

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

CRL.A.No.478 OF 2016

AGAINST THE ORDER/JUDGMENT IN SC 315/2008 DATED 28-03-2016 OF
ADDITIONAL SESSIONS COURT-II, PALAKKAD DIVISION

CRIME NO.107/2007 OF Malampuzha Police Station , Palakkad

APPELLANTS/ACCUSED:

- 1 MANIKANDAN
 AGED:33 YEARS/2016,
 S/O NANU, PARAYIL VEEDU,
 KADUKKAMKUNNAM, MALAMPUZHA, PALAKKAD
- 2 KUTTAYI @ RAJESH
 AGED:31 YEARS/2016,
 S/O NARAYANAN, VANJIKKARA HOUSE, KADUKKAMKUNNAM,
 MALAMPUZHA, PALAKKAD
- 3 MURUKADAS
 AGED:34 YEARS/2016,
 S/O SIVARAMAN, MAMBANPURA HOUSE, KADUKKAMKUNNAM,
 MALAMPUZHA, PALAKKAD
- 4 UDESH @ SURESH
 AGED:32 YEARS/2016,
 S/O SIVARAMNAN, KADUKKAMKUNNAM, MALAMPUZHA, PALAKKAD
- 5 GIREESH @ POULOSE
 AGED:31 YEARS/2016,
 S/O. PAZHANIMALAM, PUZHAKKAL VEEDU, S.K.NAGAR,
 KADUKKAMKUNNAM, MALAMPUZHA, PALAKKAD

BY ADVS.
SRI.P.VIJAYA BHANU (SR.)
SMT.MITHA SUDHINDRAN
SRI.VIPIN NARAYAN
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SMT.S.LAKSHMI SANKAR
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

RESPONDENT/COMPLAINANT :

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM

R1 BY ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI. NICHOLAS P. JOSEPH, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
11.09.2020, THE COURT ON 19.10.2020 DELIVERED THE FOLLOWING:

JUDGMENT

“C.R.”

Dated : 19th October , 2020

M.R. Anitha, J.

1. Appellants are accused Nos.1 to 3, 5 and 7 in S.C.No.315/2008 on the files of Additional Sessions Court-II, Palakkad.
2. Prosecution case is that accused 1 to 7 hatched a criminal conspiracy in the evening of 29.10.2007 at BJP party office near Nilampathi bridge at Kadukkamkunnam to do away with the deceased Gopalakrishnan and Raveendran out of previous enmity and political feud. For that they formed themselves into an unlawful assembly armed with deadly weapons and in prosecution of the common object of the assembly rioted with deadly weapons. They got information of the deceased persons attending the marriage party of PW16 Radhakrishnan and 4th accused directed the 6th

accused to wait near Mukkei temple to inform the other accused about the movements of deceased persons over phone. As agreed, 6th accused intimated, the deceased persons coming out of the marriage reception on KL-09L/1972 motorcycle through Nilampathy bridge. Accordingly when the deceased were coming on the motorcycle and reached near the pillar on the northern side of Nilampathy bridge at about 6.45 p.m, accused persons in prosecution of the common object of the assembly, wrongfully restrained them. Thereafter accused 1 and 2 repeatedly slashed Gopalakrishnan with a sword at his head, hand and leg and several other parts of his body and inflicted fatal injuries. Deceased Raveendran ran away and third accused chased him and when reached about 20 meters south, the third accused slashed Raveendran with sword at his head, arm and leg 5th and 7th accused who were hiding behind, struck him with iron pipes at different

parts of the body and inflicted fatal injuries. When people rushed to the spot on seeing the incident, the accused persons ran away and injured were taken initially to District Hospital, Palakkad and from there they were taken to Palana hospital. Before reaching there Gopalakrishnan succumbed to his injuries and Raveendran was taken to K.G. Hospital, Coimbatore. He also succumbed to the injuries on the succeeding day at 11.30 am. while undergoing treatment. Hence the case.

3. The law was set in motion as per Ext.P25 FIS given by deceased Raveendran, while undergoing treatment at Palana Hospital, to PW18, the Sub Inspector of Police, Town North police station, Palakkad during the relevant time. FIS was produced before PW19 SHO Malampuzha Police Station and based on the same, he registered Ext.P26 FIR under Sections 341, 307, 302 read with Section 34 of IPC originally against accused nos. 1 to 3. PW22

conducted the initial investigation and inquest of Gopalakrishnan was conducted on 30.10.2007 and the inquest report is marked as Ext.P1. PW24 C.I of police Palakkad conducted inquest in the body of Raveendran and the inquest report is marked as Ext.P3.

4. PW22 prepared the scene mahazar Ext.P6 and seized MO6 to 9 foot-wears from the scene of occurrence. PW18 took custody of accused Nos.1 to 3 from Pollachi and produced before PW22 on 30.10.2007 and they were arrested by PW22 in accordance with law. Thereafter, he questioned them and seized the dresses worn by them. Recovery of weapon at the instance of accused Nos.1 to 3 were also effected. Thereafter, PW23 C.I. Of Police Kollamgode took charge of the investigation and filed Ext.P42 report stating about the involvement of the accused No.4 to 7. He arrested them, questioned them and recovered MO4 and 5 iron pipes at their instance. He filed Ext.P52 report adding

Sections 143, 147, 148, 120(B), 149 IPC along with 341 and 302 IPC. Further he forwarded the properties for chemical analysis and Ext.P54 is the copy of the forwarding note. Ext.P55 is the chemical examination report of the sample sent.

5. PW1 to 24 were examined and Exts.P1 to P61 marked, MO1 to MO21 were identified and marked from the side of the prosecution. DWs 1 to 3 examined and D1 to D17 and Exts.X1 and X2 were also marked at the instance of the accused. After trial, the learned Additional Sessions Judge-II, Palakkad, found the accused No.4 and 6 not guilty under Sections 143, 147, 148, 120(B), 341 and 302 r/w. 149 IPC and were acquitted. Accused 1 to 3, 5 and 7 were found guilty and convicted and sentenced to undergo rigorous imprisonment for six months each under Sec.143 read with Sec.149 IPC, rigorous imprisonment for two years each under Sec.147 read with Sec.149 of the IPC, rigorous

imprisonment for three years each under Sec.148 read with Sec.149 IPC, simple imprisonment for one month each under Sec.341 read with Sec.149 IPC, rigorous imprisonment for life and to pay fine of Rs.2,00,000/- each, in default to undergo rigorous imprisonment for three years each under Sec.302 read with Sec.149 IPC. On realization of the fine amount, a sum of Rs.4,00,000/- each is directed to be paid to the legal heirs of deceased Raveendran and deceased Gopalakrishnan by way of compensation. The sentences were directed to run concurrently. Aggrieved by the same, accused Nos.1 to 3, 5 and 7 came up in appeal.

6. Heard Senior Counsel Sri. B. Raman Pillai appearing for accused Nos.2 and 5, Senior Counsel Sri. P. Vijaya Bhanu appearing for accused 1 and 7 and Adv.Sri.S. Rajeev for accused No.3. The learned Senior Public Prosecutor Sri. Nicholas P. Joseph was heard on the side of respondent/State.

7. The fact that the death of the deceased persons were homicide is not in dispute at all. Moreover, the evidence of PW17, the District police Surgeon, District Hospital, Palakkad, who conducted post-mortem on the body of Gopalakrishnan and Raveendran and post-mortem certificates issued by him with respect to them would lead to an irresistible conclusion that the death of the deceased persons were homicide.

8. Ante-mortem injuries of deceased Raveendran are as follows:-

- 1). Sutured incised wound 9cm long, sutured with 4 black sutures, vertically oblique, on right half of back of head, lower front end at 9 cm behind top of right ear. The upper back end was at 1.5 cm to the right of midpoint between the parietal eminences. Both ends of the wound were sharp cut and edges contused. The wound cut the scalp in full thickness and just cut the outer table of skull. The wound was directed to front, to left and downwards.
- 2). Incised wound 7x0.2 cm vertically oblique on right parietal eminence, lower front-end 9 cm above top of

ear at 10 O clock position. The upper back end was 1 cm to the right of upper back end of previous injury. Both ends of the wound were sharp cut and edges contused. The wound cut the scalp in full thickness and just cut the outer table of skull. The wound was directed downwards, to front and to left.

3). Incised wound 7x0.2 cm obliquely placed on right half of back of head, lower front-end 1 cm in front of midpoint of injury No.1. The upper back end was 2.5 cm in front of upper back end of injury No.1. Both ends of the wound were sharp cut and edges contused. The wound cut the scalp in full thickness and cut the outer table of skull. The wound was directed downwards to front and to left.

4). Incised wound 5.5x0.5 cm transversely oblique, on back end of top of head, right upper end 15 cm above right eyebrow and 2.2 cm outer to midline. The lower end was 12 cm above left eyebrow and 2.7 cm outer to midline. Both ends of the wound were sharp cut and edges contused. The wound cut the scalp in full thickness and was directed downwards and to front.

5). Superficial incised wound 6x0.1 cm vertically oblique, on back of right shoulder and chest, upper outer end 14 cm outer to root of neck on top of shoulder.

6). Parallel linear contusions 6x0.3 cm each, placed

1 cm apart, on back of right shoulder, 21 cm outer to midline & midline & just below top of shoulder with contusion 10x6x2 cm underneath.

7). Superficial incised wound 29x0.3x0.3 cm vertically oblique on back of right chest and abdomen, upper outer end outer to midline and 11 cm below top of shoulder. The wound was deeper at the upper outer end.

8). Multiple contused abrasions over an area of 7x2 cm, transversely oblique on front and inner aspects of right upper arm, 6 cm below top of front armpit fold, with contusion 8x4x1.5 cm underneath.

9). Superficial incised wound 6x0.2 cm on outer and back aspects of right upper arm, transversely placed with front-end 7 cm below top of shoulder in midline outer aspect of upper arm.

10). Parallel linear contusions 4.2x0.3 cm each, placed 1cm apart, on outer aspect of right upper arm, transversely placed at 16 cm above elbow with contusion 12.5x12x2.5 cm underneath.

11). contused abrasion 8x0.4 cm transversely oblique on front and outer aspect of right upper arm, 4cm above elbow with contusion 7x5x1.5 cm underneath.

12). Contused abrasion 6x0.5 cm transversely placed on outer aspect of right upper arm, 1cm above elbow.

13). Incised wound 5x2x2.3cm obliquely placed on

back and outer aspect of right upper arm, upper back end 5 cm above midline back of elbow. Both ends of the wound were sharp cut and edges contused. The wound continued as superficial incised wound 7 cm long, to front and downwards. The wound was directed downwards, backwards and to left.

14). Contusion 4x3x1 cm on outer and back aspect of right elbow.

15). Parallel linear contusions 8x0.3 cm each placed 1 cm apart on back and outer aspects of right forearm upper outer end 6cm below elbow with contusion 9x5x2.5 cm underneath.

16). Incised wound 9x2.5x3.8 cm obliquely placed on back and outer aspects of right forearm, lower inner end 10 cm above wrist. The upper outer end was 13.5 cm below elbow. The wound cut the skin, subcutaneous tissues, blood vessels and muscles underneath and cut the radius bone. Both ends of the wound were sharp cut and edges contused. The wound was directed downwards, to left and to front.

17). Incised wound 12x4x4 cm obliquely placed on back and outer aspects of right forearm, curved with convexity upwards, lower outer end at outer aspect of wrist. The wound cut the skin, subcutaneous tissues and muscles underneath and cut the lower end of radius bone in full thickness. Both ends of the wound

were sharp cut and edges contused. The wound was directed to front, downwards and to left.

18). Incised wound 3.5x0.5x1 cm, transversely placed on back and outer aspects of right wrist. The wound cut the skin, subcutaneous tissues, tendons and the joint capsule of wrist.

19). Avulsed incised wound 10x3.5x3.5 cm vertically placed on front of right forearm, lower end at wrist. The wound showed an angulation for 2.2 cm from its lower end, to right at an angle of 120° . The wound cut the skin, subcutaneous tissues and muscles underneath and partially cut the radius bone. Both ends of the wound were sharp cut and edges contused. The wound was directed to downwards, backwards and to right.

20). Incised wound 10x3x3 cm on back of right hand, transversely oblique with upper outer end 1.5 cm below wrist on outer aspect of hand. The lower inner end was 5 cm below wrist on inner aspect of hand. The wound cut the skin, subcutaneous tissues and tendons underneath and cut the carpal bones underneath. Both ends of the wound were sharp cut and edges contused. The wound was directed to front, to left and to upwards.

21). Incised wound 2x1x0.5 cm, on back of first phalanx of middle finger, vertically placed at just below root of finger.

22). Incised wound 8x2x2 cm chopping off right index

finger completely, partially cutting the right middle finger at middle phalanx and right ring finger at the first inter-phalangeal joint.

23). Parallel linear contusions 7x0.3 cm each, placed 1 cm apart, on front and outer aspects of right half of lower abdomen, lower inner end 14 cm outer to midline and 3 cm above top of hip with contusion 8x4x1.5 cm underneath.

24). Superficial incised wound 7x0.2 cm vertical on palm of left hand, upper inner end at inner aspect of wrist.

25). Incised wound 6x0.2x0.4 cm transversely oblique on palm of left hand, upper inner end 5 cm below wrist at border between palmar and inner aspects of hand. The lower outer end was at the border between palmar and outer aspects of hand, 2cm below root of thumb.

26). Incised wound 2x1 cm with skin and subcutaneous tissues chopped off from the region of the wound, on back and inner aspects of left thumb, 3 cm below root of thumb. This wound was in line with the previous injury on palm of left hand.

27). Incised wound 1.5x1 cm chopping off the tip of finger and distal end of nail and nail bed of little finger of left hand.

28). incised wound 2x1.2 cm chopping off the tip of finger and complete nail and nail bed of the ring finger

of left hand.

29). Incised would 1.8x0.3x0.3 cm on back of lower end of left middle finger.

30). Superficial incised wound 6x0.1 cm on back of left hand, vertically oblique, with lower end at root of ring finger.

31). Sutured incised wound 11 cm long, obliquely placed on front and inner aspects of left forearm, lower inner end at 1 cm above midline inner aspect of wrist. The wound cut the skin, subcutaneous tissues and muscles underneath. Both ends of the wound were sharp cut and edges contused. The wound was directed upwards, backwards and to left.

32). Sutured incised wound 7 cm long on front of left forearm, lower inner end 8 cm above wrist at the border between front and inner aspects of forearm. The wound cut the skin, subcutaneous tissues and muscles underneath. Both ends of the wound were sharp cut and edges contused. The wound was directed upwards, backwards and to left.

33). Superficial incised wound 4x0.2 cm transversely oblique on front of left forearm, 14 cm below elbow.

34). Multiple parallel linear contused abrasions of size 5x0.2 to 8x0.3 cm each pair placed 1.2 cm apart, on inner and back aspects of left forearm, 2cm below elbow with contusion 10x5x1 cm underneath.

35). Sutured incised wound 16 cm long, transversely obliqu on outer and back aspects of left upper arm, lower back end 6 cm above elbow in midline back of arm. The upper front end was 9 cm above midline front of arm. The wound cut the skin, subcutaneous tissues and muscles underneath. Both ends of the wound were shrp cut and edges contused. The wound was directed upwards, backwards and to left. The wound cut the skin subcutaneous tissues muscles and blood vessels underneath and just cut the humerus bone. Both ends of the wound were sharp cut and edges contused. The wound was directed downwards and to right.

36). Superficial incised wound 6x0.3 cm transversely oblique on front of left upper arm, lower outer end 9 cm above elbow at border between front and outer aspects of arm.

37). contused abrasion 14x0.5 cm on back of left shoulder & upper arm, upper inner end 3 cm below top of shoulder & 12 cm outer to root of neck with contusion 20x6x3 cm underneath.

9. Ante-mortem injuries of deceased Gopalakrishnan are as follows:-

1). Incised wound 6x1x2 cm on right side of head, extending to right forehead, obliquely placed with lower

back end at 2 cm above top of root of pinna of right ear. The upper front end was 4 cm above outer end of right eyebrow and 8cm outer to midline. Both ends of the wound were sharp cut and edges contused. The wound cut the scalp and the skull in full thickness. On approximation, the wound measured 7cm long and was curved with convexity to front and downwards. The wound was directed upwards, backwards and to left.

2). Avulsed incised wound 15x2x5.5 cm, obliquely placed on right side of head, curved with convexity to backwards and upwards and with avulsion of scalp. Both ends of the wound were sharp cut and edges contused. On approximation, the wound measured 16.5 cm. The upper front end was 7cm above outer end of eyebrow and 9cm outer to midline. The lower back end was 5 cm behind root of right ear lobule. At its lower back end, the wound showed an angulation, upwards and to front, for 1.8 cm at an angle of 100° . The wound cut the scalp and the muscles underneath and cut the outer table of skull. The wound was directed downwards, to left and backwards.

3). Superficial incised wound 25x0.2 cm obliquely placed on back of right chest, shoulder and upper arm, upper front end at 12 cm below top of shoulder in midline outer aspect of upper arm. The lower back end was 21 cm below top of shoulder and 12 cm outer to

midline.

4). Superficial incised wound 4x0.2 cm, on back of right chest, lower inner end 32 cm below top should and 11.5 cm outer to midline.

5). Incised would 9x0.5x3.4 cm on outer aspect of right upper arm, transversely placed with front end 15 cm below top of shoulder at the border between outer and front aspects of arm. At its front end the wound measured 4cm deep and the back 6cm was superficial.

6). There was an angulation of 100° at the junction between the superficial and deep parts of the wound. The wound cut the subcutaneous tissues and muscles underneath. Both ends of the wound were sharp cut and edges confused. The wound was directed downwards to left and backwards.

7). Superficial incised wound 2.2x0.2 cm on outer aspect of right upper arm, transversely placed with front-end 17 cm below top of shoulder at midline outer aspect of arm.

8). Superficial incised wound 14x0.3 cm obliquely placed on outer back and front aspects of right upper arm, upper front end 20 cm below top of shoulder on front of upper arm. The lower back end was 25 cm below top of shoulder in midline back of arm.

9). Incised wound 9x1.6x3.5 cm on outer aspect of right upper arm, transversely oblique with upper front end

20.5 cm below top of shoulder at the border between outer and front aspects of arm. Lower back end was 23 cm below shoulder at the border between back and outer aspects of arm. Both ends of the wound were sharp cut and edges contused. The wound was directed downwards to left and backwards. The wound cut the subcutaneous tissues, blood vessels, nerved and muscles underneath and cut the humerus bone for a depth of 0.3 cm.

10). Incised wound 19x3x9 cm on back outer and front aspects of right upper arm, transversely oblique with lower front end 10 cm below top of right front armpit fold. Both ends of the wound were sharp cut and edges contused. The wound cut the subcutaneous tissues, muscles and humerus bone underneath in full thickness. The arm was almost completely amputated except for skin, subcutaneous tissues and outermost fibers of muscles on inner aspect of the arm. The wound was directed downwards, backwards and to left.

11). Incised wound 1.5x0.4x0.4 cm on back of right elbow.

12). Incised wound 8x1.5x4.5 cm oblique on back and outer aspects of right forearm, lower outer end 6 cm below elbow at border between outer and front aspects of forearm. The upper inner end was at 1.5 cm below midline back of elbow. Both ends of the wound were

sharp cut and edges contused. The wound cut the subcutaneous tissues and muscles underneath and cut the upper end of both radius and ulna bones in full thickness. The wound was directed upwards, to front and to left.

13). Incised wound 11.5x2.5x4 cm on back and outer aspects of right forearm, lower outer end 9 cm below elbow at border between outer and front aspects of forearm. The upper inner end was 3 cm below back end of previous injury. The wound was parallel to the previous injury and cut the subcutaneous tissues and muscles underneath. The radius bone was cut in full thickness and ulna to half thickness. The wound was directed upwards to front and to left.

14). Superficial incised wound 7x0.2 cm on back of right forearm, obliquely placed with lower outer end 7 cm above outer aspect of wrist.

15). Superficial incised wound 17x0.3 cm vertically oblique on back and inner aspects of right forearm, lower inner end at 7 cm above inner aspect of wrist.

16). Incised wound 4x0.5x3.6 cm vertical on back of right hand at just below at the border between back and inner aspects of wrist. The wound penetrated the hypothenar eminence of hand causing an incised wound 1.2x0.6 cm on the palm, 2 cm below wrist. The wound was directed to front, to left and downwards.

17). Superficial incised wound 12x0.2 cm oblique on back and outer aspects of right thigh, lower front-end 14 cm above knee at midpoint outer aspect of knee.

18). Superficial incised wound 9x0.2 cm transverse on back and outer aspects of right thigh, front end 12.5 cm above midpoint outer aspect of knee.

19). Superficial incised wound 10x0.2 cm on back and outer aspects of right thigh, 3cm below and parallel to the previous injury.

20). Incised wound 17x3x4 cm obliquely placed on front of right knee, lower left end at 4 cm above midpoint inner aspect of knee. The right upper end was at 6 cm above midpoint of border between outer and front aspects of knee. The wound cut the skin, subcutaneous tissues and patella bone in full thickness so that a piece of patella bone was seen protruding out. Both ends of the wound were sharp cut and edges contused. The wound was directed upwards, backwards and to left.

21). Incised wound 3.2x1x1.5 cm obliquely placed on outer aspect of left leg, upper front-end 7 cm below midpoint outer aspect of knee. Another superficial incised wound 1.2x0.2x0.4 was seen in line with the wound, at 1.6 cm beyond the upper front end of the first wound.

22). Superficial incised wound 1.2x0.2 cm transversely

oblique on outer aspect of left knee, 0.5 cm below midpoint outer aspect of knee.

23). Incised wound 19x8x10 cm obliquely placed on outer and back aspects of left thigh, lower front-end 7 cm above knee and 6.5 cm outer to midline front of thigh. The upper back end was 19 cm above knee in midline back of thigh. The wound had a side cut 2.5x0.2 cm along the lower edge, at 10 cm from the upper back end. In the depth of the wound, two separate cuts were seen in the muscle mass. First one corresponding to the side cut was directed backwards, downwards and to right and cut the subcutaneous tissues and muscles underneath and the femur bone to a thickness of 1.8 cm. The second cut was corresponding to the full size of the external wound and cut the subcutaneous tissues and muscles underneath and cut the femur bone in full thickness. This cut was directed downwards to front and to right.

24). Incised wound 2.2x1x2.2 cm obliquely placed on front of chest in midline, left upper end 9 cm below sternal notch and 1.1 cm outer to midline. The right lower end was 10.4 cm below sternal notch and 1 cm outer to midline. The wound cut the skin and subcutaneous tissues underneath and cut the sternum in full thickness. The wound just reached the pericardium over the region of right ventricle. The

wound was directed upwards backwards and to right.

10. Learned Senior Counsel Sri. B. Raman Pillai who led the argument attacked Ext.P25, the FI Statement given by deceased Raveendran to PW18 on various grounds which would be discussed later. PW3 and 4 cited as ocular witnesses, according to him, are party-men of CPI (M) and had no occasion to witness the incident and have been planted after a period of 15 days of incident to concoct a false case against the accused persons. He would also assail the evidence adduced in the form of dying declaration of deceased Gopalakrishnan through PW1 and that of PW10 and 12 with respect to deceased Raveendran.

11. The specific defence of the accused is that the identity of people who reached at the spot on seeing the incident have been suppressed and partisan witnesses affiliated to the political group of the deceased persons are planted and examined as prosecution witnesses. Accused persons being party men of BJP at Kadukkamknnu, they have been falsely

implicated in this case.

12. Learned Public Prosecutor on the other hand would contend that Ext.P25 has been promptly recorded by PW18 and after the death of Raveendran it was rightly acted upon as his dying declaration. All the witnesses examined are natural witnesses and there is no reason whatsoever to interfere with the conviction and sentence passed by the court below.

13. Learned Senior Counsel Sri. Raman Pillai was vehemently arguing about the inherent improbabilities of Ext.P25 FIS being given by Raveendran who has sustained multiple cut injuries and also contusion on the vital parts making him incapable of giving such a lengthy statement. He would contend that the incident occurred at 6.45 p.m and as admitted by the prosecution, deceased had been initially taken to Government Hospital, Palakkad and subsequently to Palana Hospital, which is situated about 4 - 5 kms away

from the District Hospital, Palakkad. But the FIS Ext.P25 is seems to have been recorded at 7.45 p.m on the same day at the causality in Palana Hospital, which according to him is highly improbable. He would also highlight the attempt made by the prosecution to suppress the medical records either of District hospital, Palakkad or the Specialty hospital at Palana to prove the mental and physical condition of deceased Raveendran for enabling him to give such a detailed statement. Learned Senior Counsel Sri. P. Vijayabhanu and also Adv. S. Rajeev strongly supported the argument so advanced with respect to Ext.P25 FIS given by the deceased Raveendran. The counsel for the accused seriously disputed the thumb impression of Raveendran said to have been affixed on Ext.P25 since he was incapable of putting the signature. According to them, the inquest report Ext.P3 of Raveendran prepared by PW24 states about injury No.27 and in Ext.P24 postmortem certificate relating to

Raveendran, injury No.26 also states about an incised wound 2x1 cm with skin and subcutaneous tissues chopped off from the region of the wound, on back and inner aspect of left thumb, 3cm below root of thumb. According to them, it is impossible to take the left thumb impression of deceased Raveendran due to that injury.

14. PW17 the doctor who conducted post-mortem was also questioned about this injury and he would state that when there is an injury 2cm below the root of the finger, the measurement will be from the root towards nails. So, according to the learned counsel, it is highly impossible when such an injury has been sustained, PW18 could have taken the left hand thumb impression of the deceased on Ext.P25.

15. The prosecution case as borne out from Ext.P25 and the evidence of PW18, the then S.I. of Town North Police Station, is that the FIS of the deceased was taken at 7.45

p.m. The incident admittedly took place at 6.45 pm. Initially they were taken to District Hospital. It is pertinent in this context to note that the investigating officer PW23 would categorically admit that he did not enquire about the medical records of the deceased personally either at District Hospital or at Palana Hospital. But at the instance of the accused Exts.X1 and X2 which are the attested copies of the wound certificates of the deceased persons were produced and doctor who treated them at District Hospital has been examined as DW2. She was the Assistant Surgeon, Government District Hospital, Palakkad during the relevant time. The evidence of DW2 would prove that she examined Gopalakrishnan at 7.15 p.m on 29.10.2007 and he was brought by friends with a history of assault. On examination he was not fully conscious and there were multiple incised wounds on right knee, back of trunk, scalp and open fracture of right upper arm and multiple incised wounds on

right upper arm. DW2 also stated that the details of injuries could not be noted as his condition was critical and patient was referred to Medical College Hospital, Thrissur for expert management. The wound certificate with respect to Gopalakrishnan is marked as Ext.X1.

16. She also examined Raveendran, at 7.30 p.m. He was also brought by friends with history of assault and was not fully conscious. Multiple incised wounds on scalp, right arm and trunk were noted. It is stated by DW2 that details of the injuries could not be noted since their condition was critical and he was also referred to Medical College Hospital, Thrissur for expert management.

17. So, Ext.X1 and X2 and the evidence of DW2 the doctor would prove that the condition of Gopalakrishnan and also Raveendran was very critical and hence they were referred for better management to Medical College Hospital. Time of examination of Raveendran is also proved to be

7.30 pm. Only after that Raveendran could have reached at Palana Hospital and got admitted there. Admittedly there is a distance of about 4 - 5 kms from District Hospital to Palana Hospital. So there arise doubt whether statement of Raveendran could have been taken from Palana Hospital at 7.45 pm and whether he was in a fit condition to give statement at 7.45 pm. Definitely the medical records at Palana Hospital could have been the clinching material to prove the actual time of deceased Raveendran reaching at Palana Hospital and his physical and mental condition at the time of reaching at Palana Hospital. But for the reasons best known to the prosecution, the said documents had not been produced. PW23 the investigating officer, when questioned was least bothered about the medical records of the two hospitals where the injured persons have undergone treatment. So it would only lead to an inference that the medical records at Palana Hospital, if produced, would be

adverse to the prosecution and that is the reason why they have been purposefully suppressed by the prosecution. The treatment records of Raveendran at Palana Hospital is very material to prove the admissibility of Ext.P25 which is projected by the prosecution as the dying declaration of deceased Raveendran.

18. The other evidence adduced by the prosecution also would not go in corroboration with the time of recording of Ext.P25 at 7.45 pm. The evidence of PW1, who is a close relative of deceased Gopalakrishnan and brother of Raveendran is relevant in this context to be appreciated. He would admit that it is correct to say that Gopalakrishnan died at 8.00 pm. Further, he deposed that after he reached Palana Hospital at 08.00 pm. that he came to know about the death of Gopalakrishnan. Again he deposed that after he reached at Palana Hospital that Raveendran was brought there and it is after 10 to 15 minutes of his arrival that

Raveendran was brought there. So if the evidence of PW1 is accepted how can the prosecution case that PW18 recorded the FI statement of Raveendran at 7.45 pm at the causality of Palana Hospital be believed? It is in this context that the suppression of the treatment records of Raveendran at Palana Hospital assumes importance.

19. On analyzing the evidence of PW18, the then Sub Inspector of the Town North Police Station also serious doubt arise whether he actually had recorded the F.I. statement of the deceased Raveendran. On perusing Ext.P25, it could be seen that there is specific recital that PW18, the Sub-Inspector of Town North Police Station, has recorded the statement of deceased Raveendran. There is also a statement that since Raveendran was not in a position to put signature, his thumb impression was obtained. But during evidence PW18 would admit that the hand writing in Ext.P25 is of a policeman. But he cannot

name the scribe. So if that evidence of PW18 is read along with Ext.P25, it could reasonably be concluded that the statement in Ext.P25 that he himself has recorded the statement of deceased is nothing but a falsehood.

20. It is in this context that the argument of the learned counsel for accused with regard to Ext.D16, copy of the General Diary of Town North Police Station and the evidence of PW18 with respect to the same will become relevant. According to the learned counsel for the accused, though PW18 claims to have went to the District Hospital first and thereafter to Palana Hospital, Ext.D16, the GD of Town North Police Station dated 29.10.2007, does not show any entry to show that PW18 had been to District Hospital Palakkad or to Palana hospital, Palakkad for recording the FIS of deceased Raveendran as directed by DYSP, Palakkad. In Ext.D16 the only entry with respect to this crime and the Sub inspector attending duty is at 22.00

hours. When PW18 was questioned in that regard he would admit that the only entry in Ext.D16 is at 22 hours on 29.10.2007 with respect to this crime. It is to the effect that an intimation has been received that assault had taken place at Kadukkamkunnu in between CPI(M) and BJP activists within the jurisdiction of Malampuzha police station and as directed he went for duty putting a Head Constable in charge. Apart from that there is no entry of going to Kadukkamkunnu on that day. So that would probabalise the defence case that PW18 had not recorded the FIS of the deceased at 7.45 pm on 29.10.2007 at Palana Hospital.

21. The learned counsel for the accused would also contend that prosecution could not establish that accused No.1 to 3 were taken into custody by PW18 from Pollachi. The prosecution case is that after taking custody of the accused, from Pollachi at 5.30 am on 30.10.2007 he produced them before Circle Inspector of police Hemambika

Nagar. But when PW18 was cross examined and confronted with Ext.D16 containing the GD entry of the Town North Police Station containing no entry of himself going for investigation in this case on 30.10.2007 or going to Pollachi, he just wriggled out from the question by stating that he has to verify the original. Anyway Ext.D16 the certified copy of the GD entry produced from the side of the accused would prove that there is no such entry of PW18 going to Pollachi or taking accused No.1 to 3 into custody. PW22 the Circle Inspector of Police, Hemambika Nagar during the relevant time, who conducted the initial investigation of this case, would admit that police officers had to obtain passport for going out of State as part of investigation. He added that in emergency cases they would go without passport and would get a ratification later. But he further admitted that there is no such direction in the Police Manuel and he claims that there is office circular to that effect. So the case of the

prosecution that PW18 took accused 1 to 3 into custody from Pollachi bus stand at 5.30 am on 30.10.2007 is also not free from doubt.

22. The learned counsel for the accused persons further contend that PW18 has been inducted in the investigation team only on 31.1.2007 as borne out from Ext.D15. But he claimed to have recorded the F.I.S. on 29.10.2007 and took custody of the accused from Pollachi on 30.10.2007. During evidence PW18 would admit that on questioning by the investigating officer he stated that he has become a part of the investigation as per the order of the Police Superintendent with number D145978/2007. Further he admitted that at the time of questioning by the investigating officer, he stated the order number and when he was confronted with his statement that the said order is dated 31.10.2007, he stated that he had doubt with regard to the date.

23. But Ext.D15 statement would show the order date is 31.10.2007, and order No.D1/45978/2007. But it is the order by which Kollamkode Circle Inspector was put in charge of the investigation. It is also stated that Dy.S.P, Palakkad directed him to record the statement of Raveendran and accordingly he had recorded it. In this context the learned Public prosecutor drew our attention to Sec.36 of the Code of Criminal Procedure, 1973 which would enable police officers superior in rank to an officer in charge of a police station to exercise the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station. Sec.36 actually deal with the powers of superior officers of police to exercise the same powers of officer in charge of police station throughout the local area to which they are appointed. In this case the prosecution version is that PW18 was sent by the Deputy Superintendent of police to

record the statement of Raveendran who was in a critical condition. But Ext.D16 G.D. entry does not reveal that.

24. The learned counsel for the accused also invited our attention to the fact that no body-note has been prepared in Ext.P25. When a sub-Inspector records the FIS of such a critical patient with multiple injuries such an omission ought not have taken place.

25. In this context, The Kerala Police Manual,1972 Volume 1V Chapter 111 Rule 811 is relevant to be quoted which reads as follows:

“The Police should draw up at the earliest opportunity, in the form of a mahazar, a description of wounds or marks of violence found on the person of a complainant or prisoner. The mahazar should be attested by witnesses and forwarded to the Magistrate.
.....”

26. So the above guidelines also would make it clear that

the police officer should prepare a description of the wounds or mark of violence found on the person of complainant at the earliest opportunity. That is also not done by Pw18 in this case. That would be more relevant in this case because no medical records showing the admission, treatment or discharge of the patient is forthcoming with respect to Palana Hospital.

27. Vehement argument was also advanced from the side of the accused disputing the left hand thumb impression of deceased Raveendran on Ext.P25. According to them there is a chop wound on the left thumb of deceased Raveendran as per inquest as injury No.27 and as per Ext.P24 post-mortem report as injury No.26. So it is quite impossible for him to put thumb impression on FIS. But on perusing Ext.P3 injury No.27 and injury No.26 in Ext.P24 the argument so advanced is not fully acceptable because injury No.26 in Ext.P24 is an incised wound 2x1 cm with skin and

subcutaneous tissues chopped off from the region of the wound on back and inner aspect of left thumb, 3cm below root of thumb. The doctor PW17 during cross-examination would admit that if the injury is 2 cm below the root of finger then the measurement will be taken from the root towards the nail. Since injury No.26 in Ext., P24 is only of 2x1 cm and it is 3cm below the root of thumb it will not make it impossible to take the thumb impression as alleged. But normally no one will attempt to take a thumb impression by applying force on the injured thumb. So also there is no reference with regard to that injury in Ext.P25. Further more in Ext.P3 there is no reference with regard to the ink mark on the left thumb of the deceased. PW17 during evidence also deposed that he has not noted any ink mark on any part of the body of the deceased. As rightly contended by the public prosecutor there was a request from the side of accused to send the documents for comparison of thumb

impression and the matter also came up to this Court and this court also permitted them to send the left hand thumb impression of deceased for expert opinion to Forensic Science Laboratory, Allahabad or to the Court approved private finger print expert, but due to omission to deposit data by the accused, it was not sent.

28. In this context the learned counsel for the accused persons would contend that it is for the prosecution to prove that the left hand thumb impression is that of the deceased and the expense ought to have been met by the prosecution. But the contention so advanced is against Sec.103 of the Indian Evidence act 1872, as per which the burden of proof as to a particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person. Here it is the accused who asserts that the thumb impression on Ext.P25 is not that of the

deceased. So it is upto them to prove that fact and hence it is the accused who has to deposit the bata for sending the same for expert opinion. But we have already found that the evidence adduced by the prosecution with regard to the recording of Ext.P25 at the instance of PW18 at 7.45 at Palana hospital itself is doubtful.

29. It is further noteworthy that the statement in Ext.P25 is that accused one to three wrongfully restrained them and all of them slashed them with sword and both of them ran through the bridge. But the prosecution case is that accused number one and two attacked Gopalakrishnan with sword and Raveendran was slashed with sword by the third accused and beat with iron pipes by accused 5 and 7. That would show that Ext.25 is not consistent with the prosecution case .

30. The learned counsel for the accused persons also highlighted the lengthy statement recorded in Ext.P25 as

that of deceased Raveendran. They would contend that if at all the patient was in such a critical condition, the opinion of the Doctor ought to have been obtained before recording the statement about his physical and mental condition. PW18 during cross examination would admit that he is bound to ask the Medical Officer about the condition while questioning the person who has been seriously injured. But in this case the records would not reveal that he has made any such attempt. Usually, when a statement of an injured in a medico-legal case who is in critical condition is taken, the Police Officer has either to make a request for getting a dying declaration through the process of the Court or ought to have recorded the same after getting a certificate about the medical condition from the doctor treating him. It would have given more sanctity to Ext.P25. But curiously enough in this case the prosecution originated the case with Ext.P25 alleged as recorded by PW18 immediately on reaching at

Palana hospital in the causality where the patient was undergoing treatment. Exts.X1 and X2 and the evidence of DW2 would prove that Raveendran had multiple incised wounds on scalp, trunk and arms etc. It has also come out that he was not fully conscious at 7.30 pm. It is from such a patient that PW 18 said to have got a lengthy statement, Ext.P25, at 7.45pm with details regarding the time, place, the name of the assailants etc. So without an expert opinion by a Doctor about the condition of the patient, it is highly unsafe for a court of law to accept such a lengthy statement as that of the deceased person. That is more so because the person who alleged to have recorded the statement itself disowned the handwriting and stated that it has been written by a constable accompanied him and he cannot name the person also.

31. It is apposite in this context to quote Hari Singh and Anr. v. State of M.P. [2019 (8) SCC 677 : 2019 KHC 6947]

wherein while dealing with admissibility of dying declaration it has been held that where the condition of the injured was serious and his blood pressure was not recordable, without getting the opinion of the doctor that patient was in a fit condition for making statement, his statement should not have been recorded. That was also a case in which the investigating officer recorded the statement of the victim under Section 161 Cr.P.C. After the death of the victim it was attempted to be proved as a dying declaration.

32. We may also quote Mohan singh and others v. state of Punjab (1981 KHC 735 : AIR 1981 SC 1578) wherein it is held as follows :

“..... In view of the detailed and extremely coherent nature of the dying declaration, we find it impossible to believe that the deceased even if conscious would have made such a detailed statement. We are therefore inclined to think that this statement smacks of concoction of fabrication in order to make the present case fool proof. At any rate we find it wholly unsafe to rely on the dying declaration,

particularly when PW12 did not take the necessary precaution of getting the dying declaration attested by the wife who was stated to be present there or the doctor who was alleged to be present in the hospital. Thus the dying declaration has to be excluded from consideration.....”

33. In this case also evidence of DW2 and Ext.X2 wound certificate would prove that deceased Raveendran was not fully conscious and he had sustained multiple cut injuries and contusion involving the vital parts. But Ext.P25 was said to have recorded without getting the attestation of the doctor or anybody accompanied the victim. So the principles laid down in the above decision is squarely applicable to the fact situation of this case.

34. Learned counsel for the accused persons would also strongly challenge the evidence of PW20 and Ext.P20 and P27 got marked through her. PW20 is the medical officer KG hospital Coimbatore. The accused have a strong contention that it is quite impossible to reach KG hospital at 9.27 pm.

They would also contend that in all the entries in Ext.P20 and P27 with regard to the time of examining the patient at KG hospital there are corrections of time from 9.00 pm to 9.27 pm. According to them initially time has been entered as 9.00 pm. and subsequently to suit the prosecution case, time of reaching at KG hospital and examination has been corrected as 9.27 pm. They would also contend that in several pages such correction with regard to the time as 9.27 pm could be seen in Ext.P20 and P27.

35. Prosecution on the other hand relies upon Ext.P20 and P27 to show that as per Ext.P20 on examination of the patient at KG hospital he was conscious restless, drowsy, talking and oriented. But evidence of PW20, the Medical Officer, K.G. Hospital would show that she was not the doctor who treated the patient. She would also admit that the summons issued from the court did not call for production of document and she had voluntarily produced

the case file as the management and higher ups directed her to produce the same. She also stated that apart from the summary there is nothing in her handwriting in Ext.P27 case file. Ext.P27 also was marked subject to objection. She also would admit that Ext.P27 would show the names of the doctors who admitted and treated the patient and out of the five names shown, her name is not there. Further she admits that she did not prescribe any medicine and the summary would show the doctors who treated the patient and their opinion. Further she admits that summary does not show that she is the one who treated or attended to the patient. She also admits that the doctors mentioned in the summary are the competent persons to state about the patient and the treatment given. So it is clear from the evidence of PW20 that she is not the person who attended to or treated deceased Raveendran and hence she is not competent to prove Ext.P27 with regard to the condition of

patient at the time of admission. So the writings in Ext.P27 and P20 that at the time of admission the patient was conscious, oriented, talking etc., can not be said as proved for drawing an inference that the deceased was in a position to talk. So in effect the evidence of PW20 will not prove the time of admission and condition of Raveendran and the treatment undergone by the deceased at K.G. Hospital.

36. Based on the above discussion we are of the view that Ext.P27 cannot be acted upon as the dying declaration of deceased Raveendran and the learned Additional Sessions Judge had went wrong in accepting Ext.P25.

37. The other evidence relied upon by the prosecution is the dying declaration of Gopalakrishnan and Raveendran alleged to have been given to PW1, PW10 and PW12. Section 32 of the Indian Evidence Act deals with the statements of persons who cannot be called as witnesses. The relevant portion of Section 32 reads as follows:

32. Cases in which statement of relevant fact by persons who is dead or cannot be found, etc., is relevant. - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1)when it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be nature of the proceeding in which the cause of his death comes into question.

38. So dying declaration is a statement made by a person as to cause of his death or as to any of the circumstances of the transactions which resulted in his death. The statement alleged to have been made by the deceased person in this

case to PW1, PW10 and PW12 indisputably are statements relating to the cause of death. The evidence of PWs 1, 10 and 12 are mainly assailed on the ground that they are close relatives of the deceased persons and have not revealed the alleged dying declaration said to have been made by the deceased persons at the earliest point of time. Delay of 15 days in questioning PW1 and PW10 is also challenged.

39. Learned counsel for the accused took our attention to Ext.X1 and X2 and the evidence of DW2 wherein there is specific mention that deceased persons were brought by friends to the hospital whereas PW1 is a close relative, i.e. deceased Gopalakrishnan is his uncle and Raveendran is his brother. So, if at all, a close relative of the patient was there at the Hospital, it would have found a place in Ext.X1.

40. Prosecution case is that PW1 accompanied deceased Gopalakrishnan while he was taken from the place of

occurrence to the District Hospital initially and thereafter to the Palana Hospital. His evidence is that on the way to hospital Gopalakrishnan told him that second and first accused attempted to slash him to death and Raveendran who was with him had been chased by third accused and others. He also stated that it was informed from the District Hospital that Gopalakrishnan is serious and hence he was taken to Palana Hospital, there he died.

41. The Counsel for the accused contended that Pw1 has been questioned by the Police only after fifteen days. It has also come out from his evidence that he is already accused in two murder cases. In both cases, the complainants are R.S.S. Workers. He stated that out of political rivalry, he has been falsely implicated. He also would admit that he is a sympathizer of CPI(M) and he is also an accused in a case of assault of the 4th accused in this case. Though he was further questioned that he is a witness in Crime No.52/2006

of Malampuzha Police Station, he pleaded ignorance. But on further cross examination he would admit that he has testified as witness in two cases registered by Malampuzha Police and both are political cases. The complainant in that case is CPI(M) sympathizer and accused are RSS Workers. So, the evidence of PW1 would prove that he is involved in political murder cases and also testified as witness in political cases involving CPI(M) and RSS. It is to such a person that deceased Gopalakrishnan, while going to the hospital from the place of occurrence, alleged to have revealed that Kuttayi and Manikandan attempted to do away with him by slashing and Raveendran was chased by Murugan and others. But his statement has been recorded after 15 days. According to him before that he has not stated to anybody about the dying declaration made by Gopalakrishnan. The explanation given by him is that out of fear he has not disclosed it to anybody. Being a person

involved in two murder cases and witness in more than one case and murder cases according to him are politically motivated, it is quite difficult to believe that out of fear he did not disclose to anybody about the dying declaration of Gopalakrishnan for 15 days till he has been questioned by the Police. So his statement recorded after 15 days of the occurrence by Police evokes suspicion. It is also to be noted that during cross examination he would depose that the Doctor of the District hospital has asked him to take the victim to Palana Hospital and he was the only relative of Gopalakrishnan present there and it is he who has directed to take him to Palana Hospital. But it is to be noted that the evidence of DW2 and Ext. X1 and X2 would clearly show that after examination, DW2 referred both Gopalakrishnan and Raveendran to Medical College hospital, Thrissur. So it is really doubtful whether he had accompanied Gopalakrishnan to hospital. Hence the evidence of PW1

with regard to the dying declaration of Gopalakrishnan while himself taking the deceased to hospital is also suspicious.

42. The prosecution further cited PW10 and 12 to prove the dying declarations alleged to have been made by deceased Raveendran. PW10 is a close relative of both the deceased persons and his evidence is that while returning after PW16 Radhakrishnan's marriage reception, he heard a cry when reached at the middle of the bridge and he rushed to the spot and saw Raveendran. Thereupon, he asked about the incident. Then Raveendran told him that while himself and Gopalakrishnan were coming on a motorcycle, they were restrained and attacked by RSS workers, Murugadas, Manikandan, Umesh, Kuttayi and Gireesh. Then PW10 asked, who slashed him? Then he answered that Murugadas(A3) slashed him with sword and Umesh(A5) and Gireesh(A7) struck him with stick. Then he asked about Gopalakrishnan and thereupon Raveendran told him that

Kuttayi(A2) and Manikandan(A1) had chased him with sword for slashing. Thereafter he was taken in an auto rickshaw came through that way to District hospital and from there he was taken to Palana hospital due to seriousness of the injuries.

43. The defence has a specific contention that PW 10 and 12 are planted witnesses and are close relatives of the deceased persons. It is also their contention that PW10 was questioned after 15 days. And it is highly improbable that being a close relative to whom deceased revealed about the assailants would keep mum without intimating about the identity of the assailants to the police for such long time.

44. On a close evaluation of the evidence of PW10 we find some merits in the argument advanced by the learned Counsel for the accused persons. According to PW10, at the time of seeing deceased Raveendran and

taking him to the hospital he was the only relative of the deceased. So also, during cross examination he stated that he cannot say as to where the head of Raveendran was facing and he would also state that he could not note his injuries and was there any blood stains and blood was oozing out. Further, he deposed that he does not know the autorickshaw driver. But contradictory statement by him to the police that Raveendran was taken in the autorickshaw of one Balakrishnan is marked as Ext.D10. More over, he admitted that he had a desire to disclose to the police about the incident at the earliest. Further that he could not go to the police station and thought that it can be disclosed when police questions him. That attitude of the witness appears to be highly improbable since the deceased Raveendran was his nephew and said to have revealed about the assailants and incident to him. Naturally there would be every possibility of such witness to disclose such facts at

the earliest to police without waiting for the police to come and question him. So also according to him, from the District Hospital, Palakkad after examination by the Doctors Raveendran was taken to the Palana Hospital. But he did not state about the reference made by the Doctor to take to Medical College hospital, Thrissur.

45. It is also to be noted that he is a witness in Ext.P3 inquest of Raveendran. But he denied to have been present at the time of inquest. If at all deceased Raveendran had made any dying declaration to him disclosing the name of assailants, definitely he would have revealed the same to the Police at the time of inquest or he could have revealed the same to any of his relatives at least to PW12, his own brother.

46. PW12 was also present and questioned at the time of the inquest by the Police. The statement given by PW12 with regard to the infliction of injuries upon the deceased

persons at the instance of accused Nos.1 to 3 seems to be in tune with Ext.P25, FIS. So also, he would depose during cross examination that while he reached the hospital with Raveendran, Gopalakrishnan has not reached there. He would also state that Raveendran was examined at causality and after 5 minutes Raveendran was brought out. He pleaded ignorance whether Gopalakrishnan had been brought there by that time. So his evidence is inconsistent with prosecution case because it has come out in evidence that Gopalakrishnan was taken first to the District hospital. Ext.X1 and evidence of DW2 also would prove that Gopalakrishnan was examined first by the Doctor at 7.15 PM. It is after the examination of Gopalakrishnan, at 7.30 PM that Raveendran was examined.

47. The defence contention is that he had not taken the deceased Raveendran from the place of occurrence to hospital and that is the reason why the Doctor has stated

that Raveendran was brought by friends. If at all he had taken Raveendran to hospital, being a close relative the Doctor would have stated that he was brought by his relative and not by friends.

48. The prosecution further attempted to prove the dying declaration alleged to have given to PW12 by deceased Raveendran while he was being taken from Palana Hospital to K.G. Hospital, Coimbatore. PW12 was present at the time of inquest of Raveendran. His evidence is that while Raveendran was being taken in the ambulance to Coimbatore himself and PW10 accompanied him. While so the deceased Raveendran asked him as to what happened to Gopalakrishnan. Then one Sunil who also accompanied them told the deceased that nothing had happened. Then Pw12 asked Raveendran as to what had happened to him. Then deceased told him that Manikandan(A1), Murugadas(A3), Kuttayi (A2) slashed him.

49. The main attack of the above statement by the learned Counsel for the accused is that the dying declaration alleged to have been given by Raveendran if accepted, would be in conflict with the evidence of PW18 and Ext.P-25, FIS. In the FIS, it has been stated by Raveendran that himself and Gopalakrishnan were initially taken to Palakkad District Hospital and from there to Palana Hospital and by that time he was informed that Gopalakrishnan died. So if Raveendran was aware of the death of Gopalakrishnan at the time of giving Ext.P25 FIS, to PW18, there won't be any occasion for him to ask about the condition of Gopalakrishnan during the travel to K.G.Hospital.

50. So also during cross examination he would state that he came to know about the incident at 6.45 PM. He also admitted that Raveendran was in a critical condition while taking him to Coimbatore and nurses were giving

necessary treatment in the ambulance. He also admitted that when Raveendran told him about assailants he thought of intimating the same to the police. But he did not reveal about the dying declaration to the Police at Coimbatore hospital. He being the direct uncle of the deceased, disclosure about the assailants to him naturally would have revealed to the police at the earliest. Admittedly by him he was present at the time of inquest and police questioned him and his statement was recorded at the time of inquest .But even at that time he did not reveal the dying declaration to the Police. So the conduct of PW12 seems to be highly suspicious.

51. Learned Public prosecutor in this context cited George v. State of Kerala (1998 KHC 258) and contend that it is not necessary nor obligatory on the part of the investigating officer to investigate or ascertain who are the persons responsible for the death at the time of inquest. Even though

it is not obligatory for the investigating officer to investigate into or ascertain the persons responsible at the time of inquest when a close relative of the deceased to whom dying declaration is said to have been made by the deceased is questioned by the investigating officer at the time of inquest, normally he would have revealed the information divulged by the deceased to him. However as has been held in the above decision the omissions on the part of PW12 to disclose the dying declaration given by deceased by itself will not put the prosecution out of court.

52. Learned Public Prosecutor next took our attention to Munnur Raja v. State of M.P. [1976 KH C 807 (SC)] wherein it has been held that statement by victim recorded as FIR could be treated as dying declaration and is admissible under Sec 32(1) of the Indian Evidence Act. It is also held that dying declaration need not cover the whole incident or narrate the case history.

53. Learned Public Prosecutor also cited **Laxman v. State of Maharashtra (2003 KHC 247)** wherein it has been held that where dying declaration is proved by the testimony of magistrate that the declarant was fit to make the statement even without the examination by the doctor the declaration can be acted upon provided the court holds the same to be voluntary and truthful. But in this case there is no testimony of magistrate that the deceased Raveendran was fit to make a statement. PW18 said to have simply recorded the statement of the Raveendran while he was undergoing treatment at casualty at Palana Hospital. No medical records of Palana Hospital has been brought in evidence by the prosecution. Ext.X1 and 2 produced from the side of the accused and the evidence of DW2 would prove that Raveendran was not fully conscious at the time when the doctor examined at District hospital. It is after that he has been brought to Palana Hospital. So without any medical

certificate or any material to prove the mental or the physical condition of Ravindran who died on the next day morning at 11.30 am how can it be taken as the statement voluntarily given by him?

54. It is also pertinent to note that even in the above decisions the Apex Court has held that court must be careful and cautious in relying upon the testimony of dying declaration. In the previous paragraphs we have already discussed that it is quite unbelievable that a patient who had sustained such multiple cut injuries involving his head and other vitals could give such a lengthy coherent statement to PW18 in the absence of any medical certificate in that regard. So at any rate the decision so cited will not in any way help the prosecution.

55. Learned Public prosecutor also placed reliance on Nallam Veera Stayanandam and Others v. Public Prosecutor, High Court of A.P. 2004 KHC 1807 wherein

while dealing with Sec.32(1) of the Evidence Act in a case of multiple dying declarations it has been held that each dying declaration has to be considered independently on its own merit as to its evidentiary value, one cannot be rejected because of the contents of the other. But that was a case of dowry death and the victim initially stated that she suffered burn injury because of stove burst while she was preparing tea. But subsequently another dying declaration was given by the deceased as per which she stated that on being unable to bear the dowry demand and harassment meted out by her at the hands of husband and in-laws she poured kerosene on herself and set her ablaze. It was in the said context it has been held that each dying declaration has to be considered independently. But in the present case prosecution case is that Ext.P25 FIS has been given in detail by deceased Raveendran disclosing about the death of Gopalakrishnan also. But subsequently on the way to KG

hospital he said to have given dying declaration to PW12 enquiring about the condition of Gopalakrishnan. So the fact situation of this case and decisions cited above have no nexus at all.

56. The next argument is with regard to the ocular evidence. The defence would contend that PW3 and PW4 are active workers of the CPI(M) and held prominent posts in the party and they were planted witnesses of prosecution. They would also vehemently contend about the delay of 15 days in questioning them by the Investigating Officer.

57. The evidence of PW3 and PW4 is that while they were travelling on motorcycle ridden by PW3 on 29/10/2007 from Malampuzha to Palakkad and reached near Nilampathi bridge, Kadukkamkunnu near the pillar of the bridge they saw the incident. According to PW3 near the pillar situated on the upper side of the bridge, the 3rd accused was found slashing a person and accused No.5 and 7 were found

beating him with iron rods and that man was found running towards north. Finding it difficult to stand there, they moved forward and then he saw the 1st and 2nd accused slashing another person with a sword and the person sustained injuries was lying in a pool of blood. When they went forward, PW2 Soman stretched his hand to stop the motorcycle. But he did not stop the vehicle and returned home through Puthussery. On reaching home he came to know that it was Raveendran and Gopalakrishnan who had sustained injuries. He identified MO1 to 3 as the swords and MO4 and 5 as the sticks used by the assailants. He also claims to have witnessed the incident in the street light and also in the light of his motor cycle.

58. PW4 deposed that while they reached near Nilambathi bridge after crossing Kadukkamkunnu, he saw accused Nos. 3, 5 & 7 striking Raveendran with a sword and iron rods. When they went forward accused Nos. 1 and

2 were found slashing another man and suddenly they moved forward and he alighted at the post office, Palakkad. He identified MO1 to 5 as the weapons used by the assailants.

59. During cross examination PW3 would admit that he stated about the incident to the Police for the first time on 14/11 i.e., after 15 days. Though he stated that he disclosed it to the wife and children on reaching home, that was not stated to the police. Further he admitted that the injured persons were known to him. He would also admit during cross examination that his brother C.R.Shaji had contested election in 4th ward as a candidate of CPI(M). Further he deposed that his brother Shaji and Gopalakrishnan had been working in the same concern and that Shaji is a local committee leader of CPI(M).

60. It has come out that deceased Raveendran and Gopalakrishnan CPI(M) sympathisers. Shaji being the

brother of PW3 working in the same concern where deceased Gopalakrishnan had been working, there would have been every chance of PW3 knowing about politics of Gopalakrishnan though he was not prepared to admit that. So also he would admit that on reaching house he came to know that Gopalakrishnan sustained injuries and died subsequently. If that be the case naturally he would have disclosed at least to his brother Shaji about the incident that had been witnessed by him and revealed the identity of the assailants. So the prosecution case that he could be questioned only after 14 days as explained by PW23, the Investigating Officer in the usual course of questioning the other witnesses cannot be swallowed without a pinch of salt.

61. The evidence of PW4 also would reveal that he had been questioned by Police after 15 days of the incident. It is true that PW4 was not prepared to admit that he is a party worker or has got any connection with CPI(M) party. The

Court below also found that he has no political connection at all. But on a close scrutiny of the evidence of PW4 it could be seen that his denial and pleading ignorance of political parties or the connection of the victim or the assailants with any political parties appear to be false in view of Ext.D4, D5 D6 and D7, portions of statement given to police. It would reveal that he is not a total stranger to the political parties and there was reference with regard to the political affiliation of the deceased while giving statement by him to the Police. Moreover, he would admit that he knew that brother of PW3 Shaji is a CPI(M) worker. He also would admit that PW3 is his close friend. So also PW5 deposed that at the time of incident, he was the Director of Malampuzha Co-operative Bank. He further stated they have won in CPI(M) – CPI panel and PW4 had worked for him. So the ignorance pleaded by PW4 about politics of the deceased persons or that of the accused is

without bona fides. All those factors have not been given proper weightage by the court below. So the statements given by PW3 and 4 as eye witnesses after 15 days of the incident really cast doubt about their presence at the place of occurrence.

62. It is in this context that the inconsistent stand taken by the prosecution with regard to the place of occurrence at different stages assumes importance. Defence has got a specific contention that the place of occurrence has not been correctly located by the prosecution. Admittedly, PW23 was not relying upon scene plan which is prepared by the Village Officer and the prosecution also did not mark the plan prepared by the Village Officer. It was marked as Ext.P57 during the cross examination of PW23. The police charge was also marked during the examination of the Investigating Officer as Ext. P56 from the side of the defence to prove the inconsistency with regard to the place

of occurrence.

63. PW23, the Investigating Officer would state during cross examination that he relies upon Ext.P6 scene Mahazar to prove the place of occurrence. In this context the inconsistency crept in the evidence of PW3 and 4 who claimed to have witnessed the incident of two deceased persons sustaining injury became relevant. According to PW3 he witnessed the incident from the beginning to end and first he saw Raveendran on the southern side of the pillar – 10 to 18 feet towards the south. In chief examination he deposed that he found Raveendran running towards north after the attack. Further he deposed that the second incident is 20 meters south to the first incident and it was on the bridge. He also denied that both the incident took place 25 metres north from northern end of the bridge. But the scene mahazer which is relied upon by Pw23 would describe the place of incident with respect to an electric

post erected on the eastern mud margin also. But the distance of that electric post with respect to the pillar or any other identifying feature is not stated in Ext.P6. Ext.57 plan is not relied upon by the prosecution also. So place of occurrence could not be correctly located by the materials produced by the prosecution also.

64. PW4, the other eye witness would depose that the incident occurred on the southern side of the pillar and the first incident is about 5 to 6 feet south to the pillar and the second incident is about 30 feet away. Further he deposed that it is about 25 meters south from the northern end of the bridge. Whereas PW3 deposed that the first incident was 10-18 feet south from the pillar and the second incident was seen by him on the bridge. If the evidence of PW3 and 4 is accepted Gopalakrishnan ought to have sustained injuries on the bridge. Prosecution did not have any such case. PW3 and 4 could not consistently state where Raveendran

and Gopalakrishnan sustained injuries. PW23 the Investigating Officer during cross examination also could not state about the exact place where the two incidents occurred. But at the same time, the prosecution case is that two sets of assailants have attacked separately Raveendran and Gopalakrishnan. PW23 the Investigating Officer when questioned about the place where Gopalakrishnan and Raveendran sustained injuries, he could not give any clear answer. In page No.36 of the cross examination he would state that Raveendran ran towards south to 20 meters from the place where Gopalakrishnan sustained injuries. He also stated that when attack began Raveendran ran away. If that be so, Raveendran ought to have run towards south through the bridge. But PW4 during cross examination would depose in page No.29, that while they went about 15 feet forward they saw Raveendran running forward. He saw the same when he turned back. So on evaluation of evidence of

PW3 and 4 and also that of the Investigating Officer there is no clear picture as to where exactly the deceased persons sustained injuries.

65. Usually in a case where two persons were hacked to death, if at all there is some difference with regard to the place whether it is on the north or south to bridge or even on the bridge would not have much relevance. But in this case prosecution examined PW3 and 4 as witnesses to the incident after questioning them after 15 days of the incident. It has come out that PW3 has close contact with the political party to which the deceased persons affiliated. PW4 when questioned about the delay in giving the statement to the police, his explanation was that it was out of fear that he did not reveal it to anybody. But admittedly by him he is an accused in two criminal cases. Every attempt was also made by him during cross examination to establish that he has no connection with any of the political parties.

But the contradictory version given by him to the police which have been marked from the side of prosecution would probabalise that he was not a total stranger to the political parties and he has also given statement to the Police in connection with the political affinity of persons involved. It is also admitted by him that PW3 is his close friend and also admitted that he had acquaintance with Shaji, the brother of PW3 and he is a CPI(M) worker. So, if at all they had seen the incident definitely it would have been revealed to any of the party workers then and there.

66. Some inherent improbabilities of Pw4 witnessing the incident also came out from his evidence. According to him when he saw the first slash with sword, he was scared and wanted to somehow escape. But in spite of that they rode forward. If at all actually such a dreadful seen was witnessed and got scared definitely they would have turned back the motorcycle without going through the place where

assailants were attacking a person.

67. PW3 also during cross-examination deposed that on seeing the first attack he was scared and thought of escaping from there. But according to him he slowed down the motorcycle and witnessed the incident. Another fact is that in page No.19 towards the end he would state that while going forward after the first incident, the second person was found standing in a pool of blood. Then added that he was lying on the side of the road. Further, he deposed that since they were CPI(M) men he was not scared and after crossing the bridge no untoward incident occurred and hence he was not having any fear at all. So that evidence of PW3 appears to be highly improbable because, if at all they have witnessed such dreadful seen even after crossing the bridge the fear will be precipitating in their mind and it will not disappear all of a sudden on crossing the bridge.

68. So also PW3 stated that PW2 Soman was found at

the end of the bridge. But he has not given statement to the Police about seeing PW2 and himself stretching the hand. He also stated that the distance between the place where he found Pw2 and the second person sustaining injury is about 10-15 meters. It has come out in evidence that the bridge is having about 150-200 meters length. So, if the statement of PW3 is taken as true, Gopalakrishnan might have been found almost near the southern end of the bridge. That is against the prosecution case and also the subsequently developed version of Pw3 and 4 .

69. So also the presence of PW4 and necessity for him to come through the place of occurrence are falsified during cross examination at the instance of accused No.7. He deposed that he came along with PW3 to Palakkad for purchasing articles including vegetables and grocery. He is a resident at Malampuzha Manakkalkkade. He would admit that after rock garden at least three shops are there before

reaching Olavakkodu, to purchase household articles. And those are also shops situated on the side of main road from Mandakkad to Olavakkodu. So normally he need not come to Palakkad for purchasing vegetables and groceries. That may be the reason why he could not withstand cross examination with regard to the actual place where deceased Raveendran and Gopalakrishnan sustained injuries.

70. PW3 during cross-examination stated that he came to Palakkad for consulting Dr.Mohandas. But he has not consulted the doctor and he had been at Palakkad for about 10 minutes. So that would show that actually there was no purpose for him to come to Palakkad on that particular day. It is in this context the evidence of DW1 assumes importance. He was examined from the side of defence to prove that PW3 is his neighbour and he is also in acquaintance with PW4. His evidence is that on the date of the incident in this case one Divya plus one course student

residing nearby his house died due to cardiac disease and he had been there at that house from 7 am to 8.00 pm. He would also depose that PW3 and 4 were present in that house from 12 noon till 8.00 pm. He also stated that PW3 is working with the mother of the deceased girl and the family of deceased girl are CPI (M) sympathizers. He also stated that PW4 is his neighbour and is a leader of CPIM in that area and till he left to his house at 8.00 pm pw3 and 4 were present in that house. During cross-examination of PW3 when he was questioned about the death of Divya at Kanjirakadavu on the date of incident, he simply pleaded lack of memory. During his cross-examination though some questions were put to impeach his credit by suggesting that he had been in jail for transport of spirit in a national permit lorry from Andhra Pradesh and he is in the fore front for illegal transport of river sand at Malampuzha Anakkallu, he stoutly denied those suggestions. It has also come out

during cross-examination that he is a labourer under INTUC Welfare Scheme. Though he was cross-examined at length, his credit could not be impeached. So the evidence of DW1 also improbabilises the presence of PW3 and 4 at the place of occurrence at the time of incident. His evidence also probabilise the defence version that PW4 is also a party man of CPI(M). It is well settled that the defence witnesses are entitled to equal treatment with those of the prosecution; and courts ought to overcome their traditional instinctive disbelief in defence witnesses (Dudhnath Pandey v. State of U.P. (AIR 1981 SC 911) which is followed by the Apex Court in State of U.P. v. Babu ram (AIR 2000 SC 1735)).

71. Prosecution examined PW15 to prove the presence of accused No.5 and also accused 1 to 3 near the bridge in the evening of 29.10.2010, the date of incident. Admittedly he is the direct brother of deceased Gopalakrishnan.

72. During cross-examination he admitted that he is a

CPIM worker. He also admitted that for one or two cases he had been to Malampuzha police station apart from this case. So also according to him, he happened to go to the area of the bridge as he had to purchase rice. But he would admit that his house is near the side of Malampuzha main road and ten metres away towards west there is a grocery shop of Faizal. On the southern side of the house there is grocery shop of Kannan. He would also depose that in between his house and police station there is a company of Milma and in between his house and Milma company, there are about 12 grocery shops. So his evidence that he had gone through Nilampathy bridge for purchasing rice seems highly improbable since nearby his house there are other grocery shops. So also his evidence that he saw Manikandan and Murukadas sitting on the pipe while returning after purchasing rice is brought out as an omission. So on appreciating his evidence it could be seen

that he is also an interested and partisan witness. According to him Ravi was lying near the Mill of Kannan on the road and he went there and saw people taking him into the autorickshaw from that place. So if his version is taken as true, Raveendran was lying about 150 metres north from the northern pillar. That is in conflict with the prosecution case.

73. There was also a contention from the side of the counsel for the accused persons that on 29.10.2007 Nilampathi bridge was filled with water and vehicular traffic was not possible through the bridge. To substantiate that contention they examined DW 3 from their side. He deposed that on that day while he was returning from Palakkad during evening the passengers in the bus were made to alight on the southern side of the Nilampathi bridge in front of the temple since water was overflowing the bridge and bus could not pass through the bridge to Kadukkamkunnu. He also stated that he found 2 to 3 persons taking

Gopalakrishnan in an autorickshaw from the southern side of the bridge in front of temple. The learned counsel for the accused also relies upon the evidence of PW9 a witness in the scene mahazar who also stated that there was water over the bridge on 29.10.2007 and that was not rain water but is the water from the Malampuzha Dam. But the next sentence seems to be incomplete. The readable copy of deposition and the original was verified by us personally. It can be read as water was there, making it impossible to take a bike. In the mahazar also there is statement that in the place of occurrence rain water seem to have been flown and above the bridge herbs and plants are found here and there. Those are indications of overflow of water on the bridge on the date of incident. Since a lot of inconsistencies have been brought out during evidence with regard to the place of occurrence, it would give added strength to the defence case.

74. The learned Public Prosecutor in this context took our attention to the evidence of PW2 who though turned hostile would admit that deceased persons participated in the marriage of PW16. He also admitted that subsequently the incident occurred at the place of bridge. But further he was not prepared to support the prosecution case. So the admitted portion of the evidence of PW2 also would not reveal the exact place of occurrence of this case.

75. Umpteen decisions were cited from either side in the aspect of delay in recording the statement of PW3 and 4 by the investigating officer under Sec.161 Cr.P.C and the consequences thereto. The learned Public Prosecutor relied on Abuthagir and Others v. State rep. by Inspector of police, Madurai (2009 KHC 5015 (SC))., wherein it has been held while dealing with Sec.137 of the Indian Evidence Act, that it is well settled that the delay in examination of the prosecution witnesses by the police during the course of

investigation ipso facto may not be a ground to create a doubt regarding the veracity of the prosecution case.

76. On going through the said decision it is seen that the appellants in that case were convicted for the offence punishable under 304 r/w 34 Sec.120 B and 148 IPC. The prosecution case in that case was that PW5 was working as a Superintendent of Madurai central prison during the period of 1996 to October 1998. During that period one accused detained under TADA was brought from Chennai central prison and produced before Coimbatore court and returned back to Madurai central prison. When jailer Jayaprakash intend to have body search the accused refused. It was intimated to PW20 and accused was taken to his office and instructed to consent for body search. Again he declined. Then the jailer Jayaprakash tried to remove the shirt, at that time accused proclaimed "insha allah ! you have to answer for this". After that he was examined and send back to sixth

block. Whenever his relatives visit the jail the jailer Jayaprakash used to verify the things as per rules. Subsequently on 29.8.1997 this jailer Jayaprakash was murdered near the main gate of prison. In that case the eyewitnesses who had no enmity towards the accused and totally independent and natural witnesses have testified after seeing the photos of the accused and they have stated that they witnessed the incident from a place which is just near the central jail. Moreover the incident occurred in bright day light and there was no infirmity in identification of the accused. So the fact situation of this case is entirely different. It has been found already that Pw3 is closely associated with CPIM, PW4 is also not a stranger to politics and more over the incident also occurred in darkness. Prosecution also could not prove beyond doubt their presence at the place of occurrence at that time.

77. The learned Public prosecutor also cited Ranbir v.

State of Punjab (1973 KHC 590 (SC)) wherein it has been held that evidence of witness does not become untrustworthy merely because he was examined after delay by investigating officer . But in that case the delay caused is 4 days. It is stated in para 7 that the question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got up witness to falsely support the prosecution case. It is also held that it is therefore essential that the investigating officer should be asked specifically about the delay and the reasons therefor. In that case investigating officers were not asked about the delay at the time of examination. But in this case PW23 the investigating officer was specifically questioned about the delay in questioning PW3 and 4 and the explanation given by him is that they were not revealed it to anybody and further that they were questioned during the

course of questioning other witnesses. That does not appear to be a plausible explanation for the delay of 15 days caused in questioning the two eye witnesses who have political affinity with the deceased persons. That is more so because of the suspicious circumstances in which the FIS has been said to have been recorded and the dying declarations of the deceased persons have been brought in evidence through close relatives.

78. The learned counsel for the accused Sri.S.Rajeev on the other hand brought to our attention Maruti Rama Naik v. State of Maharashtra (2003) 10 SCC 670), that was also a murder trial and the conviction was based on testimony of interested witnesses (PW3 and 4) and the matter went up to the Apex court and while appreciating the evidence, the unwarranted delay in recording the statement of PW3 and their conduct of not informing anybody about having witnessed the incident have been taken in to account and

the Apex Court held that no reliance can be placed on their testimony.

79. The learned counsel further placed reliance upon Kantilal Alias K.L. Gordhandas Soni v. State of Gujarat (2002 KHC 1516). Para 8 of the said judgment was highlighted by the learned counsel wherein it has been discussed that a particular witness is a neighbour and residing very close to the house of the deceased and he did not speak about the factum of witnessing the incident to anybody for merely 39 days till he decided to speak to the investigating agency and no explanation has been brought on record to explain this extra ordinary conduct of the witness. So it was held that merely because the evidence of witness is recorded by police under 161 Cr.P.C belatedly by itself does not make the evidence unacceptable provided there is some some logical or acceptable explanation for the same. The learned counsel further drew our attention to

Balakrushna Swain v. State of Orissa (1971 KHC 639 (SC))

wherein it has been held that unjustified and unexplained long delay to record statement of witness renders the evidence of such witness unreliable.

80. Learned counsel further relied upon Harjinder Singh Alias Bhola v. State of Kerala (2004 KHC 1831) wherein while dealing with a murder trial it has been held that evidence of chance witnesses cannot be discarded if the court finds assurance from the prosecution evidence pointing to the guilt of the accused and unexplained delay in recording the statement without any explanation is held to be fatal.

81. In this case the delay caused is 15 days. It has been discussed in the previous paragraphs that brother of PW3 is an active political worker. PW4 also proved to have contact with the brother of PW3 who was a candidate of CPIM in the preceding Panchayat election. PW4 during evidence

would state that he was waiting for the investigating officer to come and question him and that was the only explanation given for the delay. PW23 investigating officer would explain the delay by stating that PW3 and 4 were questioned in usual course among other witnesses and further that they were not revealed it to anybody. So as rightly contended by the learned counsel for the accused persons there is no satisfactory explanation for the delay caused in questioning the two eye witnesses.

82. The learned Public prosecutor further cited State of Karnataka v. Yarappa Reddy (1999 KHC 618) wherein it has been held that if the court is convinced that the testimony of a witness to the occurrence is true, the court is free to act on it. It is also held that eye witnesses cannot make a tutored impact or a structured reaction and court cannot expect the same.

83. The learned Public prosecutor further relied on Rana

Partap and Others v. State of Haryana (1983 KHC 462)

wherein while dealing with murder trial it has been held that evidence of independent witnesses can not be viewed with suspicion on ground that they are mere chance witnesses. It is also held that evidence of witnesses cannot be discarded on the ground that they did not react in a particular manner. But in this case while discussing the evidence of PW3 and 4 by evaluating the various circumstances and discrepancies and the delay caused in questioning them it has been found that they are not natural witnesses and the contention of the counsel for the accused that they are planted subsequently to suit the prosecution case is quite probable.

84. The next aspect is with regard to the recovery of the material objects and the scientific evidence adduced in connection with the same. In a case where charge-sheet has been filed based on direct evidence and the ocular witnesses have already been found to be unreliable and the

very origin of the crime by registering Ext.P25 FIR itself is found to be suspicious, there will not be much relevance to the recovery of the articles and the evidence adduced in connection with the same.

85. Learned public prosecutor in this context would contend that recovery of MO1 to MO3 and Exts.P9 to P11 recovery mahzars have been proved by the prosecution by examining PW11 who was a witness in Exts.P9 to P11 seizure mahazars with respect to recovery of MO1 to 3 in connection with accused 1 to 3 respectively.

86. As stated earlier main defence of the accused is that of witnesses who have been examined from the side of the prosecution to prove the occurrence and other connected matters are party men or close relatives and no independent witness could be cited and examined by the prosecution.

87. During cross-examination PW11 would admit that in the year 2006 there was a case of attacking one Janardhanan of CPIM and he is a witness in that case. Further he would admit that he is a worker of CPIM and further categorically admit that he is a man who contested the election in Marxist party panel and won the election.

88. It is in the above context his evidence with regard to the recovery of the weapons is to be appreciated. In chief-examination he had gone to the extent of stating about the exact measurement of the sword used by each accused as 71 cm, 72.5 cm and 73 cm respectively. But during cross-examination he would admit that he has not stated about the measurement of the swords to the police. In this context it is apposite to quote Golden Satheesan@Satheesan and others V State of Kerala (2012 KHC 25) wherein it has been held while dealing with S.3 of the Indian Evidence Act that the credibility of highly interested, inimical, partisan and

tutored witness describing the occurrence with meticulous details in a parrot like manner makes the evidence suspicious.

89. PW13 is the witness cited by the prosecution to prove the recovery of MO4 and 5 at the instance of 5th and 7th accused. He would state that he is a witness in Ext.P12 and P13, the recovery mahazars of MO4 and 5 recovered at the instance of accused 5 and 7. During cross-examination he also admits that he is the fourth accused in a case registered for attacking an RSS worker on 30.10.2007. He deposed that he has been made an accused. So his evidence also would indicate that he is also a partisan witness. But the learned Additional Sessions Judge had wrongly found in paragraph 64 of the judgment that PW12 is an independent witness for the recovery of MO4 and MO5.

90. The learned public prosecutor also drew our attention to Ext.P55, the FSL report to contend that MO1 to 3 and

also the clothes worn by the accused persons at the time of incident which have been seized by the investigating officer were found to be containing human blood. Ext.P54 is the forwarding note proving the fact of sending the material objects for FSL examination. Ext.P53 series are the property list. On examination of Exts.P54 and P55 it is seen that item No.1 in Ext.P55 is MO1, item No.2 is MO2, item No.3 is MO3. The report of FSL would prove that human blood was detected in MO1 to 3. It would also show that item Nos.4 and 5 are the shirt and dhoti worn by the third accused. Item No.6 and 7 which were the dresses seized from the second accused and item No.8 and 9 are the dresses seized from the first accused. The report would show that human blood was detected in the shirt and dhoti belonging to the third accused. Item No.6 and 7 which are shirt and dhoti of the second accused in which shirt alone contained human blood and in dhoti no blood was detected.

So in item Nos.8 and 9 which are the shirt and dhoti seized from the first accused though human blood was detected on the shirt, no blood stains were found on the dhoti. In item No.10 which is the shirt and dhoti of deceased Gopalakrishnan reported to contain human blood. In item No.12 which is the pants of the deceased Raveendran contain human blood. That according to the learned public prosecutor, is a clinching evidence to connect the accused with the offence. As we have stated earlier, since the case has been investigated and charge-sheeted as one of direct evidence and no other relevant circumstances connecting the accused with the offence have been investigated by the police, the recovery of the weapon and the scientific evidence with respect to the articles recovered may not be of much relevance. In Sathesan's case referred supra, paragraph No. 10 in State of M.P. v. Kaiparam (2003 (3) KHC 1850 : 2003 (12) SCC 675) has been quoted wherein it

has been held that if the prosecution case in regard to occurrence witnesses is not acceptable, then the recoveries would not take prosecution case anywhere.

91. Learned counsel Sri.S.Rajeev further in this context cited State of Maharashtra v. Dinesh (2018 KHC 3865) to substantiate his contention with regard to the failure of the prosecution to prove the blood group of the deceased with the blood stains found on the weapons alleged to have been used in the crime. In that case also the testimony of the sole eye witness was not relied upon on various grounds including that her statement was recorded after a gap of 1½ month from the date of incident. The Apex Court in that case found that no firm ground was found in the appeal or reason to believe the testimony of the alleged eye witness PW7. It was in the above context prosecution was found fault with for not taking any steps to prove the blood group of the deceased with the blood stains found on the alleged

weapons used in the crime. In this case it is pertinent to note that the blood group of the deceased were not at all attempted to be established by the prosecution and Ext.P55 FSL report only says about the item No.1 to 12 which are the weapons alleged to have been used in the commission of the crime and also the alleged blood stained clothes of the accused and deceased persons. It is true that the blood stains on the dresses of the deceased persons reported to be containing human blood. But group was not determined. It is also discernible from Ext.P54 the forwarding note of the articles sent for examination that no request was made by the investigating officer to determine the group.

92. The learned senior counsel Sri. P. Vijayabhanu in this regard cited Balwan Singh v. State of Chathisgarh (2019 7 SCC 781) wherein while dealing with clues and tell – tale signs/ forensics – blood marks and trial and blood stains it has been held that non confirmation of blood group or origin

of the blood may assume importance in cases where accused pleads a defence or alleges mala fides on the part of prosecution or accuses the prosecution of fabricating the evidence to wrongly implicate the accused in the commission of crime . It was also held in that case that in the absence of positive material that stained blood was of human origin and of same blood group as that of accused, recovery of weapons at behest of accused could not be relied upon. In that context it was also held that it would be difficult to rely upon the aspect of recovery of weapons and such recovery does not help the prosecution case.

93. The learned senior counsel also relied upon the above decision in the aspect of acquittal of all the accused for the offence of conspiracy and it has been held that both the courts below made a concurrent findings that the prosecution failed to prove the aspect of conspiracy . It is further held that once the conspiracy to commit the murder

of the deceased is absent, there is no material on record to show as to why the accused had gathered in the house of *B*. It further goes by holding that in view of the above material which is shaky, suspicion arises in the mind of the court about the genesis of prosecution and it is found that the courts below were not justified in relying upon the eye witnesses as well as of PW11 and 12 who have been cited to prove the criminal conspiracy. In that case also the statement of eye witnesses were recorded after 8 days of the incident and the prosecution tried to explain the delay in recording the statement of eye witnesses by contending that they were scared of the accused who was panchayat chairman, a powerful and influential person and they have gone to other village and considering the various circumstances the Apex court held the whole prosecution story about presence of two eye witnesses on the spot at the time of incident appears to be artificial and concocted.

94. In this case also criminal conspiracy was found against the prosecution and accused No.4 and 6 were acquitted by the trial court. Two eyewitnesses cited by the prosecution (PW3 and 4) were also questioned after 15 days of the incident. The explanation offered by the investigating officer for delay is that, they have been questioned in the usual course among other witnesses and that they were not revealed it to anybody.

95. The learned Public Prosecutor would also strongly contend that minor lapses in investigation by itself is not sufficient to acquit the accused and the criminal court is to find out truth and accused is only entitled for a reasonable doubt. In this case according to him prosecution proved through oral and documentary evidence the culpability of accused beyond any reasonable doubt and hence they are not entitled for an acquittal. To substantiate the same, the learned Prosecutor placed reliance on Suresh Chandra

Jana v. State of West Bengal and Others (2017 KHC 7082)

wherein it has been held that minor lapses in investigation is immaterial and the function of the criminal court is to find out the truth and it is not the correct approach to simply pick up minor lapses of the investigation and acquit the accused, particularly when the ring truth is undisturbed. It is also held that accused is entitled for benefit of only reasonable doubt, ie, the doubt which rational thinking man would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism. But that was a case in which a victim woman (deceased in that case) complained that she was raped by the accused, though complaint was filed to panchayath no action was taken and subsequently after a few months she lodged FIR against the accused and case was registered against him under Sec.376 and her statement was also got recorded under

Sec.164 Cr.P.C. As a retaliation the accused knocked her door and when she came out acid was thrown at her and hospital authorities did not initiate the police and subsequently from the hospital she sent a complaint to the police through a visitor by registered post with the name of the accused. There upon FIR was registered but no dying declaration was taken because doctor who was attending her advised that there was no need for dying declaration as the patient was responding to the treatment. Subsequently she succumbed to the injuries. So on a mere glance through the fact situation of the case it is quite clear that it has no resemblance to the facts and circumstances of this case. Hence the principles laid down therein cannot be sought in aid by the prosecution.

96. The learned Public prosecutor further placed reliance on Annayappa alias Krishnappa and Another v. State of Karnataka (2015 KHC 2532) wherein while dealing with

Sec.3 of Evidence Act the question whether the testimony of eye witness who was a friend of deceased and nephew of the accused and his presence on scene of offence was came up for consideration. In the said circumstances it was held that there was no reason for the witness to depose against his own maternal uncle particularly when there is no malice against him and it was held that he cannot be treated as an interested witness. It is also held that if the eye witnesses stand in the test of cross-examination and if the prosecution is able to explain the delay in recording the statement satisfactorily there is no reason why the benefit should go to the accused for the delayed recording of the statements. On going through the said decision it is seen that the statements of eye witnesses were recorded two days of the incident. In this case it has already been found that there is a delay of 15 days in recording the statements of witnesses and their presence at the place of occurrence

also could not be explained by the prosecution satisfactorily and hence that decision also have no relevance to the fact situation of the case.

97. What is emerged from the facts circumstances and evidence adduced in this case is the undue haste shown by the investigating agency to register FIR Ext.P25. Evidence of PW24 who conducted the inquest of Raveendran in this case would prove that some unknown person was intruding into the investigation when he admitted that he had not given any instruction to take the thumb impression of deceased Raveendran. PW22 Hemambika Nagar Circle Inspector who was in charge of the investigation at the time of inquest of Raveendran by PW24 would depose that he has not given any instruction to take the thumb impression of the deceased. Then who instructed the finger print bureau to get left hand thumb impression of Raveendran at the time of inquest is still a mystery. All those

factors would lead to an inference that investigation was controlled by some higher officials. It may be due to the fact that two young men of 38 and 32 years have been brutally attacked and hacked to death just out of political rivalry in the Constituency of the then Chief Minister. But the consequence was that the entire investigation has become shaky. If at all nobody had witnessed the incident the investigating agency should have taken pains and put in effort to investigate the case on circumstantial evidence. Over anxiety and enthusiasm of the investigating agency made the entire investigation artificial and shaky. Seriousness of the crime by itself can not be taken as a factor to uphold the conviction unless the conscience of the court is satisfied through the materials brought in by the investigating agency that it is the accused who have done the heinous crime. Wherever a reasonable doubt arises in the mind of court, benefit of the same should go to the

accused. On a careful evaluation of the various facts and circumstances and the evidence adduced which have been discussed above, we are of the considered view that the prosecution failed to prove the case beyond reasonable doubt and hence appellants/accused Nos.1 to 3, 5 and 7 are entitled to get the benefit of doubt.

98. In the result appeal allowed and conviction and sentence passed against appellants/accused Nos.1 to 3, 5 and 7 is set aside and they are acquitted. They shall be released forthwith if their confinement is not required in any other case.

Sd/-

A.HARIPRASAD
Judge

Sd/-

M.R.ANITHA
Judge