence or taking too sympathetic view would be counter productive. The principle of deterrence is also a avowed object of sentencing policy”.

AIR 2015 SC 2170 : *“Family background of accused cannot be said to be a mitigating circumstance, in case of heinous crime. Fact that accused was happily married and his wife was pregnant at the relevant time is not mitigating circumstance – Lack of criminal antecedents also cannot be considered as mitigating circumstance”.*

AIR 2014 SC 739 : *“Punishment should always be proportionate / commensurate to the gravity of offence – Religion, race, caste, economic or social status of the accused or victim or long pendency of criminal trial etc.*

cannot be construed as special factors for reducing sentence prescribed by the statute”.

2013 CrLJ 3514 : *“Sentence should neither be too lenient nor disproportionately severe – If sentence is lenient, it loses its deterrent effect”.*

2017 KHC 3255 : *“While awarding sentence, the court has to strike a balance between the reformatory and punitive theories. At the same time it should be a lesson for potential offenders”.*

2015 KHC 840 : *“Sentence to be appropriate should neither be too harsh nor too lenient”.*

402. In this context, it is also worth beneficial to reiterate the words of Lord Denning on proportionality of punishment.

“The punishment is the way in which society expresses its denunciation of wrong doing; and, in order to maintain respect of the law, it is essential that the punishment inflicted for grave crime should adequately reflect the

revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishments as being deterrent or reformatory or preventive and nothing else. The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is deterrent or not”.

403. Considering the above judicial precedents, it is essential to award adequate sentence to the accused. This is the first mob lynching case in Gods Own Country. Let it be last such case. The materials placed before the court reveal that the accused persons have assumed the role of moral police. Such moral policing can never be encouraged in a civilised society. Unless instances of such moral policing is deprecated by awarding adequate sentences, this practice will be repeated by like minded persons. Therefore, it should be a lesson for all those who are thinking of assuming the role of moral police.

404. The evidence adduced in this case leads to the conclusion that the accused persons have mercilessly inflicted injuries on Madhu alleging that he had committed some theft of food items in Mukkali and adjacent places. Even if it is assumed that the so called properties found in the custody of Madhu are stolen properties it can only be said that Madhu did not steal for the joy of it, but because of the clamor of his stomach. For that allegation of minor theft the acts done by the accused persons lead to the death of Madhu. As pointed out by learned Special Prosecutor, Ext.P48, P49(series) documents and evidence of PW58 and PW59 reveal that Madhu was treated for some mental illness. This court is bound to respect the life of Madhu just like the life of any other citizen in this country. Our constitution guarantees equal right to life for each and every citizen in India irrespective of their social status. Hence, the court cannot award a flee bite sentence in this case for the reason that the person who died in the incident is not a big shot.

405. Due to the acts done by the accused persons, PW70

lost her son. It is true that such loss cannot be compensated in terms of money. But, at the same time, taking into account of the spirit of Section 357 of Cr.P.C and in the light of the decision of the Honourable Supreme Court reported in **AIR 1988 SC 2127**, I find that considerably good amount is to be paid to the legal heirs of Madhu as compensation out of the fine amount. Therefore, I am not inclined to shower much leniency while imposing fine.

406. At the same time the CCTV footages made available before the court reveal that accused no 3 has given a plantain to Madhu and accused no 14 has offered a cup of juice to Madhu when Madhu was brought to Mukkali. These acts of A3 and A 14 reveal that even now there exists remnants humanitarian consideration in the mind of the accused and hence the court find that chances of reforming the accused into a socially committed citizen cannot be ruled out. It is to be bear in mind that *“every saint has a past and every sinner has a future”*. For that reason and taking into account of the grounds stated by the accused and their counsel I am not inclined to award the maximum punishment provided in the law for

the commission of offence.

407. In this context, I am constrained to mention that had the police apprehended Madhu, he could have been brought before law and if it is found that he has got any mental illness he could have been treated and rehabilitated at the expense of the State. In fact, this incident is a lesson to the police force in our state, reminding them that no complaint should be left unattended and all such complaints should be taken seriously. If the police pay blind attention to complaints of theft taking into account of the value involved therein, that will result in developing a tendency of moral policing among the society. Hence, I find that this unfortunate incident is a lesson for police force also.

408. It is not fair to put an end to this judicial task without mentioning the effort and contribution made by PW95, the then Assistant Director of State Forensic Science Laboratory, Thiruvananthapuram, who has taken extreme pain in finding out the relevant photos and videos from several thousands of photos and

videos stored in the mobile phones and hard disk of DVRs produced in this case. Hence, the court place on record its sense of appreciation to the valuable contribution made by PW95, the expert.

409. Likewise, it is unfair to mention about the contribution made by media in paving way for rendering justice to Madhu. Perhaps, had the media not given importance to this news, this case would not have ended like this. In fact, the highlight given by the media to this incident has expedited the authorities to take dynamic measures in handling this case. The court acknowledges the role of media for being instrumental in rendering justice to Madhu.

410. The court also place on record its appreciation for the effort made by the Investigating Officer in collecting all possible electronic evidence in this case. In fact, the electronic evidence made available in this case played a vital role in deciding this case.

411. It is inevitable to note that most of the eye witnesses turned hostile to the prosecution case and given false evidence before court, though they have given 164 statement before the

Magistrate supporting the prosecution case. Even the close relative of Madhu turned hostile to the prosecution case. Some of the witnesses dared to blindly deny their own visuals in CCTV, mobile phones etc. when played in court even though the visuals were crystal clear. Though this disgusting factor has not materially affected the finding of the court, it is unfair to encourage such practice of prime witnesses turning hostile to the prosecution case so as to subvert the judicial system. Therefore, I am of the considered view that proceedings under Section 340 of the Cr.P.C is to be initiated against PW2, PW3, PW4, PW5, PW6, PW7, PW9, PW20, PW26, PW63 for having committed offence punishable under Section 193 of IPC.

412. Therefore, I find that ends of justice will be met if the accused persons who are found guilty are sentenced as follows :-

In the result,

1. Accused No.1 is convicted under Section 235(2) of Cr.P.C as under :-

- a) Accused No.1 is sentenced to undergo Rigorous Imprisonment for seven years and to pay fine of ₹100000/- (Rupees one lakh only), for the offence under Section 304 Part II read with Section 149 of IPC. In default to undergo Simple Imprisonment for one year.
- b) He is further sentenced to undergo Rigorous Imprisonment for six months and to pay fine of ₹1,000/- (Rupees one thousand only), for the offence under Section 143 read with Section 149 of IPC. In default to undergo Simple Imprisonment for one week.
- c) He is further sentenced to undergo Rigorous Imprisonment for two years and to pay fine of ₹2,000/- (Rupees two thousand only), for the offence under Section 147 read with Section 149 of

IPC. In default to undergo Simple Imprisonment two weeks.

413.

d) He is further sentenced to undergo Rigorous Imprisonment for one year and to pay fine of ₹1,000/- (Rupees one thousand only) for the offence under Section 323 read with Section 149 of IPC. In default to undergo Simple Imprisonment one week.

e) He is further sentenced to undergo Rigorous Imprisonment for one year and to pay fine of ₹1,000/- (Rupees one thousand only) for the offence under Section 342 read with Section 149 of IPC. In default to undergo Simple Imprisonment one week.

2. Accused Nos.2, 3, 5 to 10 and 12 to 15 are convicted under Section 235(2) of Cr.P.C as under :-

- a) Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for six months each and to pay fine of ₹1,000/- (Rupees one thousand only) each for the offence under Section 143 read with Section 149 of IPC. In default to undergo Simple Imprisonment for one week each.
- b) Further, Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for two years each and to pay fine of ₹2,000/- (Rupees two thousand only) each, for the offence under Section 147 read with Section 149 of IPC. In default to undergo Simple Imprisonment for two weeks each.
- c) Further, Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for

one year each and to pay fine of ₹1,000/- (Rupees one thousand only) each for the offence under Section 323 read with Section 149 of IPC. In default to undergo Simple Imprisonment one week each.

d) Further, Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for two years each and to pay fine of ₹1,000/- (Rupees one thousand only) each for the offence under Section 324 read with Section 149 of IPC. In default to undergo Simple Imprisonment one week each.

e) Further, Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for seven years each and to pay fine of ₹5000/- (Rupees five thousand only) each for the offence

under Section 326 read with Section 149 of IPC. In default to undergo Simple Imprisonment five weeks each.

f) Further, Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for one year each and to pay fine of ₹1,000/- (Rupees one thousand only) each for the offence under Section 342 read with Section 149 of IPC. In default to undergo Simple Imprisonment one week each.

g) Further, Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for five years each and to pay fine of ₹2,000/- (Rupees two thousand only) each for the offence under Section 367 read with Section 149 of IPC. In default to undergo Simple Imprisonment two weeks

each.

- h) Further, Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for seven years each and to pay fine of ₹1,00,000/- (Rupees one lakh only) each for the offence under Section 304 Part II read with Section 149 of IPC. In default to undergo Simple Imprisonment one year each.
- i) Further, Accused Nos.2, 3, 5 to 10 and 12 to 15 are sentenced to undergo Rigorous Imprisonment for three years each and to pay fine of ₹5,000/- (Rupees five thousand only) each for the offence under Section 3(1)(d) of the SC/ST (POA) Act read with Section 149 of IPC. In default to undergo Simple Imprisonment five weeks each.

3. Accused No.16 is sentenced to undergo Simple Imprisonment for three months and to pay fine of ₹500/- (Rupees five hundred only) for the offence under Section 352 of IPC. In default to undergo Simple Imprisonment for four days.

414. The substantive sentences of imprisonment shall run concurrently. The accused are entitled to get set off for pre-trial detention undergone by them under Section 428 Cr.PC. The pre-trial detention undergone by accused are as under :-

Accused	A1	A2	A3	A5	A6	A7	A8	A9	A10	A12	A13	A14	A15	A16
No. of days	97	129	134	129	129	134	97	129	129	129	97	97	134	129

415. If fine amount is realised, 75% of the total fine amount realised shall be disbursed among the legal heirs of deceased Madhu as compensation under Section 357(1)(b) of the Cr.P.C. Out of the amount so disbursed to the legal heirs, 50% of that amount shall be paid to the mother of deceased Madhu (PW70).

416. Address Honourable Chairman, District Legal Services Authority, Palakkad to award a reasonable amount as compensation to the legal heirs of deceased Madhu under the Victim Compensation Scheme, 2021.

417. Initiate proceedings under Section 340 of the Cr.P.C against PW2, PW3, PW4, PW5, PW6, PW7, PW9, PW20, PW26, PW63 for having committed offence punishable under Section 193 of IPC after issuing show-cause to them, as and when stay order passed by the Honourable High Court of Kerala in CrI.M.Ps / MCs filed by the learned Special Public Prosecutor is vacated.

418. MO11, MO11(a), MO14, MO15, MO15(a) shall be confiscated, after the period of appeal. Likewise, MO25, MO27, MO27 series mobile phones, MO23 series, MO28 series, MO29 series DVRs and adapters shall be released to the respective owners after the period of appeal. Before releasing the mobile phones, the photos and videos of Madhu relating to this case shall be permanently deleted with the help of an expert. Other material objects being

valueless shall be destroyed after the period of appeal.

Dictated to the Confidential Assistant, transcribed and typewritten by her, corrected by me and pronounced in open Court this the 5th day of April, 2023.

Sd/-
Judge,
**Special Court for SC/ST (POA) ACT/
 Additional Sessions Court
 Mannarkkad.**

A P P E N D I X

Witnesses examined for the prosecution :

PW1	Vellingiri S/o Mathan
PW2	Unnikrishnan S/o Narayanan
PW3	Chandran S/o Kali
PW4	Anilkumar S/o Rankan
PW5	Anand S/o Prabhakaran
PW6	Meharunnisa D/o Hamsa
PW7	Rasak S/o Ayamu
PW8	Suresh S/o Shonkan
PW9	Joly.K.C S/o K.M. Chakko
PW10	Kali Mooppan S/o Mari
PW11	Kakki S/o Panali
PW12	Maruthan @ Mayyan S/o Kali
PW13	Veeran S/o Chellan
PW14	Murukan S/o Rankan

PW15	Gokul S/o Mohanan
PW16	Maruthan S/o Nanjan
PW17	Jayakumar S/o Sethumadhavan
PW18	Saithalavi S/o Abdu
PW19	Manikandan S/o Sankaran
PW20	Sunilkumar @ Vava S/o Sivaramapilla
PW21	Deepu S/o Babu
PW22	Manaf S/o Sidhique
PW23	Renjith.K.N S/o Mathew
PW24	Manikandan S/o Nanjan
PW25	Anoop S/o Sivan
PW26	Abdul Latheef S/o Muhammed
PW27	Lakshmi W/o Manikyan
PW28	Mathachan S/o Joseph
PW29	Ummar S/o Kunhali
PW30	Manoj @ Manu S/o Damodharan
PW31	Latheef S/o Aboobacker
PW32	Kumar S/o Kalimuthu
PW33	Yakoob S/o Sadique
PW34	Muhammedali S/o Moitheen
PW35	Shoukath S/o Abdutty
PW36	Ravi S/o Pazhaniswami
PW37	Binu S/o Sivaraman
PW38	Jinson S/o Sunny
PW39	Muhammed Jasin S/o Abdul Nasar
PW40	Devarajan S/o Ankaboyan
PW41	Marakkar S/o Muhammed

PW42	Hareesh S/o Aandi
PW43	Anand S/o Manoharan
PW44	Mahesh S/o Narayanan
PW45	Riyas S/o Hussain
PW46	Albin S/o Antu.K. Abraham
PW47	Ramesh.R S/o Raman
PW48	Raghunathan (Reghu) S/o Gopinathan
PW49	Barnadit Manuval D/o Manuval
PW50	K.T. Joseph S/o K.J. Thomas
PW51	Krishnakumar S/o A. Krishnan Nair
PW52	Augustine Joseph S/o K.M. George
PW53	T.K. Panali S/o Kadan
PW54	Appukuttan S/o C.V. Kannan
PW55	Abhilash.G S/o K.V. Gopalakrishnan
PW56	Dr. Lima Francis D/o G. Francis
PW57	O.K. Anil S/o O. Sreedharan
PW58	Dr. Sivadas.K.K S/o Narayanapothuval
PW59	Dr. Prabhudas S/o Raghavankutty
PW60	Sumesh.C S/o Chenthamara
PW61	Nijamudeen S/o Haneefa
PW62	N. Panjan S/o Nanjan
PW63	Navas S/o Moosa
PW64	Rini Thomas D/o I.R.Thomas
PW65	Jayakumar S/o Jayachandran Pilla
PW66	Beena. K.P D/o Poulose.K
PW67	Geromic George, IAS, S/o V.V. George
PW68	Shabu Joseph S/o Joseph

PW69	B. Abhilash S/o Boss.T.K
PW70	Malli W/o Mallan
PW71	Murukan S/o Velli
PW72	V. Vinu S/o Parameswaran
PW73	Riyas.T S/o Hydru.T
PW74	Saifudeen S/o Yusaf.A
PW75	Muhammed Shefeeque S/o Najumul Hussain
PW76	Ravikumar.V S/o Vasudevan Nair
PW77	Abbas S/o Muhammed
PW78	Ramu. N S/o Nanjan
PW79	Raghavan S/o Rankan
PW80	Kamal S/o Krishnankutty.D
PW81	P.G. Doli S/o P.A. George
PW82	C.K. Noushad S/o Muhammed C.K
PW83	Prasad Varkky S/o K.V. Varkky
PW84	Mohandas S/o Chemban
PW85	P. Kumaran S/o Pazhani.K
PW86	Dr.N.A Balaram S/o Ashokan
PW87	K. Vasudevan S/o Kunhan Ezhuthachan
PW88	Sundari D/o Chellappan
PW89	Sujilal S/o Aaru
PW90	Ramachandran Pilla S/o K. Vasu Pilla
PW91	Subin.S, S/o Sukumaran.P
PW92	Rejimon S/o Jony
PW93	Saleesh.N. S, S/o Sankaran
PW94	Soorya D/o P. Surendran
PW95	Shaji.P S/o Paramanandan

PW96	M. Ramesan S/o Sami
PW97	T.K. Subrahmanian, Dy.SP, SMS & Agali Sub-Division, Agali.
PW98	Shahin, S/o.Asharef.K.M
PW99	Aji Sankar, S/o.K.P.S.Nair
PW100	Shanavas Khan P.A, Tahsildar.
PW101	P.Sasikumar, Dy.SP
PW102	Shahul Hameed.A, ASP, Palakkad.
PW103	Radhakrishnan S/o Sankaran.K.M, Chalakudy.

Exhibits marked for prosecution :

Ext.P1	23-02-2018	Inquest report
Ext.P2	Nil	Contradiction in 161 statement of CW10, Unnikrishnan
Ext.P2(a)	Nil	Contradiction in 161 statement of CW10, Unnikrishnan
Ext.P2(b)	Nil	Contradiction in 161 statement of CW10, Unnikrishnan
Ext.P2(c)	Nil	Contradiction in 161 statement of CW10, Unnikrishnan
Ext.P2(d)	Nil	Contradiction in 161 statement of CW10, Unnikrishnan
Ext.P3	Nil	164 statement of Unnikrishnan
Ext.P4	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(a)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(b)	Nil	Contradiction in 161 statement of CW11, Chandran

Ext.P4(c)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(d)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(e)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(f)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(g)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(h)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(i)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(j)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(k)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(l)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(m)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(n)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(o)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(p)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P4(q)	Nil	Contradiction in 161 statement of CW11, Chandran

Ext.P4(r)	Nil	Contradiction in 161 statement of CW11, Chandran
Ext.P5	Nil	Contradiction in 161 statement of CW12, Anikumar
Ext.P5(a)	Nil	Contradiction in 161 statement of CW12, Anilkumar
Ext.P5(b)	Nil	Contradiction in 161 statement of CW12, Anilkumar
Ext.P5(c)	Nil	Contradiction in 161 statement of CW12, Anilkumar
Ext.P6	Nil	Contradiction in 161 statement of CW14, Aanand
Ext.P6(a)	Nil	Contradiction in 161 statement of CW14, Aanand
Ext.P6(b)	Nil	Contradiction in 161 statement of CW14, Aanand
Ext.P6(c)	Nil	Contradiction in 161 statement of CW14, Aanand
Ext.P6(d)	Nil	Contradiction in 161 statement of CW14, Aanand
Ext.P6(e)	Nil	Contradiction in 161 statement of CW14, Aanand
Ext.P6(f)	Nil	Contradiction in 161 statement of CW14, Aanand
Ext.P6(g)	Nil	Contradiction in 161 statement of CW14, Aanand
Ext.P7	Nil	Contradiction in 161 statement of CW15, Meharunnisa
Ext.P7(a)	Nil	Contradiction in 161 statement of CW15, Meharunnisa

Ext.P7(b)	Nil	Contradiction in 161 statement of CW15, Meharunnisa
Ext.P7(c)	Nil	Contradiction in 161 statement of CW15, Meharunnisa
Ext.P7(d)	Nil	Contradiction in 161 statement of CW15, Meharunnisa
Ext.P8	Nil	Contradiction in 161 statement of CW16, Rasak
Ext.P8(a)	Nil	Contradiction in 161 statement of CW16, Rasak
Ext.P8(b)	Nil	Contradiction in 161 statement of CW16, Rasak
Ext.P8(c)	Nil	Contradiction in 161 statement of CW16, Rasak
Ext.P8(d)	Nil	Contradiction in 161 statement of CW16, Rasak
Ext.P9	10-02-2020	Annexure scene mahazar II
Ext.P10	10-02-2020	Annexure scene mahazar I
Ext.P11(a)	Nil	Contradiction in 161 statement of CW18, Kalimooppan
Ext.P11(b)	Nil	Contradiction in 161 statement of CW18, Kalimooppan
Ext.P11(c)	Nil	Contradiction in 161 statement of CW18, Kalimooppan
Ext.P12	Nil	Contradiction in 161 statement of CW20, Maruthan @ Mayyan
Ext.P12(a)	Nil	Contradiction in 161 statement of CW20, Maruthan @ Mayyan
Ext.P12(b)	Nil	Contradiction in 161 statement of CW20, Maruthan @ Mayyan

Ext.P13	Nil	Contradiction in 161 statement of CW21, Veeran
Ext.P14	Nil	Contradiction in 161 statement of CW22, Murukan
Ext.P14(a)	Nil	Contradiction in 161 statement of CW22, Murukan
Ext.P15	04-03-2018	Seizure mahazar of KL-32-B-5959 Xylo car
Ext.P16	Nil	Contradiction in 161 statement of CW24, Maruthan
Ext.P16(a)	Nil	Contradiction in 161 statement of CW24, Maruthan
Ext.P17	Nil	Contradiction in 161 statement of CW27, Saithalavi
Ext.P17(a)	Nil	Contradiction in 161 statement of CW27, Saithalavi
Ext.P17(b)	Nil	Contradiction in 161 statement of CW27, Saithalavi
Ext.P17(c)	Nil	Contradiction in 161 statement of CW27, Saithalavi
Ext.P17(d)	Nil	Contradiction in 161 statement of CW27, Saithalavi
Ext.P17(e)	Nil	Contradiction in 161 statement of CW27, Saithalavi
Ext.P18	Nil	Contradiction in 161 statement of CW29, Sunilkumar @ Vava
Ext.P18(a)	Nil	Contradiction in 161 statement of CW29, Sunilkumar @ Vava
Ext.P18(b)	Nil	Contradiction in 161 statement of CW29, Sunilkumar @ Vava

Ext.P18(c)	Nil	Contradiction in 161 statement of CW29, Sunilkumar @ Vava
Ext.P19	Nil	Contradiction in 161 statement of CW31, Deepu
Ext.P19(a)	Nil	Contradiction in 161 statement of CW31, Deepu
Ext.P19(b)	Nil	Contradiction in 161 statement of CW31, Deepu
Ext.P19(c)	Nil	Contradiction in 161 statement of CW31, Deepu
Ext.P20	Nil	Contradiction in 161 statement of CW32, Manaf
Ext.P20(a)	Nil	Contradiction in 161 statement of CW32, Manaf
Ext.P20(b)	Nil	Contradiction in 161 statement of CW32, Manaf
Ext.P20(c)	Nil	Contradiction in 161 statement of CW32, Manaf
Ext.P20(d)	Nil	Contradiction in 161 statement of CW32, Manaf
Ext.P21	Nil	Contradiction in 161 statement of CW33, Ranjith
Ext.P21(a)	Nil	Contradiction in 161 statement of CW33, Ranjith
Ext.P21(b)	Nil	Contradiction in 161 statement of CW33, Ranjith
Ext.P21(c)	Nil	Contradiction in 161 statement of CW33, Ranjith
Ext.P21(d)	Nil	Contradiction in 161 statement of CW33, Ranjith

Ext.P22	Nil	Contradiction in 161 statement of CW34, Manikandan
Ext.P22(a)	Nil	Contradiction in 161 statement of CW34, Manikandan
Ext.P22(b)	Nil	Contradiction in 161 statement of CW34, Manikandan
Ext.P23	Nil	Contradiction in 161 statement of CW35, Anoop
Ext.P23(a)	Nil	Contradiction in 161 statement of CW35, Anoop
Ext.P24	Nil	Contradiction in 161 statement of CW36, Abdul Latheef
Ext.P24(a)	Nil	Contradiction in 161 statement of CW36, Abdul Latheef
Ext.P24(b)	Nil	Contradiction in 161 statement of CW36, Abdul Latheef
Ext.P25	Nil	Contradiction in 161 statement of CW46, Latheef
Ext.P26	Nil	Inquest Video – (1) – DVD
Ext.P26(a)	Nil	Inquest Video – (2) – DVD
Ext.P26(b)	Nil	65B certificate
Ext.P27	24-02-2018	Scene mahazar
Ext.P28	25-02-2018	Seizure mahazar of KL-11-H-8559 Jeep
Ext.P29	25-02-2018	Seizure mahazar of KL-53-F-722 Xylo car
Ext.P30	Nil	CD containing the photos of Madhu and A1 to A16
Ext.P30(a)	Nil	Photo of deceased Madhu
Ext.P30(b)	Nil	Photo of Accused No.1

Ext.P30(c)	Nil	Photo of Accused No.2
Ext.P30(d)	Nil	Photo of Accused No.3
Ext.P30(e)	Nil	Photo of Accused No.4
Ext.P30(f)	Nil	Photo of Accused No.5
Ext.P30(g)	Nil	Photo of Accused No.6
Ext.P30(h)	Nil	Photo of Accused No.7
Ext.P30(i)	Nil	Photo of Accused No.8
Ext.P30(j)	Nil	Photo of Accused No.9
Ext.P30(k)	Nil	Photo of Accused No.10
Ext.P30(l)	Nil	Photo of Accused No.11
Ext.P30(m)	Nil	Photo of Accused No.12
Ext.P30(n)	Nil	Photo of Accused No.13
Ext.P30(o)	Nil	Photo of Accused No.14
Ext.P30(p)	Nil	Photo of Accused No.15
Ext.P30(q)	Nil	Photo of Accused No.16
Ext.P30(r)	09-01-2023	65B certificate
Ext.P31	02-03-2018	Seizure mahazar of DVR and power Adapter
Ext.P32	04-03-2018	Seizure mahazar of KL-05-AJ-498, motor cycle
Ext.P33	Nil	DVD-(1)- Place of occurrence video
Ext.P33(a)	Nil	DVD-(2)- Place of occurrence video
Ext.P33(b)	Nil	DVD- Place of occurrence still photos
Ext.P33(c)	Nil	Photo of scene of occurrence
Ext.P33(d)	Nil	Photo of scene of occurrence
Ext.P33(e)	Nil	Photo of scene of occurrence
Ext.P33(f)	Nil	Photo of scene of occurrence

Ext.P33(g)	Nil	Photo of scene of occurrence
Ext.P33(h)	Nil	Photo of scene of occurrence
Ext.P33(i)	Nil	Photo of scene of occurrence
Ext.P33(j)	Nil	Photo of scene of occurrence
Ext.P33(k)	09-01-2023	65B certificate
Ext.P34	13-03-2018	Scene plan
Ext.P35	15-03-2018	Caste certificate of A1 to A5 and A7 to A16
Ext.P36	06-03-2020	Scene plan
Ext.P37	15-03-2018	Scene plan
Ext.P38	14-03-2018	Caste certificate of A6
Ext.P39	13-03-2018	Caste certificate of Madhu
Ext.P40	Nil	Cell ID Decoded details provide by idea cellular Ltd.
Ext.P40(a)	Nil	Cell ID Decoded details provide by idea cellular Ltd.
Ext.P40(b)	Nil	Cell ID Decoded details provide by idea cellular Ltd.
Ext.P40(c)	Nil	Cell ID Decoded details provide by idea cellular Ltd.
Ext.P40(d)	Nil	Cell ID Decoded details provide by idea cellular Ltd.
Ext.P41(a)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(b)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by

		Vodafone mobile services Ltd.
Ext.P41(c)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(d)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(e)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(f)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(g)	Nil	True copy of CAF, customer identity details, call data records,65B certificates,cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(h)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(i)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(j)	Nil	True copy of CAF, customer identity details, call data records,65B certificates, cell ID Decoded details provide by

		Vodafone mobile services Ltd.
Ext.P41(k)	Nil	True copy of CAF, customer identity details, call data records,65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(l)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(m)	Nil	Trace copy of CAF, customer identity details, call data records,65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(n)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P41(o)	Nil	True copy of CAF, customer identity details, call data records, 65B certificates, cell ID Decoded details provide by Vodafone mobile services Ltd.
Ext.P42	Nil	True copy of CAF, call data records, 65B certificates provide by IDEA cellular Ltd.
Ext.P42(a)	Nil	True copy of CAF, call data records, 65B certificates provide by IDEA cellular Ltd.
Ext.P42(b)	Nil	True copy of CAF, call data records, 65B certificates provide by IDEA cellular Ltd.
Ext.P42(c)	Nil	True copy of CAF, call data records, 65B certificates provide by IDEA cellular Ltd.
Ext.P42(d)	Nil	True copy of CAF, call data records, 65B certificates provide by IDEA cellular Ltd.

Ext.P42(e)	Nil	True copy of CAF, call data records, 65B certificates provide by IDEA cellular Ltd.
Ext.P42(f)	Nil	True copy of CAF, call data records, 65B certificates provide by IDEA cellular Ltd.
Ext.P43	24-02-2018	Scene mahazar
Ext.P44	01-03-2018	Seizure mahazar of DVR and Power adapter
Ext.P45	03-04-2018	Covering letter of Range Forest Officer, Attappadi
Ext.P45(a)	Nil	True copy of forest notification
Ext.P45(b)	Nil	True copy of sketch.
Ext.P46	22-02-2018	Casualty OP ticket
Ext.P46(a)	22-02-2018	Police intimation
Ext.P46(b)	22-02-2018	Request for medical examination
Ext.P47	Nil	Registration particulars of vehicles
Ext.P47(a)	Nil	Registration particulars of vehicles
Ext.P47(b)	Nil	Registration particulars of vehicles
Ext.P47(c)	Nil	Registration particulars of vehicles
Ext.P47(d)	Nil	Registration particulars of vehicles
Ext.P48	Nil	OP medical record of Madhu
Ext.P49	26-08-2008	OP ticket
Ext.P49(a)	17-08-2008	Discharge card
Ext.P50	06-03-2018	Petition for formal arrest
Ext.P51	25-02-2018	Seizure mahazar of blood sample of accused
Ext.P52	05-03-2018	Recovery mahazar (wooden stick)
Ext.P53	Nil	Contradiction in 161 statement of CW42, Navas

Ext.P53(a)	Nil	Contradiction in 161 statement of CW42, Navas
Ext.P53(b)	Nil	Contradiction in 161 statement of CW42, Navas
Ext.P53(c)	Nil	Contradiction in 161 statement of CW42, Navas
Ext.P53(d)	Nil	Contradiction in 161 statement of CW42, Navas
Ext.P54	23-02-2018	Body mahazar of KL-01-BW-5724 Police Jeep
Ext.P55	23-02-2018	Seizure mahazar
Ext.P56	25-02-2018	Seizure mahazar
Ext.P57	02-05-2018	Seizure mahazar of CCTNS GD
Ext.P58	08-03-2018	Seizure mahazar of mobile phone of Hareesh
Ext.P59	02-05-2018	Seizure mahazar of CDR, CAF of accused
Ext.P60	10-05-2018.	Seizure mahazar of casualty OP ticket
Ext.P61	23-02-2018.	Seizure mahazar (Dress and other materials of Madhu)
Ext.P62	24-02-2018	Seizure mahazar (Mobile phone of accused Sidhiq)
Ext.P63	24-02-2018	Seizure mahazar (Mobile phone of accused Radhakrishnan)
Ext.P64	24-02-2018	Seizure mahazar (Mobile phone of accused Najeeb)
Ext.P65	24-02-2018	Seizure mahazar (Mobile phone of accused Ubaid)
Ext.P66	24-02-2018	Seizure mahazar (Mobile phone of Aneesh)

Ext.P67	22-03-2018	Seizure mahazar (Treatment records of Madhu).
Ext.P68	Nil	Facebook business record of Ubaid
Ext.P68(a)	Nil	Facebook business record of Aneesh
Ext.P68(b)	09-05-2019	65B certificate
Ext.P69	28-02-2018	Seizure mahazar (Photos of Madhu and accused).
Ext.P70	06-03-2018	Seizure mahazar of Auto KL-50-D-2908
Ext.P71	14-03-2018	Seizure mahazar (Photos of P/o 8 Nos,3 CDs)
Ext.P72	14-03-2018	Seizure mahazar (CCTV Footage).
Ext.P73	11-05-2018	Seizure mahazar dated. (Forest agreement)
Ext.P74	09-05-2018	Seizure mahazar (Facebook business record and IPDR copy).
Ext.P75	27-11-2017	Agreement with license and schedule
Ext.P76	17-03-2018	Seizure mahazar (Screen shot of WhatsApp photos)
Ext.P77	10-05-2018	Seizure mahazar (Vehicle diary)
Ext.P78	Nil	CD of inquest photos.
Ext.P78(a)	Nil	65B certificate
Ext.P79	24-02-2018	Seizure mahazar (Remnants collected from scene place)
Ext.P80	22-02-2018	FIS
Ext.P81	22-02-2018	FIR
Ext.P82	24-02-2018	Postmortem certificate
Ext.P83	Nil	True copy of CAF, Voter ID, CDR and 65B certificate from Bharathi Airtel

Ext.P83(a)	Nil	True copy of CAF, Voter ID, CDR and 65B certificate from Bharathi Airtel.
Ext.P83(b)	Nil	True copy of CAF, Voter ID, CDR and 65B certificate from Bharathi Airtel.
Ext.P83(c)	Nil	True copy of CAF, Voter ID, CDR and 65B certificate from Bharathi Airtel.
Ext.P84	25-02-2018	Kychit of GD of Agali Police Station
Ext.P85	Nil	Manual GD of Agali Police Station.
Ext.P85(a)	Nil	Relevant page of manual GD.
Ext.P86	Nil	Vehicle diary.
Ext.P86(a)	Nil	Relevant page of vehicle diary.
Ext.P87	Nil	Duty note book of Prasad Varkey
Ext.P87(a)	Nil	Duty note book of Mohandas
Ext.P87(b)	Nil	Duty note book of Sujilal
Ext.P88	Nil	Scene plan
Ext.P88(a)	Nil	Scene plan
Ext.P89	Nil	Final report in Cr.No.524/2016 of Agali Police Station.
Ext.P90	Nil	Print of CCTNS. GD
Ext.P90(a)	Nil	65B certificate
Ext.P91	Nil	Certified copy of IPDR
Ext.P91(a)	Nil	65B certificates
Ext.P91(b)	Nil	CD including CDR
Ext.P91(c)	11-08-2022	65B certificate
Ext.P91 (d series)	Nil	CAF 31 Nos

Ext.P92	05-05-2018	Cyber forensic Analysis report
Ext.P92(a)	Nil	Pendrive
Ext.P92(b)	06-06-2022	65 B certificate
Ext.P93	Nil	Hard disk
Ext.P93(a)	Nil	Hard disk
Ext.P93(b)	Nil	Hard disk
Ext.P94	03-06-2018	Inquiry report of M. Ramesan, JFCM, Mannarkkad
Ext.P95	Nil	Form I in OR.01/18 of Mukkali Forest Station.
Ext.P96	Nil	Form II in OR.01/18 of Mukkali Forest Station.
Ext.P97	01-03-2018	Property list
Ext.P98	26-02-2018	Property list
Ext.P99	28-02-2018	Property list
Ext.P100	26-02-2018	Property list
Ext.P101	24-02-2018	Arrest memo of A1
Ext.P101(a)	24-02-2018	Arrest memo of A2
Ext.P101(b)	24-02-2018	Arrest memo of A3
Ext.P101(c)	24-02-2018	Arrest memo of A4
Ext.P101(d)	24-02-2018	Arrest memo of A5
Ext.P101(e)	24-02-2018	Arrest memo of A6
Ext.P101(f)	24-02-2018	Arrest memo of A7
Ext.P101(g)	24-02-2018	Arrest memo of A8
Ext.P101(h)	24-02-2018	Arrest memo of A9
Ext.P101(i)	24-02-2018	Arrest memo of A10

Ext.P101(j)	24-02-2018	Arrest memo of A11
Ext.P101(k)	24-02-2018	Arrest memo of A12 to A16
Ext.P102	24-02-2018	Inspection memo of A1
Ext.P102(a)	24-02-2018	Inspection memo of A2
Ext.P102(b)	24-02-2018	Inspection memo of A3
Ext.P102(c)	24-02-2018	Inspection memo of A4
Ext.P102(d)	24-02-2018	Inspection memo of A5
Ext.P102(e)	24-02-2018	Inspection memo of A6
Ext.P102(f)	24-02-2018	Inspection memo of A7
Ext.P102(g)	24-02-2018	Inspection memo of A8
Ext.P102(h)	24-02-2018	Inspection memo of A9
Ext.P102(i)	24-02-2018	Inspection memo of A10
Ext.P102(j)	24-02-2018	Inspection memo of A11
Ext.P102(k)	24-02-2018	Inspection memo of A12
Ext.P102(l)	24-02-2018	Inspection memo of A13
Ext.P102(m)	24-02-2018	Inspection memo of A14
Ext.P102(n)	24-02-2018	Inspection memo of A15
Ext.P102(o)	24-02-2018	Inspection memo of A16
Ext.P103	24-02-2018	Arrest intimation of A1
Ext.P103(a)	24-02-2018	Arrest intimation of A2
Ext.P103(b)	24-02-2018	Arrest intimation of A3
Ext.P103(c)	24-02-2018	Arrest intimation of A4
Ext.P103(d)	24-02-2018	Arrest intimation of A5
Ext.P103(e)	24-02-2018	Arrest intimation of A6

Ext.P103(f)	24-02-2018	Arrest intimation of A7
Ext.P103(g)	24-02-2018	Arrest intimation of A8
Ext.P103(h)	24-02-2018	Arrest intimation of A9
Ext.P103(i)	24-02-2018	Arrest intimation of A10
Ext.P103(j)	24-02-2018	Arrest intimation of A11
Ext.P103(k)	24-02-2018	Arrest intimation of A12
Ext.P103(l)	24-02-2018	Arrest intimation of A13
Ext.P103(m)	24-02-2018	Arrest intimation of A14
Ext.P103(n)	24-02-2018	Arrest intimation of A15
Ext.P103(o)	24-02-2018	Arrest intimation of A16
Ext.P104	05-03-2018	Property list (Mobile phone of Aneesh)
Ext.P105	05-03-2018	Property list (Mobile phone of Sidhiq)
Ext.P106	05-03-2018	Property list (Mobile phone of Radhakrishnan)
Ext.P107	05-03-2018	Property list (Mobile phone of Najeeb)
Ext.P108	05-03-2018	Property list (Mobile phone of Ubaid)
Ext.P109	24-02-2018	Section alteration report
Ext.P110	24-02-2018	FIR transfer report
Ext.P111	24-02-2018	Complete address report of accused
Ext.P112	25-02-2018	Remand report
Ext.P113	26-02-2018	Property list
Ext.P114	26-02-2018	Property list
Ext.P115	26-02-2018	Property list
Ext.P116	28-02-2018	Property list
Ext.P117	25-02-2018	Seizure mahazar (Duty note books)

Ext.P118	14-03-2018	Form 15 (Property list) (Duty note books)
Ext.P119	25-02-2018	Seizure mahazar (Manual GD)
Ext.P120	26-02-2018	Seizure mahazar (DVR Sreerag bakery)
Ext.P121	06-03-2018	Property list (DVR Sreerag bakery)
Ext.P122	01-03-2018	Form 15 (Photos of Madhu and A1 to A16)
Ext.P123	28-02-2018	Seizure mahazar (GD of Anavay Forest Station)
Ext.P124	28-02-2018	Kychit of GD of Anavay Forest Station
Ext.P125	Nil	GD of Anavay Forest Station.
Ext.P126	28-02-2018	Custody petition with affidavit
Ext.P127	06-03-2018	Property list
Ext.P128	06-03-2018.	Property list
Ext.P129	11-05-2018	Form 15 (CDR and CAF cell ID decoded)
Ext.P130	14-03-2018.	Property list
Ext.P131	14-03-2018	Property list
Ext.P132	05-03-2018	Confession extract of A3
Ext.P133	03-04-2018	Property list (wooden stick)
Ext.P134	14-03-2018	Property list (Autorickshaw)
Ext.P135	06-03-2018	Custody petition with affidavit
Ext.P136	07-03-2018	Report to produce the accused after police custody
Ext.P137	12-03-2018.	Property list (Mobile phone of Hareesh)
Ext.P138	09-03-2018	Report to produce the accused after police custody

Ext.P139	14-03-2018.	Property list
Ext.P140	15-03-2018.	Property list
Ext.P141	Nil	Copy of forwarding note
Ext.P142	Nil	Copy of forwarding note
Ext.P143	Nil	Photo of Whatsapp screen shot
Ext.P143(a)	Nil	Photo of Whatsapp screen shot
Ext.P144	20-03-2018	Property list
Ext.P145	26-03-2018	Form 15
Ext.P146	28-03-18	Copy of report
Ext.P147	06-04-2018	Section alteration report
Ext.P148	21-04-2018	Report u/s. 4(e)of SC/ST (POA) Act
Ext.P149	21-04-2018.	Copy of the proceedings of IGP and Report of Dy.SP
Ext.P150	01-03-2018	Copy of proceedings of District Police Chief
Ext.P151	11-05-2018	Form 15 (CCTNS GD)
Ext.P152	10-05-2018	Form 15 (Casualty OP ticket)
Ext.P153	11-05-2018	Form 15 (Vehicle diary)
Ext.P154	14-05-2018	Form 15 (Forest agreement)
Ext.P155	19-05-2018	Section adding report
Ext.P156	22-05-2018	Report to delete section
Ext.P157	09-05-2019	Form 15
Ext.P158	22-05-2018	Mobile number details of accused
Ext.P159	07-03-2018.	Chemical analysis report
Ext.P160	30-04-2018	FSL report

Ext.P161	11-08-2022	CD including CDR
Ext.P161(a)	(Nil)	CAF one number
Ext.P161(b)	11-08-2022	65B certificate
Ext.P162	(Nil)	CD including CDR
Ext.P162(a series)	(Nil)	CAF 7 Nos
Ext.P162(b)	12-08-2022	65B certificate
Ext.P163	06-12-2022	Caste certificate of Madhu
Ext.P163(a)	Nil	Back file of related to the caste certificate of Madhu
Ext.P164	16-01-2020.	Copy of proceedings of the Superintendent of Police, Palakkad
Ext.P164(a)	30-09-2020	Copy of proceedings of the DIG of Police, Thrissur
Ext.P165	10-07-2018	Magisterial inquiry report
Ext.P165(a)	27-06-2018	True copy of the statement of Murukan
Ext.P165(b)	27-06-2018	True copy of the statement of Dr.Lima Francis
Ext.P165(c)	09-07-2018	True copy of the statement of Prasad Varkey
Ext.P166	18-11-2019	Covering letter of NHRC
Ext.P166(a)	12-12-2022.	Covering letter of ASP
Ext.P167	Nil	Secured Digital Card (Memory card) of postmortem videos
Ext.168	02-03-2023	65B certificate

Witnesses examined for the defence :

DW1	Radhadevi.M, Nursing Superintendent, CHC, Agali.
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DW2	Muraleedharan.P, Assistant Engineer, KSEB, Electrical Section, Agali.
DW3	Sreejith S Nair, Assistant Engineer, 110 KV Sub-Station, Mannarkkad.
DW4	Yesudas Mathew, Secretary, Taluk Legal Services Committee, Mannarkkad.
DW5	Nasar, S/o Moithu, Kurikkal (H), Mukkali, Kallamala Village.
DW6	Abdu Rahman, S/o Muhammed, Mecheriyil (H),Pakkulam, Kallamala Village
DW7	K.V.Salam, S/o Hussain, Mukkali, Kallamala Village (Secretary Badariya Jumma Masjid Committee)
DW8	Niyas, S/o.Hussain, Mecheriyil (H), Pakkulam, Kallamala Village.

Exhibits marked for the defence :

Ext. D1	Nil	Contradiction in 161 statement of CW23, Gokul
Ext. D2	Nil	Contradiction in 161 statement of CW43, Mathachan
Ext. D3	Nil	Contradiction in 161 statement of CW92, Rini Thomas
Ext. D4	Nil	Contradiction in 161 statement of CW39, Malli
Ext. D4(a)	Nil	Contradiction in 161 statement of CW39, Malli
Ext. D4(b)	Nil	Contradiction in 161 statement of CW39, Malli
Ext. D5	10-10-2009	Certified copy of Judgment in CC.1049/09 of JFCM-III, Palakkad

Ext. D6	22-02-2018.	True copy of page No.101 of the postmortem register of CHC, Agali
Ext. D7	03-04-2018	Invoice of KSEB
Ext. D8	Nil	Govt. Property register, 2016-2018 of Agali Police Station. (Page Nos.7, 8, 9, 24, 25, 36, 38, 40, 41, 42)
Ext. D9	24-02-2018	Page No.3 of CCTNS GD
Ext. D9(a)	24-02-2018	Page No.5 of CCTNS GD
Ext. D9(b)	24-02-2018	Page No.6 of CCTNS GD
Ext. D9(c)	24-02-2018	Page No.7 of CCTNS GD
Ext. D9(d)	24-02-2018	Page No.8 of CCTNS GD
Ext. D10	23-02-2018	Inquest note of JFCM, Mannarkkad
Ext. D11	05-11-2021	Gazette notification
Ext.D12	22-02-2018	True copy of page No.94 and 95 of casualty OP register of CHC, Agali
Ext. D13	22-02-2018	True copy of page No.211, 212, 213, 214, 215 of casualty injection register of CHC, Agali
Ext. D14	22-02-2018	True copy of page No. 51 and 52 of complaint register of KSEB, Agali
Ext. D15	22-02-2018	True copy of page No. 8 of LT Interruption register of KSEB, Agali
Ext. D16	22-02-2018	True copy of page No. 82 HT Interruption register of KSEB, Agali
Ext. D17	22-02-2018	True copy of page No. 105 of Interruption register of 33 KV Sub-Station Agali
Ext. D18	22-02-2018	True copy of page No. 24, 25, 26, 27, 28 of Operator's diary of 33 KV Sub-Station Agali

Ext. D19	04-02-2022.	Copy of complaint filed by Malli to Taluk Legal Services Committee, Mannarkkad, addressed to Additional Chief Secretary
Ext. D20	Nil	Notarized copy of Marriage certificate
Ext. D21	Nil	Notarized copy of Aaddaar copy of Raseenamol
Ext. D22	Nil	Notarized copy of Aaddaar copy of Nasar
Ext. D23	Nil	Notarized copy of Ration card
Ext. D24	Nil	KSEB bill
Ext. D24(a)	Nil	Cash receipt
Ext. D25	Nil	True copy of page No. 116 and 117 of minutes book of Juma Masjid Committee, Mukkali.
Ext. D26	Nil	True copy of FIS in Cr.No. 143/21 of Agali Police Station.
Ext. D27	Nil	True copy of FIR in Cr.No. 143/21 of Agali Police Station.
Ext. D28	Nil	True copy of Statement of missing girl recorded by Police.
Ext. D29	Nil	True copy of report to produce the missing girl before court.
Ext. D30	Nil	True copy of statement of missing girl recorded by Magistrate.

Material Objects marked :

MO1	Big shopper
MO2	Zip
MO3	Plastic sack written on "Nirmal".
MO4	White plastic sack

MO4(a)	Yellow and red coloured plastic sack
MO4(b)	Printed in white coloured “Palakkadan Matta” rice sack with red and blue coloured ink.
MO5	Wooden stick with 76 cm length and about 12 cm width of centre part.
MO5(a)	Wooden stick with 60 cm length and 12 cm width
MO5(b)	Wooden stick with 45 cm length and about 15 cm width of centre part.
MO6	A bag with damaged zip of NIKE company
MO7	Plastic cover with toilet soap and plastic scrubber
MO8	Used black coloured old bag written on 'Wild craft' with damaged zibs
MO9	A broken packet of incense stick written on 'Vishu Leela'.
MO10	Red colour battery of Eveready company
MO10(a)	Red colour battery of Eveready company
MO10(b)	Red colour battery of Eveready company
MO10(c)	Blue colour battery of Eveready company
MO10(d)	Blue colour battery of Eveready company
MO11	Scissors
MO11(a)	Scissors
MO12	Steel torch containing four battery
MO12(a)	Eveready Josh torch with yellow coloured switch in black on working condition
MO12(b)	Torch written on “NIPPO JWALA”.
MO12(c)	Blue coloured small torch
MO13	A Plastic cup with red coloured melted handle
MO14	An old and used charred aluminium cup

MO15	Steel vessel
MO15(a)	Steel vessel
MO16	A white and rose cocloured big shopper written on "Vijayalakshmi Saree"
MO17	600 ml green coloured empty bottle
MO17(a)	500 ml empty bottle
MO17(b)	200 ml empty bottle
MO17(c)	200 ml empty bottle
MO18	Blue coloured cigarette lamp
MO18(a)	Yellow coloured cigarette lamp
MO18(b)	White coloured cigarette lamp
MO19	Broken coriander powder packet
MO19(a)	Broken coffee powder packet
MO19(b)	Broken sambar powder packet
MO19(c)	Broken turmeric powder packet
MO19(d)	Broken coriander powder packet
MO20 series	Green coloured plastic covers (6 in Nos)
MO21	Cloth bag
MO22	Burned out lunkimundu
MO23	DVR of Anavay Forest Station.
MO23(a)	Power Adapter
MO24	Wooden Stick with 119 cm length and 7 cm width of centre part.
MO25	Mobile phone
MO26	Lunki
MO26(a)	Full sleeve shirt

MO26(b)	Trouser
MO27	Mobile phone
MO27(a)	Mobile phone
MO27(b)	Mobile phone
MO27(c)	Mobile phone
MO27(d)	Mobile phone
MO27(e)	Memory card
MO28	DVR of Sreerag bakery
MO28(a)	Power Adapter
MO29	DVR of Ponniyammal Gurukulam
MO29(a)	Power adapter
MO30	DVD of CCTV footage
MO31 series	White coloured plastic covers (4 in Nos)
MO32	Yellow plastic cover
MO32 (a)	Yellow cover with lentil
MO32 (b)	Yellow cover with rice
MO32 (c)	Yellow cover with sugar
MO33 series	Rose coloured plastic covers (19 in Nos)
MO34	A plastic cover written on 'Indica'
MO35	Ear phone
MO36	Blue battery of Eveready company
MO37	Small battery of NIPPO company
MO37(a)	Small battery of NIPPO company

Sd/-
Judge,
**Special Court for SC/ST (POA) ACT/
 Additional Sessions Court
 Mannarkkad.**

Tabular Statement as per Rule 132 of Cr.P.C. of Kerala

1.	Serial No.	: 1
2.	Name of Police Station and Crime No. of the offence	: Crime No.87/2018 of Agali Police Station

3. Description of the accused

Name	Father's Name	Age	Address
Hussain,	Muhammed	54 years	Mecheriyil (H), Thavalam Post, Pakkulam, Palakkad District.
Marakkar	Unneen	37 years	Kilayil (H), Mukkali (P.O), Kallamala, Palakkad District.
Shamsudheen	Muhammed	37 years	Pothuvachola(H), Mukkali Post Kallamala, Palakkad District.
Aneesh	Rajagopalan	34 years	Kunnath (H), Kakkuppadi, Kalkandi (P.O), Kallamala, Palakkad District.
Radhakrishnan	Balan	38 years	Thazhussery (H), Mukkali Post, Kallamala, Palakkad District.
Aboobacker @ Backer	Muhammed	35 years	Pothuvachola (H), Pallippadi, Thenkara Post, Anamooli, Palakkad District.

Sidhique	Saidh	42 years	Padinjare Palla kurikkal (H), Mukkali Post, Kallamala, Palakkad District.
Ubaid	Ummar	29 years	Thottiyil (H), Mukkali Post, Kallamala, Palakkad District.
Najeeb	Latheef	37 years	Viruthiyil (H), Mukkali Post, Kallamala, Palakkad District.
Jaijumon	Ayyappankutty	48 years	Mannampatta (H), Mukkali Post, Kallamala, Palakkad District.
Abdul Kareem	Thajudheen	52 years	Cholayil (H), Mukkali Post, Kallamala, Palakkad District
Sajeev	Raveendranath	34 years	Puthanpurakkal (H), Kottiyurkunnu, Mukkali Post, Kallamala, Palakkad District.
Satheesh	Govindan	43 years	Muriykkada (H), Mukkali Post, Kallamala, Palakkad District.
Hareesh	Sivaraman	38 years	Cherivil (H), Mukkali Post, Kallamala, Palakkad District.
Biju	Sivaraman	41 years	Cherivil (H), Mukkali Post, Kallamala, Palakkad District.

Muneer	Latheef	32 years	Viruthiyil (H), Mukkali Post, Kallamala, Palakkad District.
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4. Date of Occurrence : 22.02.2018
Date of complaint : 22.02.2018
Date of arrest : 24.02.2018
Released on bail : 31.05.2018
Commencement of trial : 28.04.2022
Close of trial : 10.01.2023
Date of judgment : 04.04.2023
Explanation of delay : No delay.

Sd/-
Judge,
**Special Court for SC/ST (POA) ACT/
Additional Sessions Court
Mannarkkad.**

Compared by : Yesudas Mathew

//TRUE COPY//

**Fair/Copy of Judgment
in S.C.No.265/2018
Date : 04.04.2023**