

**CALENDAR STATEMENT**

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|---|---|
| 1. Serial Number  | Sessions Case No.301/2017                       |
| 2. Name of police station and<br>Crime No. of the offence | Kasaragod Police Station.<br>Crime No. 210/2017 |

**DESCRIPTION OF THE ACCUSED**

- |                  |  |
|------------------|--|
| 3. Name and Rank | A1. Ajesh @ Appu<br>A2. Nidhin Kumar @ Nithin<br>A3. Akhilesh @ Akhilu   |
| 4. Age           | A1- 27/2024<br>A2- 26/2024<br>A3- 32/2024  |
| 5. Father's Name | A1- Subrahmaniyan<br>A2- Shivananda<br>A3- Suresh.N  |
| 6. Occupation    | A1- Coolie<br>A2- Nil<br>A3 - HDFC Bank employee   |
| 7. Residence     | A1- Near Bhajana Mandiram,<br>Ayyappa Nagar, Kelugudde,<br>Kudlu Gramam.<br>A2- Nidhin Nivas, Patla,<br>Kelugudde,<br>Kudlu Gramam.<br>A3- Keshava Kudeeram, Gangai,<br>Kelugudde, Kudlu Gramam. |

**DATES OF**

- |               |            |
|---------------|------------|
| 8. Occurrence | 20.03.2017 |
| 9. Complaint  | 21.03.2017 |

10. Apprehension	A1- 23.03.2017 A2- 23.03.2017 A3- 23.03.2017
11. Released on bail	A1 } A2 } Judicial Custody till this date A3 }
12. Commitment	29.06.2016
13. Commencement of trial	15.11.2017, 25.09.2019 (Altered charge)
13A Commencement of evidence	08.10.2018
14. Close of trial	20.03.2024
15. Sentence or order	30.03.2024
16. Service of copy of judgment or finding on accused	30.03.2024
17. Explanation for delay	Delay due to the pendency of old cases.
18 Period of detention undergone during the investigation, enquiry or trial for the purpose of section 428 Cr.P.C	A1 arrested on 23.03.2017 and Judicial Custody till this date A2 arrested on 23.03.2017 and Judicial Custody till this date A3- arrested on 23.03.2017 and Judicial Custody till this date
19 Remarks	Nil

Sessions Court, Kasaragod.  
Dated: 30.03.2024

Sd/-  
**SESSIONS JUDGE**

**IN THE COURT OF THE SESSIONS JUDGE, KASARAGOD**

Present:-Sri. K.K.Balakrishnan, Sessions Judge

Saturday, the 30<sup>th</sup> day of March, 2024/ 10<sup>th</sup> Chaithra 1946.**SESSIONS CASE No. 301/2017**

(This case was committed by Judicial First Class Magistrate-I, Kasaragod  
as per CP.No.112/2017 dated 29.06.2017)

Complainant	State: Station House Officer, Kasaragod Police Station. (Crime No.210/2017 of Kasaragod P.S) Rep.by Sri.T.Shajith, Special Public Prosecutor.
Accused	A1. Ajesh @ Appu, aged 27/2024 S/o.Subrahmaniyan Near Bhajana Mandiram, Ayyappa Nagar, Kelugudde, Kudlu Gramam. A2. Nidhin Kumar @ Nithin, Aged 26/2024 S/o.Shivananda, Nidhin Nivas, Patla, Kelugudde, Kudlu Gramam. A3. Akhilesh @ Akhilu, aged 32/2024. S/o.Suresh.N Keshava Kudeeram, Gangai, Kelukunnu, Kudulu Gramam.
Defended by	Sri. T.Sunilkumar and, Sri.Binu.S.Kulamkkatu, Advocates.
Offence	U/s. 449, 302, 153(A), 295, 201 r/w 34 of IPC.
Plea of the Accused	Not Guilty

Finding of the Judge

Not Guilty

Sentence or order

Acquitted u/S.235(1) of Cr.P.C

This case having been heard on 20<sup>th</sup> day of March, 2024 for final hearing and the court delivered the following:-

### **J U D G M E N T**

This intricate web of murder case stems from Ext P65 FIR, lodged on March 21st, 2017, by PW61, the Station House Officer of Kasaragod Police Station, as crime number 220/2017, subsequent to the statement provided by PW1 in Ext P1. PW97, the former Inspector of Police in Thaliparamba, conducted investigation as he helmed the special investigation team, a mandate bestowed upon him by the State Police Chief, in continuation of the investigation done by PW58, the then Deputy Superintendent of Police Kasaragod. The final report unveiled the distressing murder of a Madrasa Teacher in the quiet hours of 20.03.2017, within the modest confines of a mosque room where he sought solace to sleep. Allegedly, A1, aided by A2 and A3, orchestrated this nefarious act collaboratively, purportedly stoked by the smoldering embers of communal tension ignited from an incident happened in the election booth of Meppugiri LP School on 16.05.2016 during the Kerala Legislative Assembly election where A1 was beaten by some Muslim youths. Thereafter due to communal enmity A1 and A2 on 07.06.2016 attacked PW32 and CW51 with broken bottles and both sustained head injuries. On another day of same month a car of CW55, another Muslim, bearing registration number KL 14 H 124 was destroyed by stone pelting and in the month of August 2016 the house of CW 52 to 54, belong to Muslim Community, were attacked with soda bottles and stones.

On 18.03.2017, A1 and A2 stolen the motor cycle of PW 33 and riding on that vehicle both accused attacked few Muslim youths who were watching a Shuttle tournament. Therefore the accused had hatredness against the Muslim community of the locality. (CW 51 to 55 were given up by the prosecution during the trial). So with common intention to kill any Muslim person, A1 to A3 came in MO5 motor cycle to the Muhayuddeen Mosque in Madhur Panchayath at Old Choori in Kadlu village at midnight on the 20th of March, 2017, A1 and A2 trespassed into the mosque building. A1 further trespassed into the room of Muhammad Riyas, an Usthad (Madrassa Teacher) who was residing within the mosque, and inflicted injuries upon him with a knife and A2 guarded out side of the room and the victim succumbed to the injuries caused by A1. Upon sighting PW2, A2 hurled a stone at him, resulting in damage to the mosque's wall. Thus the victim was murdered by all these accused after which they fled the mosque on MO5, driven by A3, and proceeded to destroy evidence pertaining to the offense. Thereby, final report alleged that A1 to A3 committed offences outlined in Sections 449, 302, 153A, 295, 201 r/w 34 of IPC.

2. The accused have languished in custody since their arrest, on 23.03.2017. The final report, designated CP 112/2017, has been admitted in the Court of Judicial Magistrate of First Class, Kasaragod. Following due process, copies of pertinent prosecution records have been furnished to the accused in adherence to Section 207 of the Cr.P.C. Subsequently, the case has been formally committed to this court and assigned Sessions Case number. The accused were produced before this court, and they exercised their right to be represented by counsel of their choosing. In parallel, the State of Kerala appointed a Special Public Prosecutor for the prosecution. Subsequently, in

accordance with the provisions of Section 227 of the Cr.P.C, both the defense and prosecution were afforded the opportunity to be heard. Following consideration of the materials on record, the learned predecessor Judge found no sufficient grounds to discharge the accused at that juncture. Consequently, proceeded to frame the charges against the accused. On 15.11.2017, the learned predecessor Judge framed charges against the accused, delineating five specific heads. Subsequently the Special Prosecutor filed CMP 3047/2019 to amend the charges and after hearing both side by order dated 25.09.2019, allowed the petition and the learned Judge amended the charge, integrating two additional heads and corresponding allegations. Given that the facts of the allegations in the initial charge are encompassed within the amended charge, I am of the opinion that it is redundant to recount the details of the first charge. Following are the contents of the charge read over and explained to the accused persons on 25.09.2019:

A1 and A2 in furtherance of their common intention with A3 reached near the Muhayudheen Mosque in Madhur Grama Panchayath at old Choori in Kudlu village at 24.00 hrs on 20.03.2017 (00.00 hrs on 21.03.2017) on account of their personal enmity towards the members of the Muslim community in general and to promote feelings of enmity and hatred between Muslims and Hindus and thereby to disturb the public tranquility also on account of them being fanatic workers and believers of Rashtriya Swayam Sevak Sangh (for brevity and convenience here after referred as to 'RSS) trespassed into the Mosque belonging to the Muslims and with an intention to kill anyone who belongs to Muslim community, came on

a motorcycle bearing Registration No.KL 14 L 816 and A3 placed on the road leading to the southern side of the Mosque for the purpose of giving alarm to A1 and A2 who had trespassed into the Mosque. A1 and A2 trespassed in the mosque by opening the Aluminium gate on the southern side of the Mosque, with an intention to cause the death of Usthad Muhamed Riyas who was residing there, with whom they were not having any previous acquaintance. A in furtherance of common intention shared with A2, trespassed into the room of Muhammed Riyas, and stabbed him repeatedly with a knife. A2 by placing outside the room of the deceased near the aluminium gate on the southern side of the Mosque for the purpose of safeguarding A1. When PW2, the Khatheeb, came out of his room after hearing the noise from the adjacent room, A2 threatened PW2 and pelted a stone towards him which hit on the wall and thereby PW2 was compelled to close the door and the stone hit on the wall and damaged the Mosque, held as sacred by the members of the Muslim community. Thus the accused defiled the place of worship intentionally and to insult Muslim community. A3 in furtherance of common intention with A1 and A2, knowing that the offence as mentioned above has been committed, caused disappearance of evidence by taking and transporting both A1 and A2 on the same motor cycle to the house of PW42 and facilitated washing of the cloths and hands of A1 from the premises of the Anganwadi, concealed the above mentioned motorcycle and gave false information with an intention to screen the offenders from legal punishment. So the accused persons committed offence u/S Sections 449, 302, 153A, 295, 201 r/w 34 of IPC.

3. The accused denied the charge, asserting their innocence by pleading not guilty, and elected to proceed with a trial to contest the imputations brought against them.

4. The learned Special Public Prosecutor submitted the list of prosecution witnesses and in the trial 97 witnesses were examined as PW1 to PW97, including additional witnesses who were summoned after allowing the petitions submitted by the prosecution side as per the orders in CrI.MP.Nos.4280/2018, 3567/2018, 163/2019, 4356/ 2018, 378/2019, 1058/2019, 1059/2019 and 1060/2019. In addition to oral evidence 375 documents were marked as Exts.P1 to P215 series and MO1 to MO45 were identified for the prosecution side. Ext P112 marked subject to proof. Since no proof is produced this document is eschewed from consideration. Among the witnesses cited in n the charge sheet CW5, CW6, CW9, CW11, CW12, CW15, CW18, CW20, CW23, CW25, CW28, CW39, CW43, CW5, CW49, CW51, CW52, CW53 to 55 and CW86 were given up by the prosecution. Following the examination of the accused under Section 313(1)(b) of the CrPC, they steadfastly maintained their innocence by refuting all the incriminating facts and circumstances brought out from the evidence presented by the prosecution. Subsequently, they submitted separate written statements under Section 313(5) of the CrPC, articulating the following contentions:

5. Following are the explanation of A1 in the written statement. No confession was provided by him to the police or anyone else and, no evidence, such as the knife, footwear, or clothing, was recovered based on any alleged confession. Under the weight of pressure from senior police

officials to swiftly apprehend the murderer, he was unfairly implicated. This undue pressure influenced the investigation, potentially resulting in the wrongful accusation. The submission in the Kerala Legislative Assembly exerted immense pressure on the police, prompting the fabrication of false evidence, the manipulation of witnesses, and the wrongful framing of the case. Under government pressure, false recovery process were created. PW3, was coerced into participating in the Test of Identification Parade and instructed to falsely identify him during the procedure. While he was in police custody, his photo was clandestinely captured using both a mobile phone and a camera. Later, the police showed this photo to PW3, who then made a false identification during the TIP. MO18 was concocted by the investigating officer following his arrest, utilizing blood either from the scene of the incident or from the clothing of the deceased. Consequently, MO18 is not authentic but rather a product of fabrication. He vehemently reaffirms his innocence.

6. In his written statement, A2 reiterated above stated denial of the prosecution case. Additionally, he stated that while he was in police custody, PW2 was brought before him by the police and shown to him. The police also instructed PW2 to identify him during the TIP to be conducted by the Magistrate. His photo was taken by the investigating officer using both a mobile phone and a camera. Subsequently, PW2 identified him during the TIP based on this photograph. Mobile phone was not recovered from his possession by the police either at the time of arrest or thereafter. The photos allegedly taken from his mobile phone are fabricated, and he has no connection with the SIM card or phone. He also reiterated his innocence.

7. In his written statement, A3 reiterated the same facts and emphasized that no items, including a mobile phone and SIM card, were found in his possession, and he had no association with the mobile phone presented as evidence. Concerning PW3's identification, he echoed the denials made by A1. Additionally, he clarified that his mother's phone call on the day of the incident occurred due to his late arrival home after attending the Mallikarjuna Temple festival in Kasaragod. He firmly reaffirmed his innocence.

8. Following this, heard both sides under Section 232 of CrPC and upon reviewing the evidence on record, found that the accused were not eligible for acquittal under that provision. Subsequently, the defense side was given the opportunity to present evidence. DW1 was examined, and Exhibits D1 to D9 were admitted as defense evidence. DW1 produced X1 but it was marked subject to proof as it is the photostat copy of a notice of temple festival. The defense side failed to produce any proof for the said photostat copy so it cannot be relied as evidence and eschewed from consideration. Following this, both sides were heard again, and written arguments were also submitted. The counsel appeared for the wife of the victim submitted that he is supporting the arguments of learned Special Public Prosecutor.

9. Following are the points for determination:

- i. *What is the cause of death of Usthad Muhamed Riyas?*
- ii. *Whether the A1 to A3 had common intention to commit murder of any Muslim person and A1 and A2 infurtherance of that common intention trespassed into the Muhayudheen Mosque at*

*old Choori at and thereby committed offence under Section 449 IPC r/ W 34 of IPC?*

*iii. Whether A1 to 3 being the fanatic workers and believers of RSS, came on MO5 motorcycle to the said Mosque infurtherance of common intention to murder any Muslim person and A3 awaited at the gate of the mosque with MO5, A1 and A2 trespassed in to the building of the mosque and thereafter A1 trespassed in to the room of the Usthad Muhamed Riyas and A2 guarded outside of the said room and pelted stone against PW2 causing damage to the wall of the mosque and A1 attacked Usthad Muhamed Riyas and stabbed him several times with MO18 knife causing fatal injuries to him and thereafter A1 to A3 escaped from there in MO5 motorcycle and the victim succumbed to his injuries caused by A1 and thereby A1 to 3 committed offence of murder punishable under Section 302 IPC r/w 34 of IPC?*

*iv. Whether A1 to 3 being the fanatic workers and believers of RSS were in inimical terms with Muslim community and infurtherance of their common intention to murder of the victim committed criminal trespass to the said Mosque and with intention to promote hostility and hatredness between Hindus and Muslims and thereby disturbed public tranquility and thus committed offence punishable under Section 153A IPC r/w 34 of IPC?*

*v. Whether A1 to 3 were in inimical terms with Muslim community and infurtherance of common intention to commit murder of any Muslim came and A1 and A2 trespassed in to the mosque and*

*while A1 attacking the victim, A2 pelted stone against PW2 and it hit against the wall of the mosque and thereby defiled the place of worship of the Muslim community and thus A1 to A3 committed offence punishable under Section 295IPC r/w 34 of IPC?*

*Vi. Whether A 3 infurtherance of common intention with A1 and A2 knowing well that A1 and A2 committed above said offences caused disappearance of evidence by removing A1 and A2 on MO5 motorcycle, facilitated washing of cloths and hands of A1, concealed MO5 and gave false information with intention to screen A1 and A2 from legal punishment and thus A1 to A3 committed offence punishable under Section 201 IPC r/w 34 of IPC?*

*Vii. Sentence or order?.*

#### **10. Point No:1: Cause of death of the victim**

The undisputed fact is that, the tragic end of the victim stemmed from grievous stab wounds inflicted upon him within the room of the said mosque at the stroke of midnight on 20.03.2017. PW52, Professor of Forensic Medicine at Pariyaram Medical College, meticulously conducted the postmortem examination. Through the elaborate Ext P49 Postmortem Certificate, he solemnly affirmed the cause of death. With unwavering precision, he reiterated this affirmation through verbal testimony, elucidating its contents and methodically delineated the examination procedure, unveiling the poignant findings therein as follows:

The examination of the dead body was started at 8.45 am and finished at 10.30 am on 21.3.2017.

### General Findings:

Body was that of a medium fair complexioned adult male – 168 cm height, 54Kg weight. Dried blood stains seen all over the body. Bleeding seen from nostrils. Rigor mortis was fully established and retained all over the body. Postmortem staining is not clear. No signs of decomposition. Body refrigerated (4.30 am on 21.03.2017).

1. Incised wound 4x0.5cm. Bone deep obliquely placed on the top of head, towards the left side. A chip of bone 2.2x1.5x0.5cm was found cut away from the outer table of left Parietal bone. Brain did not show any corresponding injury.

2. Incised wound 2x1.2x2cm just behind the lower end of left ear.

3. Incised wound 2.5x1.3cm on tip of right shoulder with a tailing, 2.5cm long, directed downwards and outwards. Another incised wound, 1.5x0.5cm was seen on the top of right shoulder, 2cm inner to the previous injury. Both injuries were connected together under the skin, the one being the entrance and the latter, the exit wound.

4. Incised wound 3x0.5x2.5cm on the top of left shoulder, 3cm outer to the root of neck.

5. Incised wound 3x1cm horizontally placed on the front of left shoulder, with a tailing, 4cm long from its left end, directed towards the tip of shoulder.

6. Incised wound 2x1cm, vertically placed just below the inner end of right collar bone.

7. Incised wound 2x0.7cm, oblique, on the chest 2.5cm below the middle part of right collar bone; there was a tailing 7cm long, directed towards the right armpit.

8. Wedge shaped incised penetrating wound 2x1cm obliquely placed on the chest, the lower outer sharply cut end being 2cm above the right nipple, in the 2 o'clock position; the other end was blunt. The wound entered the chest through the second intercostal space and terminated by cutting the upper lobe of right lung. The wound was directed backwards, downwards and to the left for a total minimum depth of 4cm. Chest cavity contained a handful of blood.

9. Wedge shaped incised penetrating wound 2.2x1cm obliquely placed on the chest, the upper inner blunt end being 2cm to the left of midline and 8cm below the inner end of left collar bone; the other end was sharply cut. The wound entered the chest through lung. The wound was directed backwards, downwards and to the right for a total minimum depth of 4.5cm. There was no blood in the left chest cavity.

10. Superficial cut 1x0.4cm on the chest, 3cm above the left nipple, in the 10 o'clock position.

11. Incised wound 1x0.5cm on the chest, 3cm above the costal margin and 12cm below the left nipple.

12. Wedge shaped incised penetrating wound 2.5x0.8cm horizontally placed on the right side of abdomen, the inner blunt end being 5.5cm to the right of midline and 3.5cm below the costal margin. A dried blood streak was seen running horizontally towards the right. The wound entered the abdomen and perforated the liver close to the interlobar fissure at its lower part. The wound was directed backwards and inwards for a total minimum depth of 4cm. There was no blood in the abdominal cavity.

13. Superficial incised wound 5.5x2cm oblique on the inner aspect of right forearm, at its middle.
14. Wedge shaped stab wound 2.6x1x5.5cm horizontally placed on the inner aspect of right forearm, 2.5cm above injury no.13. The inner end was blunt and the other end was sharply cut.
15. Superficial cut 1x0.3cm on the front of left upper arm, 7cm below injury No.5.
16. Wedge shaped stab wound 2.5x1.5x5.5cm oblique on the outer aspect of left upper arm at its middle; the wound was directed downwards and inwards.
17. Linear cut 10cm long, oblique involving the outer aspect of left elbow and forearm.
18. Perforating wound of the left forearm, entrance wound being at the back, at its middle (2x0.8cm) and exit wound at the ulnar border (2x0.6cm), and the track measuring 3cm.
19. Perforating wound, the entrance wound being vertically placed on the inner aspect of left forearm, 4.4cm above the wrist (4x1.8cm) and the exit being on the back of left wrist and forearm (4x1.5cm); the ulnar artery was found severed.
20. Abrasion 1.5x1.5cm on the front of right knee.
21. Abrasion 0.8x0.5cm on the inner aspect of right knee.
22. Graze 4x1.5cm on the inner aspect of left knee.
23. Graze 4.5x1cm on the outer aspect of left knee.
24. Two abrasions 2x1cm and 1.5x1cm 1cm apart on the upper part of front of left knee.
25. Abrasion 1x1cm on the outer aspect of right ankle.

26. Wedge shaped stab wound 2.5x0.5x3cm obliquely placed on the right side of back of neck, 2cm to the right of midline; upper outer end was blunt and the other end was sharply cut. The wound was directed upwards, forwards and inwards.

27. Incised stab wound 1.5x1x3.5cm horizontally on the back of chest, 3cm above the left armpit. Tailing was seen directed towards the left.

(all the injuries were fresh injuries; marginal contusion was seen along the edges of the stab injuries).

### C. OTHER FINDINGS

Skull showed an old bony deficit 5x4cm exposing the dura on the back aspect of top of head, more towards the right side and 6cm above the occiput. An old healed laceration was seen underneath involving the right parietal lobe (5x4.5cm). Stomach was two third full with thick dark fluid (altered blood) mixed with unidentifiable food particles; no unusual smell; mucosa normal. Air passages were filled with thick, fluid blood mixed with aspirated stomach contents; Lungs showed features of aspiration of blood. Heart was normal: coronary arteries were patent. Midline structures of the neck were intact. All other internal organs were pale, otherwise normal. (The blood group of the deceased was determined to be 'AB' positive; sample of scalp hairs was preserved.)

### OPINION AS TO THE CAUSE OF DEATH

Died of bleeding due to stab injuries of the chest and abdomen, involving the right lungs and liver.

11. He affirmed that the injuries 8, 9, 12, are independently sufficient to cause death in ordinary cause of nature. Injury No.19 is not sufficient to cause death but is likely to cause death in the ordinary course of nature. Injuries 8, 9, 12 are not fatal injuries. Stab injuries having marginal contusion indicates that the weapon used had a thick blade rather than a thin one. Death might have been fastly rapid but not instantaneous. Death occurred being fast. Injuries 3,5,7 indicates the direction in which the weapon was withdrawn after inflicting injuries. Item 8, 12, 14, 16, 26, indicate single edged weapon.

12. After measuring MO18 knife he answered that fatal injuries and corresponding stab injuries indicate the width of not more than 2 cms and except 20 to 25 injuries remaining can be caused by that weapon. Injuries 20 to 25 can be caused by falling on the knees and by coming into contact with rough surface. Injuries 13 to 19 are defence injuries. Many of the superficial incised wounds and injuries 13 to 15 indicate that a scuffle between the victim and the assailant. Injuries 10,15, 17 are cut injuries. Injuries 14, 16, 18, 19, 26 and 27 are stab injuries. All these injuries (except abrasions) could be caused by a single person and single weapon. Among the injuries 8, 9, 12, 8 and 9 can be caused when the victim was standing and lying and injury 12 was caused when he was lying down face down, because there is no blood in the chest cavity. Absence of blood in the clodic chest indicate blood had drained away. Blood is filled in air passages and showed features of aspiration indicate suffocation. Till Rigor Mortis indicates lapse of more than 5 hours but less than 18 hours after death when the body is placed in the refrigerator. This witness further deposed that he visited the scene of occurrence and affirmed that MO10 cannot produce the injury noted by him even though it can produce incised injuries. In the cross examination,

this doctor admitted that injuries 2 to 7, 11 and 13 are incised wounds. The width of MO18 has maximum 2 cms. The width of blade of MO-10 is 3 cm. Hence, PW52, an expert in the field, confirmed that the cause of death of the victim was stab injuries, unequivocally establishing it as a murder.

13. Residing in close proximity to the Mosque, with the deceased's room situated opposite to his residence, PW1 recounts the events of the fateful night. As the individual who first glimpsed through the back side window of the deceased, PW1 witnessed the victim's struggle for life and alerted others. At approximately 11:45 pm, the deceased, in a phone call to PW67, the wife of PW1, implored for the lights to be extinguished at PW1's residence. Shortly thereafter, around midnight, PW1 heard a piercing cry emanating from the Mosque, compelling him to rush to its premises. There, he was met with a heart-wrenching sight: the deceased writhing in a pool of blood within the confines of his room. Without hesitation, PW1 relayed this grim discovery to his neighbor, Mr. Athicha, father of PW4, whose untimely demise ensued subsequently. PW4's testimony corroborates the information relayed by PW1 and their subsequent arrival at the mosque. It is worth noting that PW1 had a longstanding acquaintance with the deceased. In addition to the aforementioned facts, the prosecution leaned heavily on PW1's testimony to establish the registration of FIR in the case based on his Ext.P1 statement serving. Furthermore, PW1 identified MO1 as the lungi worn by the deceased during the incident.

14. Testimonies from PW3 to PW5, the mosque's proximate residents, alongside PW6 and PW7, the Secretary and President of the mosque committee, and PW2 and PW9, residents within the mosque, vividly recount

the harrowing scene that unfolded within the victim's room on that ominous night, where the wounded soul lay midst a pool of crimson. These witnesses also attested to the deceased being transported to the hospital via ambulance after the arrival of the police. Their accounts solely shed light on the condition of the injured victim post-attack. Despite the compelling testimonies provided by these witnesses, none of them could not say any fact about the manner in which the victim's fatal injuries were inflicted.

15. So, only conclusion logically follows from the above evidence is that the victim's demise was caused by stab injuries inflicted upon him by another individual, from his room in the premises of the mosque, precisely at midnight on 20.03.2017. So the death of the victim was homicide and thus he was murdered. The point is answered accordingly.

**16. Point No:ii to v.**

All these points are rooted in the same foundational materials and are intricately interconnected. For the sake of convenience and to avoid redundancy, these points are collectively considered and addressed together. The prosecution side categorically acknowledges the absence of eyewitnesses to the alleged incident and hence forthrightly avows their reliance on proving the case exclusively through circumstantial evidence. The prosecution case hinged on the singular premise that all three accused shared a common motive, ultimately leading to the murder of the victim. It was alleged that the accused, as active members of RSS and Hindu fanatics, harbored a fervent intent to target and eliminate a Muslim individual at any

cost on the night of the incident. The erudite Prosecutor expounded that the testimony of witnesses confirmed the deep-seated hostility of A1 to A3 towards the deceased's community, and thus solidified the motive behind their act of perpetrating the victim's murder. The learned Prosecutor cited three prior incidents, each labeled as communal in nature and asserted that those incidents are sufficient to substantiate the hostility displayed by the accused towards the Muslim community, and these instances were presented as concrete evidence of the motive of the accused to eliminate individual belonging to the Muslim faith, and also as the sole reason behind the murder of the victim.

17. The initial assertion by the learned counsel representing the accused is that the prosecution has failed to substantiate the hostility of the accused towards the victim's community. None of the prosecution witnesses attested that A1 to A3 harbored enmity towards that community. No antecedents attracting communal elements against any of them have been brought to light. Thus, the motive alleged in the charge remains unproven by the prosecution, and consequently, the foundation of the case itself collapsed. The endeavors of the investigating officers have yielded no evidence implicating the accused in the charged offenses. According to the learned defence counsel, except inconsistent versions and uncorroborated testimonies of planted witness nothing was produced by the prosecution. So the liability of offence alleged in the charge cannot be fasten on the accused and prayed to acquit all three accused persons.

18. Thus, in mutual concession, both sides acknowledge the foundation of the case rests solely on the threads of circumstantial evidence. The Honorable Supreme Court expounded upon the pivotal prerequisites necessary for securing a conviction based on circumstantial evidence in the seminal case of **Sharad Birdhichand Sarda vs. State of Maharashtra (AIR 1984 SC 1622)**. From this landmark ruling emerged five illustrious principles, akin to golden threads, guiding the path to establishing guilt in such cases.

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793) where the following observations were made : [SCC para 19, p. 807]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not

be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

19. In case of **Ganpat Singh Vs. State of M.P., (2017 SCC Online SC 1131)** and **Anjan Kumar Sarma & others Vs. State of Assam, (2017 (14) SCC 359)**, the Honble Supreme Court has held as under:

“It is settled law that in a case rests on circumstantial evidence every link in the chain of circumstance necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and all the circumstances must be consistent only with the guilt of the accused. In the present case, the prosecution established only a strong suspicion against the appellant which is not sufficient to lead to the conclusion that appellant robbed the ornaments of the deceased and caused death of the deceased.”

20. Again in **Suresh and Another V State of Haryana (2018 KHC 6620)** Honble Supreme Court propounded the method of application of circumstantial evidence in following paragraph:

“39. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available evidences, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of 'chain link theory' and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the 'chain link theory' since Hanumant Case (supra), which of course needs to be followed herein also.”

21. Hence, it is firmly entrenched in legal doctrine that when a criminal case rests solely upon circumstantial evidence, the onus lies squarely on the prosecution to persuade the court that the five golden pillars stand firmly established. The court, in turn, is duty-bound to accord credence to these factors, deeming them "proved" in accordance with the mandate of Section 3 of the Evidence Act. Honble Supreme Court held in **Pradeep Kumar V State of Chattisgarh ( 2023 KHC 6263)** that; “The presumption of innocence remains in favour of the accused unless his guilt is proven beyond all

reasonable doubts against him. (**Babu v. State Kerala, 2010 (9) SCC 189**). The cherished principles or golden threads of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly which was done by the Courts below.”

**MOTIVE:**

22. One of the well-established principle is that while direct evidence detailing the manner of a murder is absent and if constructing the case on circumstantial evidence the significance of motive, forms the crux assuming paramount importance. The Apex Court, in **Pannayar v. State of Tamil Nadu (2009 KHC 978)**, elucidated that the absence of motive in a circumstantial evidence-dependent case is more favorable to the defense. In **Nagaraj V State (2015(4) SCC739 -Para13)** Honble Supreme Court held that “Furthermore, motive assumes great significance where a conviction is sought to be predicated on circumstantial evidence alone, and its absence can tilt the scales in favour of the Accused where all links are not avowedly present”.

23. When the prosecution claims a specific motive, it necessitates a meticulous examination of evidence, as direct insight into the accused's state of mind is often unavailable. In the case at hand, the essence of the prosecution case unfurls depicting the accused are members of RSS and harbouring deep-seated animosity towards Muslims, especially within the vicinity of the said mosque and, they actively sought out any Muslim individual to target, ultimately trespassed into the hallowed precincts of the said mosque, a sanctum revered by many and executed the murder of the victim. So, in this case, to establish the aforementioned motive, the

prosecution must prove that the accused, as integral members of the RSS, harboured communal animosity against Muslims.

24. The learned Prosecutor in page 101 of notes of arguments submitted that the prosecution is only bound to prove that there is some enmity on the part of the accused towards Muslims. According to the learned Prosecutor its a generally impossible task for the prosecution to prove what precisely impelled the murderers to kill a particular person and the prosecution is not bound to prove the motive beyond reasonable doubt. To support this argument the learned Prosecutor relied following paragraph of the judgment of Honble Supreme Court in **RavinderKumar V State of Punjab (2001 KHC 919)**.

“18. The third contention is that the motive alleged by the prosecution was not established and hence the area remains grey as to what would have impelled them to liquidate the broker. No doubt it is the allegation of the prosecution that the appellants owed a sum of Rs. one lakh to the deceased and it might not have been possible for the prosecution to prove that aspect to the hilt. Nonetheless some materials were produced for showing that there were transactions between the appellants and the deceased and that they had some account to be settled. Only thus far could be established but not further. It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that the prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it

useful to refer to the observations of this Court in State of H.P. v. Jeet Singh (1999 (4) SCC 370 .

"33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

25. Applying the above quoted principles settled by Honble Supreme Court, the case on hand demands ascertaining of alleged motive against the accused. In the charge, which was amended after allowing the petition, CrIMP 3047/2019 submitted by the prosecution, explicitly alleges that the only motive for the murder of the victim is the enmity of the accused, attributed to their active membership in RSS as the Hindu fanatics. Along with the petition draft charge also submitted by the learned Prosecutor in which he is specifically alleged that the accused are fanatic workers and believers of RSS and belonging to Hindu community and they have personal enmity towards the Muslim community in general. Thus, it is incumbent upon the prosecution to establish, at least with reasonable probability, that the accused are indeed members of the RSS and that they harbour animosity towards

Muslims. The perceivable fact is that the prosecution presented an extensive lineup of witnesses, a zealous pursuit to prove the motive attributed to the accused.

26. First set of evidence introduced by the prosecution to prove the alleged motive that also as the beginning of hostility of accused towards the community of deceased, is the oral testimony of PW20 and 21, the two Civil Police Officers. The two police officers attended election duty in Govt LP School Meppugiri on 16.05.2016, as it was the polling booth for the State Assembly Election. Their testimony is connected to A1 only that on that day he was beaten up by few Muslim youth and PW20 informed this matter to the mobile patrol wing and a Sub Inspector (PW39 ) arrived there. No case was registered in that incident. A1 is known to the police officers as his mother is working in a canteen near to the police station. A1 returned after casting his vote. During the examination, prosecution side put no question to these witnesses in connection with the affiliation of A1 to RSS. It is relevant to note that PW20 deposed that A1 is known to them through his mother. No attempt was made by the investigating officer to record statement of mother of A1 to ascertain her knowledge about the association of her son to RSS. PW39, the former Additional Sub Inspector of the Kasaragod police station, was the officer who arrived at the polling booth where the incident described by PW20 and PW21 occurred. However, he provided no explanation for the reluctance to register a crime in the alleged incident, nor for failing to investigate the details of the person who attacked A1. The non registration of a case even after the incident happened in a polling booth in front of police officers where a Sub Inspector also arrived, is a circumstance against the prosecution allegation. Neither A1's association with RSS nor his communal hatredness

was addressed in the testimony of PW20, 21 and 39. The failure of the investigating officer to record the statement of A1's mother to ascertain her knowledge about his RSS affiliation, coupled with the reluctance to register a case despite the incident occurring in the presence of police, undermines the veracity and usefulness of the testimony of these witnesses in proving the allegation of A1's animosity towards Muslims. So the testimony of PW20 and 21 cannot be treated as a torch light to prove the motive alleged against A1.

27. PW8 is also introduced as the witness for the same alleged incident happened on 16.05.2016. He deposed that he was the Block Secretary of Congress party and Booth Agent of Congress party for Booth No.3 of Meppugiri election booth for the Legislative Assembly Election held on 16.05.2016 and at about 2 pm, he saw brawl between Hindu youth and Muslim youth outside of the polling booth. He testified that the youngsters of Hindu group are known to him. Thus he identified A1, as he is familiar by seeing him in the canteen of the Kasaragod police station and in the town. The police came and removed A1 from there. In the cross examination it is proved that his identification of A1 has no basis. He answered that none of the features of A1 were stated to the police and in the alleged incident no case was registered by the police. He is the member of the JamAt Committee organised in connection with death of the victim. Moreover if he was the booth agent of that election, definitely there will be record for that. Nothing was produced to support his contentions and claims. Therefore, the testimony of this witness also not reliable to prove the motive, especially the incident was happened 10 months prior to the incident of this case.

28. Prosecution introduced PW23 and PW24, an additional pair of witnesses, to fortify the purported motive behind the alleged acts of the

accused. The duo recounted their presence at a badminton tournament near the very same mosque, merely two days prior to the victim's tragic demise. Relying to their testimony, the prosecution contends that the accused made a brazen attempt to assail them during this gathering, thereby lending credence to the narrative of animosity harboured by the accused towards the community of the victim.

29. PW23 testified that after the tournament, while he was sitting in a car at midnight, individuals wearing helmets and appearing as intoxicated approached them on a motorcycle, hurling vulgar language. One of the riders brandished a knife and threw a beer bottle at them. In response, PW23 and others retaliated by pelting stones at the assailants, who then fled on the motorcycle. It's worth noting that there were policemen present at the location, with a police AR Camp situated 20-25 meters away. During cross-examination, PW23 admitted that no police case was registered based on that incident.

30. PW24 corroborated the same incident related to the badminton tournament. He further testified that the police arrived after being informed, and the riders returned and the pillion rider thrown beer bottles against them in the presence of police. He noticed the registration number of the motorcycle as KL 14E 5992, with A1 as the pillion rider and A2 as the rider. However, during cross-examination, he admitted that the riders were wearing helmets and he did not claim to the investigating officer that he identified A1 and A2. An unanswered question arises is that how was it feasible for PW23 and 24 to identify the helmet-wearing riders of a motorcycle at midnight, especially when the riders were strangers. Furthermore, if the statements of

this witness are true, it constitutes a serious offense. However, no case was registered for the alleged incident, despite it occurred in the presence of heavy police personnel.

31. Therefore, the statements of PW24, identifying the motorcycle and alleging that A1 and A2 threatened both PW23 and 24 two days prior to the victim's death, along with their identification of A1 and A2 for the first time in court, remains shrouded in doubt. The prosecution side attempted to prove that there was a Shuttle tournament on the alleged date and for that .PW74 is the Writer of Sub Divisional Police Office, Kasaragod was examined and through him admitted Exts.P84 to P88 applications for mike permission for Badminton and Kabadi tournament held on 18.03.2017 and Ext.P89, the notice of the Shuttle Tournament. But PW23 and 24 have not expressed any sentiments of communal hatred linking the accused with the RSS. Furthermore, the failure of the police to register any crime during the incident adds to the skepticism against the prosecution claims. Hence, the combined impact of the above facts suggests that the testimonies of PW23 and PW24 lack the credibility to serve as evidence supporting the alleged communal motive attributed to the accused.

32. PW32 is examined to establish that A1 and A2 harboured hostility against Muslims. He stated that on the third day of the Ramzan month, while he was heading to the same mosque around 7 PM, two individuals on a Honda Activa scooter approached him. The pillion rider assaulted him with a bottle before fleeing the scene. As a result, he was hospitalized and received medical treatment. On the basis of Ext.P21 FI Statement given by him Crime No.378/2016 was registered by Kasaragod. The rider of the scooter was

described as lean, while the pillion rider was characterized as overweight. In response to the learned Prosecutor's question about identifying the assailants, this witness affirmed that following the incident of the case on hand, photos of A1 and A2 were published in the '*Uttaradesom*' newspaper. Subsequently, from the police station he identified both A1 and A2 as the individuals who attacked him. The motive behind the attack was attributed to communal hostility towards Muslims, as he wore a cap at the time of the incident.

33. But in the cross examination the credibility of his testimony was impeached. He admitted that two days prior to the attack, he was threatened by a person named Prasanth in the presence of one Faraz, leading him to doubt whether he was indeed attacked by Prasanth. Additionally, he did not provide the names of the assailants or describe their physical features to either the doctor or the police officer who recorded his statement. It is also crucial to note that the communal aspect, including the fact that he was wearing a cap at the time of the attack, was not mentioned to the police. He only saw the photos of the accused persons in the newspaper ten days after the death of the victim, and A1 and A2 were shown to him by the Sub Inspector of the police station. It is also notable that investigating officer made no attempt to find out the scooter stated by this witness. The final statement of this witness during re-examination, indicating that the attack against him was orchestrated at the behest of one Prasanth, further bolstered the prosecution attempt to connect the accused with the alleged motive.

34. The testimony of PW39, also relied by the prosecution side to prove the alleged third incident connecting the communal element of the motive

alleged. His testimony is that the investigating team of this case informed that the accused were also involved in Crime number 378/2016 of his police station. This information was supported by the defacto complainant of that case as he came to know the accused through a newspaper. Consequently, the names of the accused were added in Crime No.378/2016, and a report was submitted by the Sub Inspector in charge of the Police Station. Subsequently, Ext.P35 report was also submitted in that case, adding Section 326 of IPC. During cross-examination, this officer admitted that Ext.D4 is the statement given by PW32, the defacto complainant in crime No.378/2016. Ext.D5 is the scene mahazar prepared by him in that case, which does not indicate the availability of street lights at the scene of occurrence. In Ext.P35, it was not stated that enmity towards Muslims was the reason for attacking the defacto complainant of that case. Additionally, this officer testified that PW32 did not provide him the physical features of the accused. According to the records of Crime number 378/2016, there is no connection to the communal factor, and no offense is charged under Section 153A of IPC against the accused. The comprehensive analysis of testimony of PW39 and 32 unequivocally underscores the dismal failure of prosecution to substantiate any evidence supporting the alleged motive against the accused.

35. PW33 was also brought forth to establish the aforestated motive of the accused persons. His brother is the registered owner of the motorcycle bearing No. KL 14 E 5992, and he himself is a Kabadi player. On 18.03.2017, he used the said motorcycle to attend a Kabadi tournament, parking the vehicle on the roadside. Upon returning, he found the motorcycle missing, leading him to submit Ext.P22 petition to the police, reporting the theft of his motorcycle. Subsequently, the case was settled with the accused persons of

that case. He has no knowledge about the specific offense or the identities of the offenders involved in that case. The counsel for the accused persons of that case provided him with ₹15,000, and upon receiving the aforementioned amount, Ext.P23, the compromise petition, was filed in the court of the Judicial Magistrate of First Class-I, Kasaragod, in CC.46/2017. When he visited the police station to submit the petition, he noticed his motorcycle, which had sustained damages, and the Flying Squad had brought the vehicle to the police station. He could not ascertain who took away the motorcycle. He identified A1 and A2 as the individuals present in court at the time of compounding the case regarding the motorcycle. No question was put to him by the prosecution side as an attempt to know the association of the accused with RSS and their alleged communal hostility. So this witness also revealed nothing to connect the motive alleged against the accused.

36. PW48 was introduced to identify A1, as both had worked together in a bakery at Karanthakkad in the year 2016. He testified that A1 had worked for three months in that bakery, and he deposed that 980994809 is A1's phone number as it was saved in his phone. However, during cross-examination, this witness could not recall the mobile phone number of A1. Additionally, he was unable to determine from which mobile phone number A1 had called him. Here also there was no question from prosecution side to this witness as an attempt to ascertain the link of A1 with the RSS and his attitude towards the Muslim community. The silence of the prosecution, as they refrained from asking any questions and reluctance to put a suggestion to this aspect is sufficient to disbelieve the allegations of communal element

stated in the charge. Hence, the prosecution failed to uncover anything from this witness to support their case; instead, it went against the allegations in charge.

37. PW49, a resident of Kelugudde, testified that A2 is his close friend and they played cricket together, including with A1, near the ground of Ayyappa Bhajana Mandiram at Kelugudde. A1 resides near that ground. During cross-examination, this witness stated that four days after the incident in this case, the photos of the accused persons were shown on Manorama News Channel. The point that emerged from his testimony is that, being a Muslim, none of the accused harbored any hostility towards him. So the testimony of this witness seriously damaged the alleged motive connected to communal element alleged against the accused.

38. PW56 and 57 were examined as friend of accused and both turned hostile to the prosecution denying recording of their statement by the police in the case. PW56 is a resident of Meppugiri near to Durga Parameshwari Temple and nothing was revealed from him in support of the prosecution case. Exts.P57 to P58(j) are the contradictory statements denied by these two witnesses.

39. PW81 to 84 were introduced by the prosecution as followers of RSS and friend of accused but they also turned against prosecution denying the statements produced by the Investigating Officer. The learned prosecutor argued that PW81 even though turned hostile to the prosecution case he admitted A1 to A3 are RSS workers. The point highlighted by the learned Prosecutor is the answer given by PW81 in page 2 that അജേഷിനെയാ.

നിമിനെയും അഖിലിനെയും എനിക്ക് പരിചയമുണ്ട് അവർ RSS പ്രവർത്തകരാണ്. He denied Ext.P110 series statement produced by the investigating officer recorded u/s 161 of CrPC and these statements are marked as contradictions. He admitted that A1 is residing near to his home. But to the question asked by the learned Prosecutor after granting permission under Section 154 of Evidence Act he replied that പ്രതികൾ മൂന്നുപേരും എന്റെ കൂടെ RSS ൽ പ്രവർത്തിക്കുന്നവരാണെന്നും എന്റെ ഉറ്റ ചങ്ങാതികളാണെന്നും പറഞ്ഞാൽ ശരിയല്ല ” In the cross examination this witness replied that “ അജേഷ് RSS കാരനല്ല അവരുടെ വീട്ടുകാർ CPIM കാരാണ് ”

40. PW81 reiterated that he has no connection with A1 and 3 and A2 only known to him. The statements denied by him were marked as contradictions, Ext.P113 series. Ext.P114 series are the contradictory statements of his previous statement recorded u/s 161 of CrPC produced by the investigating officer. PW82 was examined as the friend of A2. When the photograph of A2 shown to him he identified it and marked as Ext P111. Ext P113 series are the denied previous statements of him recorded under Section 161 of CrPC. In the cross examination he replied that he cannot say the authenticity of photographs shown to him. PW83 also denied Ext 114 Series, the statements produced as recorded under Section 161 of CrPC. In the cross examination Ext D4 marked as the contradictory statement. PW84 also denied Ext.P115 series statements recorded u/s 161 of CrPC.

41. PW84 also introduced as the friend of the accused but he turned hostile to the prosecution denying the statements produced by the investigating officer recorded under Section 161 of CrPC and the denied statements were marked as Ext P115 Series. He admitted only one fact that he is a member of RSS and A1 is known to him. He categorically denied that

A1 to 3 are not members of RSS. The notable fact is that even though permission was granted to put questions under Section 154 of Evidence Act, not even a suggestion put by the learned Prosecutor to PW 81 to 84 in connection with the allegation of the hostility of the accused towards Muslims and their antecedents. There is no explanation for the failure to use the opportunity by the prosecution as these witnesses were examined as the close associates of all accused.

42. PW53 was examined to prove the previous incident claiming that the accused persons sustained injuries happened on the date of badminton tournament. PW53 is the Junior Consultant of Forensic Medicine, Government Hospital, Kasaragod, who examined A2 on 24.03.2017 at 11 am, A1 at 11.20 am and issued Ext P51 and 52 certificates. The accused were brought to this doctor for medical examination after the arrest of them by PW97 in this case. The injuries were caused by stone pelting and fall from the bike five days prior to their medical examination. Who gave this information is not stated by him. In Ext P51 following injuries were noted on the examination of A2:

- 1) Healing wound 3 x 0.2 cm oblique on the right side of forehead lower inner and 2cm root of nose, and just out to midline.
- 2) Fracture of left upper central incisor tooth. Gums normal no bleeding.
- 3) Healing wound 3x3 cm on front of right knee and was covered with pinkish granulation tissue at centre and adherent black scab at periphery.
- 4) Healing abrasion 4 x 3 cms on outer aspect of right elbow.
- 5) Healing wound 10 x 2 cms on the left side of front of chest, 4 cm outer to midline and just below collar bone.

- 6) Healing abrasion 2 x 1 cm on back of right hand 6 cm below wrist.
- 7) Healing abrasion 5 x 2 cm on front of left leg, 10cm below knee.

Injuries 1, 4, 5, 6 and 7 were covered with loosely adherent brown scab injuries were old minimum 4 days and maximum 7 days.

In Ext P52 following injuries were noted after the examination of A1:

- 1) Healing wound 2 x 2 cm on under aspect of chin across midline.
- 2) Healing wound 4 x 3 cm on right side of abdomen 6 cm outer to midline and 20 cm below costal margin.

1 and 2 were covered with loosely adherent brown scab injuries were 4 to 7 days old. Certificate bears signature of the doctor and seal Ext.P51 marked.

Alleged history was mentioned by the subjects – pelting of stones and fall from bike.

Ext.P52 to 54 are the OP tickets issued for A3, A1 and A2 respectively and Ext.P55 is the proceedings of the Hospital Superintendent signed by this doctor. In the cross examination he explained that the history of the injuries noted in Ext.P53 and Ext.P54.

43. Ext P123 to 127 photographs are another material relied by the learned Prosecutor as the strong evidence to prove the alleged motive of the accused. According the learned Prosecutor among these photographs Ext P127 series proved that A2 sustained injuries on 19.03.2017. So the argument of prosecution is that it is the proof for the previous incident connected to the Shuttle tournament and A2 sustained injuries after falling from motor cycle. The claim is that the injuries of A2 caused in the incident is the evidence for the clash between the members of Muslim community two days prior to the incident. Even if the contention that A2 sustained injuries there is no evidence that the alleged incident was communal and thereafter

A2 had vengeance against the Muslims. The unanswered area is that if there was communal clash why the police failed to register a case. The learned Prosecutor admitted that no case was registered against any of the accused in connection with any communal clash. Considering the testimony of PW53 it is only revealed that A1 and A3 sustained injuries and cause of injuries was stone pelting and fall from bike. The learned Prosecutor vehemently argued that the evidence adduced by PW53 and Ext P51 and 52 certificates issued by the doctor are well corroborated by Ext P127 photographs and claimed that the injury caused to the accused was the result of clash with Muslim youths. But in these OP tickets there is nothing suggesting that who gave that information for the reason of the injuries. PW53 examined the accused on 24,03. 2017 and certified that the injuries are 4 to 7 days old. So on which date the injuries were caused is not proved. PW23 and 24 stated that alleged incident on badminton tournament was on 18.03 2017. Even if the versions are believed there is chance for causing injuries on 17.03.2017 also. Already found that there is no evidence to prove that on that night there was communal clash between the accused and Muslim youths as alleged by the prosecution. So the injuries and the photographs could not brought out any fact connected to the communal hatredness alleged against the accused and therefore Ext P51 to 54 and Ext P123 to 127 and the testimony of PW53 and PW86 cannot be used as evidence for hatredness of the accused towards Muslims as the proof for the motive alleged against the accused.

44. The outcome of the above analysis of evidence presented by the prosecution is that there was no incident connecting the allegation of hatredness of the accused against Muslim community. Three incidents specifically pointed out by the prosecution are no way connected to any

communal element. The explanation submitted by the learned prosecutor that the case was not registered for these alleged incident is that there was no complaint. This explanation has no face value for two reasons, namely the two incidents were happened in the presence of police. So no material is found to substantiate the motive alleged against the accused. Therefore the prosecution miserably failed to prove alleged motive in this case.

### **Analysis of the testimony of PW2**

45. In **Malkhansingh and others v. State of M.P. (2003 (5) SCC 746)**, the Apex Court considered the evidentiary value of the identification in Court by the witness and held as follows:-

“7. It is true to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this court. The facts, which establish the identity of the accused persons, are relevant under section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when for example the court is impressed by a particular witness on whose

testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration.”

46. The learned Prosecutor's perspective is that PW2 is a pivotal witness, and his testimony holds significance under Section 6 of the Evidence Act, as he recounted what he observed and encountered within the mosque at the pertinent moment. In support of this argument reliance was given to an unreported judgment of Hon'ble High Court, **Rijo Joseph V State of Kerala ( Crl. Appeal 1804/2005)** The learned Prosecutor gave stress to the testimony of PW2 that the image of A2 was imprinted in his mind, is unbeatable as he saw clearly A2. So the prosecution argument is that the testimony of PW2 is constant and sufficiently corroborated it by the TIP and the testimony of witnesses who immediately reached the mosque. The learned prosecutor pointed out that the immediate reaction of PW2, by announcing through loud speaker of the mosque about the attack against the mosque also relevant fact to believe his testimony. So according to the learned Prosecutor, the presence of A2 and his attack against PW2 and the Mosque are well established.

47. Relying Ext P97 the site plan, the argument of the defense side is that from the alleged spot where PW2 stood, it is impossible to see a person standing near to the owl tank. The learned counsel pointed out the existence of stair case in between the tank and the spot. Another point argued is that no finger print or any thing was recovered from the alleged spot connecting A2. From the 5 features testified by PW2 claiming that A2 was the person pelted stone against him, it is not possible to identify a person, who is also a stranger to him. These features were not stated to any person who arrived at the Mosque, including the investigating officers, PW58 and PW97. The color of the T-shirt testified by him and the shirt produced as MO3 are different. PW89, who conducted the TIP failed to state in any of the document, Ext P129 and P130, about the physical features and age of the suspect and non suspect. According to the learned defense counsel the physical features of the accused are different, especially A2. Ext P129 and 130 were prepared with out application of mind. So, the procedure adopted by the learned Magistrate in conducting TIP itself is sufficient to reject the identity of A2 stated by PW2. So the learned counsel argued that TIP cannot be used as material to prove identity of the accused and thus the testimony of PW2 pointing A2 is unreliable.

48. In **Rajesh Yadav V State of U.P. (2022 (1) KHC 812)** Honble Supreme Court propounded the method of appreciation of evidence in criminal trial in following paragraphs:

12. Section 3 of the Evidence Act defines "evidence", broadly divided into oral and documentary. "Evidence" under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an "Adjective Law"

highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.

13. The definition of the word “proved” though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the “matters before it”. The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.

14. Matters are necessary, concomitant material factors to prove a fact. All evidence would be “matters” but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court’s sojourn in deciphering the truth. Thus, the definition of “matters” is exhaustive, and therefore, much wider than that of “evidence”. However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.

15. Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary

evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

16. In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word “matter”, and for that purpose, the definition of the expression of the words “means and includes”, meant to be applied for evidence, has to be imported to that of a “matter” as well. Thus, a matter might include such of those which do not fall within the definition of [Section 3](#), in the absence of any express bar.

17. What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.

18. The word “prudent” has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be

understood from the point of view of a common man. Therefore, a judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a judge. It is only after undertaking the said exercise can he resume his role as a judge to proceed further in the case.

19. The aforesaid provision also indicates that the court is concerned with the existence of a fact both in issue and relevant, as against a whole testimony. Thus, the concentration is on the proof of a fact for which a witness is required. Therefore, a court can appreciate and accept the testimony of a witness on a particular issue while rejecting it on others since it focuses on an issue of fact to be proved. However, we may hasten to add, the evidence of a witness as whole is a matter for the court to decide on the probability of proving a fact which is inclusive of the credibility of the witness. Whether an issue is concluded or not is also a court's domain.

Appreciation of Evidence:

20. We have already indicated different classification of evidence. While appreciating the evidence as aforesaid along with the matters attached to it, evidence can be divided into three categories broadly namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters. The aforesaid

principle of law has been enunciated in the celebrated decision of this Court in **Vadivelu Thevar v. State of Madras, 1957 SCR 981**:

“In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that “no particular number of witnesses shall in any case, be required for the proof of any fact”. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s.134 quoted above. The section enshrines the well-recognized maxim that “Evidence has to be weighed and not counted”. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge

comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion.

It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars

by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.” Hostile Witness:

21. The expression “hostile witness” does not find a place in the Indian Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on

change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.

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35. The last case we need to concern ourselves is *Namdeo v. State of Maharashtra* [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773] , wherein this Court after observing previous precedents has summarised the law in the following manner: : (SCC p. 164, para 38) “38. ... it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony

of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule which remains the bulwark of this system, and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desire to do so. Similarly, he may not be in a position to provide evidence in an impartial manner, when it involves his interest. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favourable colour. These are most controlling considerations in respect to the credibility of human testimony, and should never be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case.”

30. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect as no mathematical calculation or straightjacket formula can be made on the

assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial judge. In fact, this is the real objective behind the enactment itself which extends the maximum discretion to the court.”

49. Therefore, the efficacy of PW2's testimony in proving A2's involvement in the alleged incident needs to be scrutinized in accordance with the dictum laid down by the Honorable Supreme Court. The pivotal question revolves around whether A2 was indeed the individual purportedly standing near the oil tank of the mosque and throwing stones at PW2. PW2 is the sole witness presented by the prosecution as the material witness to prove the involvement of A2 in the alleged attack against the mosque and victim. PW2 deposed that the victim, a Madrassa teacher from Karnataka, stayed in the next room on the western side of oil tank of the mosque's ground floor. Apart from the victim and PW2, no one else was on the ground floor, but three Madrassa teachers lived in a hall in the up stair. On 20.03.2017 after 11.45 pm, PW2 went to sleep. Later, he heard the sound of opening of the aluminum door near the oil tank and assumed that other teachers were going to the washroom. Soon after, he heard crying and opened his room's door. Near to the aluminum half door he spotted a young man, around 20 years old, wearing a saffron dhoti and dark blue full-sleeve baniyan, with a lean physique. Upon seeing PW2, the young man hurled stone, frightening PW2. He quickly closed the door, then opened another door to access the mosque's prayer hall, where he used the loudspeaker to announce that the mosque was under attack. The image of the young man was etched in his mind. Afterwards, he urgently called PW6, the Secretary of the mosque committee, on his mobile phone, urging him to come to the mosque as soon

as possible. Subsequently, many people arrived at the mosque. Emerging from his room, he noticed people entering and exiting the deceased's room. He followed suit and arrived at the scene, where he found the deceased brutally murdered. Shortly after, Mosque committee members and the police arrived, to whom he recounted the witnessed incident. However, when he attempted to state the incident to the police, he was too frightened to speak. He was then taken to the hospital, where the doctor advised rest. At about 4 am, he returned to the mosque to take rest.

50. PW2 in the examination in chief stated the reason for opening his room, at the time of alleged attack against the victim, is hearing of crying sound and when came out, a young man wearing dark blue color full sleeve baniyan and saffron dothi with lean body and face approximately aged 20 years was standing near to the aluminum half door. He pelted stone against PW2 and the face of that man was imprinted in his mind. These are the testimony of PW2 pointing A2. In the cross examination he replied that these facts were stated to the police while recording his statement. But PW58, the first officer, who is the DySP confirmed that none of the previous statements recorded by the police show such facts. PW2 replied further that he cannot remember whether he has stated to the police that the face of the person who pelted stone was imprinted in his mind. Therefore the strenuous effort of the learned Prosecutor in the argument that the testimony of PW2 that face of A2 was imprinted in the mind of this witness is sufficient to believe the facts testified by PW2 as A2 was the man stood inside of the mosque and guarded A1 while attacking the victim, is unacceptable as the facts testified by PW2 connecting A2 is introduction of new facts in the examination in chief, as PW2 has not stated such facts in any of the previous statement of him produced in

this case. Moreover, these facts were not stated by him to PW1, PW3 to 6, PW60 and PW61 who arrived there immediately after the incident. PW1 only stated that somebody gathered there stated that somebody pelted stone against PW2 and that person run away. PW6 is the another person who stated something in connection with what prosecution claimed that PW2 stated facts about A2 immediately after the incident. The statement of PW6 is that “റിയാസ് മാലവിയെ ആരൊക്കെയോ ചേർന്ന് കൊലപ്പെടുത്തിയത് എന്നും ഒരു കേട്ട് വാതിൽ തുറന്നു നോക്കിയപ്പോൾ ഒരാൾ കല്ലെടുത്ത് എറിയെടാ എന്നും പറഞ്ഞു”

51. So, from the evidence of PW1 and 6 also it is clear that PW2 has not stated none of the physical features of the man allegedly pelted stone against PW2. The testimony of PW1 and PW6, PW58, PW60 and PW61 mainly relied by the prosecution side as *res gestae* claiming that the identifying physical features of A2 are revealed by PW2 immediately after the incident and therefore, the testimony of these witnesses are reliable and corroborative what PW2 stated with respect to the identity of A2. The analysis of all these oral testimonies shows only one conclusion that the claim of PW2 about the face of the man who pelted stone was imprinted in his mind is new fact introduced only at the time of examination and therefore it cannot be relied as an evidence which leading to the identity of A2. In the cross examination to a question PW2 further replied that immediately after opening the door stone was pelted against him after asking “ആരൊടാ എന്തൊടാ എന്ന് ഞാൻ ചോദിച്ചപ്പോൾ ആണ് കല്ലെറിഞ്ഞത്”. This question is another new fact introduced by PW2 during the examination which further fueled doubt in the testimonies of PW2. The learned Prosecutor relied the judgment of the Hon'ble High Court in Criminal Appeal No.1804/2005 in Rijo Joseph v State of Kerala to support the argument of *res gestae* claiming that the reactions of

PW2 after the incident is relevant and a proof for the identifying A2 as one of the assailant attacked the mosque and the victim. But considering the testimony of PW1, PW6, PW58, PW60 and PW61 none of the physical features, including color and type of the dress of the man allegedly pelted stone were stated by PW2 to any of these witnesses. The only relevant fact revealed by them is PW2 stated that he saw one person outside of his room and immediately pelted stone against him. Therefore, testimony of PW1, PW6, PW58, PW60 and PW61 cannot be used as a res gestae as a corroborative material connecting the identity of A2 and his presence inside the mosque near to the room of PW2 and the victim. So, the judgment relied by the learned prosecutor is not applicable for the testimony of PW2 connecting A2 to the incident.

52. The identification of A2 by PW2 is to be analysed in comparison with other facts testified by him with respect to the incident, his previous statements and explanation given in examination in chief and cross examination. The analysis of testimony of PW2 with respect to his identification of A2 reveals that for the first time during the examination in chief he has stated that the face of A2 was imprinted in his mind. His statement was recorded on 21.03.2017 by PW58. He was there at the time of preparing mahazar by PW58, the initial investigating officer. Even though PW2 was questioned by PW58 he has not stated any of the features of the man who stood outside of his room and also not stated that he asked, "ആരൊടാ എന്തൊടാ" to that man. PW58 in the cross examination clearly testified that PW2 has not stated that a person with lean face and body aged 20 years was standing near to aluminum half door and also his face was imprinted in his mind. PW2 has not stated any of the facts he stated in

examination in chief connecting the physical features and details of the dress to PW1, PW6, PW60 and PW61, who were arrived soon after the incident. The learned Prosecutor argued that the reason for the failure of PW2 to state the details of the man found to these witnesses is that PW2 was afraid of the incident. This explanation has no face value since nothing is there on record to substantiate that claim. At the same time PW2 deposed that he was afraid of after seeing the police. His testimony in the examination chief is that “കുറച്ചു കഴിഞ്ഞ് ഞാൻ police-ൽ പരാതി പറയാൻ പോയി . അവരെ കണ്ടപ്പോൾ ഞാൻ ആകെ പേടിച്ചു തളർന്നത് കാരണം അപ്പോൾ എനിക്ക് police-ൽ പറയാൻ കഴിഞ്ഞില്ല”. But before the arrival of the police in the mosque, he met PW1, PW6 and other neighbours of the mosque. So, he could have state the details the man found in front of him to these witnesses. Moreover, PW1 and PW6 have not stated that PW2 was tired and afraid of the incident. PW2 was taken to the hospital after the arrival of the police. So, the omission of PW2 to state any of the details stated by him in the examination about the person, who was allegedly stood near to the aluminum door opposite to his room, while interacting with PW1, PW6, PW58, PW60 and PW61 also cast doubt over the veracity of his testimony given in the examination in chief with respect to the identifying features of A2 claiming that he was the person who stood outside of his room at the time of the incident.

53. PW9 is another Ustad residing in the mosque. The prosecution relied his evidence to prove that along with PW2 and deceased he resided in the mosque and there were 5 people including him. The prosecution side relied his statement only to show that he also heard sound from the ground floor and also mike announcement. After some time, he along with other Ustad came down and saw the body of the deceased in his room and later

police and ambulance came and the deceased was taken to hospital. The reliance given by the prosecution side for his statement that he also heard PW2 stated to others that somebody pelted stone against him, so, he frightened and mike announcement done. He also identified MO10 knife from the room of the deceased which is the weapon used for animal sacrifice during Bakrid. But in the cross examination he answered that nobody is stated to him that stone pelted against PW2. So the evidence of this witness also not reliable and corroborative material to believe PW2.

54. Another point of argument of the prosecution side is that PW2 testified the details of the dress of A2. In the examination in chief he stated that blue coloured full sleeve baniyan and saffron colour dhoti were the dress of the man who found outside of the room near to aluminium half door. He identified MO2 as the dhoti and MO3 as the baniyan. In the cross examination after showing MO3 he admitted that for MO3 there are two 2 ½ inch width red and white line and a sticker written as 'Pope Jeans London'. These characteristic features which is easily identifiable even at night were not stated by PW2 to any person prior to the cross examination. Moreover, in his previous statements he has not stated that he can identify the saffron dhoti and blue baniyan. This omission is confirmed by PW58 who recorded the first statement of PW2. Considering the colour of MO3, it is too dark. Pointing out this noticeable colour of MO3, the learned defence counsel argued that if PW2 was able to notice MO3 he could have notice the red and white lines of the baniyan. But this crucial colours and writing in MO3 which are easy to notice were omitted by PW2. The learned counsel also pointed out that if the prosecution version is believed PW2 could see the young man at about 10 metres away from his position. So, it is not possible to identify the colour of the baniyan as it is dark blue resembling as black. On examination

of MO3, I found there is merit in the submission of the learned defence counsel especially, considering the width of the red and white lines in MO3. Having width of 1/2 inches in the front side of it. No question was put by the prosecution side to this witness to know his inability to identify these colours of MO3. There is no explanation from the prosecution side for the omission of these crucial facts, the easily identifiable two lines in different bright two colours of MO3 in any of his previous statement. After the alleged date of the incident, PW2 encountered MO2 and MO3 only during the examination. He simply deposed that MO2 and 3 are the dress of the man who stood in front of his room who pelted stone. How it is possible to say that MO2, a saffron dhoti, is the same dress of that man in the absence of any specific feature to identify it. The learned Prosecutor merely shown the two items to PW2 and the witness deposed that yes these are the dress of that man. No doubt the identification of MO2 and 3 in this manner by PW2 is illogical as he could not say anything about how he identified MO2 a saffron dhoti and MO3 T shirt. So, also the testimony of PW2 claiming that A2 was the person who pelted stone against him is unreliable and therefore affect credibility of his testimony and cannot be relied as evidence proving the charge framed against A2.

55. Another point argued by the prosecution side is that PW2 identified A2 in the TIP conducted by PW89, the Judicial Magistrate of First Class, and thus well corroborated testimony of PW2 that A2 himself was the person pelted stone against him. Following judgments are relied by the learned Prosecutor in support of this point of argument. **2014 KHC 4569 (Pargan Singh v. State of Punjab and Anbothor), 1987 KHC 897 (Rajesh Kumar v State of Haryana), 1989 KHC 222 (Francis Joy v. State of Kerala), 2003 KHC 1069(Malkhan Singh v. State of Madhya Pradesh)**

56. These judgments categorically held that TIP is not mandatory for every criminal case to prove the identity of the accused. In Pargan Singh's case (supra) Hon'ble Supreme Court held that the capability of a person who witnessed a horrible incident cannot forget the accused persons who committed that act and in a case like that incident even when the assailants remained before the witness only for 90 seconds that time is sufficient for the witness to remember the face. In Rajesh Kumar (supra) Hon'ble Supreme Court considered the possibility of identifying an assailant and availability of light at the place. Hon'ble Supreme Court held that evidence given by the investigating officer that the light at the place of occurrence was insufficient to prepare inquest. So, Hon'ble Supreme Court held that it cannot be said that there was no light and the place was dark.

57. In **Francis Joy's case (supra)** Hon'ble High Court held that,

"6. Identification of the accused in a test identification parade is not a legal requirement as a condition precedent to identification in every crime. It involves only a rule of relevancy under S.9 of the Evidence Act. Therefore, it cannot be laid as a uniform rule of law applicable in all cases that whenever identity of an accused is in dispute in a criminal case, his identification in Court could be accepted only if it was preceded by identification in a test identification parade during investigation, if he was not known to the identifying witness earlier. That will depend upon the weight which the Court is inclined to give to the identification made by the witness in the box in the facts and circumstances of a given case. Whether or not there is a test identification parade the substantive evidence is only the identification made before court. Identification during investigation in

a T.I.P, though done under the supervision of the Magistrate for its safety, is only a process in investigation. Its purpose and object is only to ascertain and verify whether investigation is moving in the correct line against the correct persons, especially when there is involvement of unknown or unidentified persons. Successful identification in a T. I. P is not an item of substantive evidence acceptable before court That is only a circumstance that could be taken into account as and aid in the assessment of the substantive evidence of identification in the witness box. Therefore, absence of test identification parade by itself is not a technical ground on which the Court must reject the identification by a witness even if it is otherwise found acceptable to Court. 7. In many cases it may be possible to make correct identification of previously unknown accused even without a test identification parade. A person may have one or more rarely peculiar features with which he could be easily identified and distinguished from others. These features may remain clearly in the memory and vision of an eye witness in spite of passage of time even though the opportunity for seeing him in action or otherwise may be little. That is all the more so when it is a memorable incident. In another case even without any such special or peculiar identifying features, one may be able to identify a previously not known accused on account of the time and opportunity to note a memorise his features and personality at the time of incident. The importance and interest of the incident to the witness is one reason why he should retain the identification in mind. There can be various reasons of that type which could enable a witness to identify a person. Whether in a test identification parade

or in court, identification is only identification. But we cannot forget the fact that the first is earlier in point of time when memory is fresh and it involves identification of the culprits not seen after the incident from among a group of persons. That may have a better sanctity. In the box it is only a question of identifying a person who is in the dock as an accused. By the time the witness might have also had opportunities of seeing and identifying him even otherwise. All these aspects will have to enter the judicial mind to assess the identification. If after such assessment the identification in court is found free from doubt, nothing prevents acceptance of the same. Absence of a test identification parade by itself should not deter the court from accepting the identification. The credibility and impartiality of the identifying witness, absence of reasons for false implication and circumstances indicating truth of the identification, should all enter the judicial mind in the assessment”.

58. In Malkhan Singh’s case (supra) Hon’ble Supreme Court reiterated the application of Section 9 of Evidence Act and the evidence of identification of accused during the trial by the witness. Hon’ble Supreme Court reiterated that identification of the person during the trial for the first time is inherently weak. The purpose of a prior TIP, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered TIP is as a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or

other corroboration. There is no provision in CrPC which obliges investigating agency to call a TIP and it do not constitute substantive evidence and these parades are essentially governed by Section 162 of CrPC. The weight to be attached to such identification should be a matter for the court of fact.

59. PW89 conducted TIP on 29.03.2017 from Central Prison, Kannur. Ext.P130 memorandum prepared for the TIP of A2. The learned Magistrate testified in examination in chief that PW2 identified A2. In the cross examination the learned Magistrate replied that age of non suspect No.3 is 38 years old, 4<sup>th</sup> non suspect is 34 years old, 5<sup>th</sup> non suspect is 30 years old. The learned Magistrate admitted that the non suspects were with identical physic. Physical features of A2 are not identical as he is slender than others. The non suspects 1 to 9 in Ext.P130 are not residing in Kasaragod District. It is also replied that non suspect 1, 2, 5 6 and 8 in Ext.P130 are Muslim by their name. The wearing style of dhotis of suspects and non suspects was not stated in Ext.P130. Age of A2 is 19 years. Non suspect No.3 in Ext.P130 is 30 years and non suspect 9 is 30 years old. The prostrating color on the forehead of any non-suspect was not documented, nor was the presence or absence of beard noted. Therefore, PW89's testimony indicated that some of the non-suspects who participated in the TIP alongside A2 did not share similar features, particularly regarding age.

60. The trite law is that TIP is not mandatory for the purpose of trial of a criminal case and the result of TIP is not a substantive evidence and even if there is TIP, the court has to scrutiny independently the fact testified by the

witness with respect to the identity of the accused. So Applying the principles propounded in the above quoted judgments to the case at hand, the testimony of PW2 and PW 89 with respect to TIP as the result of TIP, cannot be treated as a corroborative material to support the facts stated by PW2 in the examination claiming that A2 was the person who pelted stone against him on the alleged time.

61. PW97 in the cross examination replied that PW2 has not stated that he opened his door after hearing crying sound but he stated that the reason for opening his door was hearing of fuss from the adjacent room. As per the conclusion arrived by PW97, A2 attacked PW2 with a stone brought by him. Upon analyzing the testimony of PW2 in its entirety, along with the evidence deposed by PW58 and PW97, it becomes apparent that there are numerous implausible improvements and additions compared to what he stated during the investigation, as well as the introduction of new facts.

62. Next fact claimed by the prosecution as proved through PW2 is that MO4 is the stone pelted against PW2 by A2 and thus attempted to prove involvement of A2 in the murder of the victim. PW2 testified that there was light near to oil tank as well as inside of the Mosque in addition to street light. He deposed that MO4 is a concrete piece hurled against him by the man standing near to aluminium gate, which hit against entrance wall of his room (കവാടത്തിന്റെ ഭിത്തിയിൽ) and fallen in to pieces on the floor. The seizure of MO4 was effected by PW58 in his presence. PW6 testified in the cross examination with respect to MO4 that in front of the room of PW2 stone pieces were scattered and one among them, a handful piece of stone taken and it was a concrete piece. PW58, the first investigating officer who arrived

at the scene of occurrence within short time of the incident testified that on the wall in front of the room of PW2 above 1 ½ feet from the floor there was scratch for hitting a stone and concrete pieces are found below that on the floor. MO4 taken in to custody from the floor describing in Ext.P2 mahassar. In page 5 of Ext P2, PW58 described in Ext P2 there was a scratch for the blue tiled wall adjacent to the door frame of the room of PW2 “താഴെ കട്ടിലിനോട് ചേർന്ന് തെക്ക് ഭാഗത്തായി നിലത്തു നിന്നും 1½ അടി ഉയരത്തിൽ ചുമരിൽ കല്ലെറിഞ്ഞു ഉരഞ്ഞ പാടും താഴെ concrete കല്ലുകൾ പൊട്ടി ചിതറി കിടക്കുന്നതും കണ്ടു. കയ്യിലൊതുങ്ങുന്ന concrete കഷ്ണം ബന്തവസ്സിലെടുത്തു”. He also answered that PW2 has not stated to him MO4 can be identified by him. PW2 also not stated to him that in the street light and the light near to owl tank he saw that person. The question is that if such big stone hit against the tiled wall whether the scratch noticed by PW58 only will be produced. MO4 is a handful shapeless concrete piece. Considering the size of MO4 and other pieces found on the floor, it is unbelievable minor scratch alone will be the impact on the tiled wall if the stone was pelted as an attack against PW2. Admittedly nothing was detected from MO4 connecting A2. The explanation for non availability of finger print from MO4 is that due to its shape it was not possible to collect finger prints is acceptable but there is no evidence that any attempt was made by the finger print expert to find any finger print in MO4. So all the facts testified by these witnesses in connection with MO4 also cast doubt in the prosecution assertion connecting the presence of A2 in the mosque at the time when the victim was attacked. Therefore, applying the principle laid down in Vadivelu Thevar case(Supra) PW2 comes with in the category of wholly reliable witness and as such his testimony cannot be used as evidence to prove the involvement of A2 in the unfortunate death of the victim.

### **63. Analysis of PW3's testimony**

The prosecution placed significant reliance on PW3 to demonstrate the culpability of A1 and A3 in the incident. Expounding further, the learned Prosecutor argued that upon hearing the mike announcement from the mosque, PW3, who is residing little away from the Mosque rushed towards the Mosque on a scooter. Upon reaching his gate, he observed three individuals riding a motorcycle on the road in front of his residence. He noticed them and number of the motor cycle as KL 14 816, except one alphabet of that registration number. According the learned Prosecutor PW3 categorically deposed physical features of both A1 as he was the extreme pillion rider and A3 was the rider of the said motorcycle. The learned Prosecutor also gave importance to the route of the road through which the motor cycle passed. The learned Prosecutor claimed that it is the road exclusively coming from the said mosque as it situates at the end of the road. The accused have failed to give any explanation for the arrival of them in that road at that midnight. It is further claimed that PW3 identified MO5 motor cycle as well as A1 and 3 and in the TIP he clearly identified both A1 and A3 and thereby the testimony of PW3 identifying A1 and A3 is substantial evidence pointing against the accused. The prosecutor further posited that PW3's occupation as a professional driver imbues him with the acumen to swiftly identify individuals behind the wheel and relied on this witness to prove the involvement of A1 and A3 in the murder of the victim.

64. In reply the defence side strongly opposed the identification facts testified by PW3. According to the learned defence counsel, it was not humanly possible to identify strangers riding on a motor cycle at night in a fraction of minute by a person that also when he is rushing to a mosque

knowing the attack against it. The learned defence counsel relying the testimony of PW61, a police officer of Kasaragod police station, contented that there is police picket post just 25 metres away from the house of PW3. But none of the police officers of that police picket post were aware about the incident as well as the offenders even after the mike announcement from the mosque. The reply of the prosecution is that the police personal attached to the police picket post may be sleeping. The defense counsel replied that it is baseless that the police officers in police picket was sleeping at a place where communal tension existed. So the learned defence counsel rejected the evidence given by PW3 with respect to the identification of A1 and A3 and as well as the motor cycle.

65. Nevertheless, the presumption claimed by the Prosecutor that as an experience driver PW3 needs few seconds to notice driver, lacks verifiable support, as no substantive evidence corroborates it. PW3 is residing 250 meters away from the above said mosque and was a driver for 40 years in Gulf country. At that midnight of the incident, after hearing mike announcement that the mosque is under attack, when he began to rush to the mosque in his scooter and from the gate of his home, he saw a motor cycle riding three persons coming from the side of the mosque and passed his gate towards Kelugudde side. It was a Pulsar motor cycle with Registration No.KL 14 816. The letter after KL 14 was unable to read. He specifically deposed that he understood the rider and extreme pillion rider but could not see the face of lean bodied person who was sitting middle of both riders as his face was towards opposite side. The bike was very slow and there was big street light at that 'T' junction. The rider of the motorcycle appeared as a bearded man dressed in pants and a shirt, while the

passenger seated at the back was wearing a dhoti and a T-shirt. His testimony in the examination in chief is as follows “ബൈക്കിൽ 3 പേർ ഉണ്ടായിരുന്നു. motorbike കറുപ്പ് നിറം. Pulsar Bike – KL 14 – 816 – KL 14 കഴിഞ്ഞു ഒരക്ഷരം ഉണ്ടായിരുന്നു. അതെനിക്ക് വായിക്കാൻ കഴിഞ്ഞില്ല. Bike ൽ ഉണ്ടായിരുന്ന രണ്ടുപേരെ എനിക്ക് മനസ്സിലാക്കാൻ കഴിഞ്ഞു. Bike slow ആയിരുന്നു. turning ഉണ്ട് . gutter ഉണ്ട് . T junction ആണ് . വലിയ street light ഉം ഉണ്ട് . എന്റെ bike ന്റെ light ഉം ഉണ്ട് . Bike ഓടിച്ചയാളെയും ഏറ്റവും പുറകിൽ ഇരുന്ന ആളെയും ഞാൻ കണ്ടു. Bike ഓടിച്ചയാൾക്ക് താടി ഉണ്ടായിരുന്നു. Pant ഇട്ടിരുന്നു. ഷർട്ടിട്ടിരുന്നു. ഏറ്റവും പിറകിൽ ഇരുന്ന ആൾ മുണ്ടും ടി ഷർട്ട് പോലത്തെ ഷർട്ടും ധരിച്ചിരുന്നു. മുനിലിരുന്നയാൾക്ക് കുറച്ച് തടിയുണ്ടായിരുന്നു. back ലിരുന്നയാൾക്കും ഒരു മാതിരി തടിയുണ്ടായിരുന്നു. നാടുവിലിരുന്നയാളുടെ മുഖം എനിക്ക് ശ്രദ്ധിക്കാൻ കഴിഞ്ഞില്ല അയാൾ മറ്റേ ഭാഗത്തു തിരിഞ്ഞിരിക്കുകയായിരുന്നു, അയാൾ മെലിഞ്ഞയാളായിരുന്നു. These testimony of PW3 are the basis for the claim of the prosecution that he identified A1 as the rider and the extreme pillion rider of the motor cycle was A3.

66. The pattern of the identification of MO5 by this witness in the examination in chief also very relevant. During the examination in chief he identified MO5 as the motor cycle passed in front of his gate on that night . The front rider and extreme back rider of the motorcycle were A3 and A1 respectively. He identified that MO6 is the pants shirt and MO7 is the shirt of A3 at that time. MO8 is the dhoti and MO9 is the T shirt of extreme pillion rider of the motor cycle (A3). Thus the prosecution argument is that PW3 identified A3 as the rider of the motorcycle and A1 is the second pillion rider of it. He answered in the cross examination that he has nothing to say if in his statement recorded by the investigating officer there is no statement that he can identify the motor cycle. Admittedly, the distance from his house to the mosque is only 250 metres. He has testified that after hearing the mike announcement of mosque attack, he arrived the mosque within 3 minutes on

his Activa Scooter. He has not stated that he stopped the scooter after seeing the motorcycle. PW62, the Joint RTO, Kasaragod proved that, Ext.P68 is the RC particulars of the scooter KL14 K 6067 of PW3 and Ext.P69 is the driving license of PW3. The learned Prosecutor argued that from the reading the testimony of this witness it is to be believed that he stopped the scooter after seeing the motor cycle. This argument has no basis as there was no attempt for clarification during the re examination to clear the ambiguity.

67. Another striking fact revealed in the cross examination by same witness connected to the identity of MO5 is that he identified the motor cycle from back side and front side. The reason for looking the front side of the motor cycle is that it is not possible to understand the bike from back side. From the front side the registration number of MO5 cannot identify. His testimony in page 9 of the cross examination is as follows "Bike തിരിച്ചറിഞ്ഞത് പുറകിൽ നിന്നും മുമ്പിൽ നിന്നും നോക്കിയാണ്. പുറകിൽ നിന്ന് നോക്കിയാൽ മനസ്സിലാക്കാത്തതുകൊണ്ടാണ് മുന്നിൽ പോയി നോക്കിയത്. പുറകിൽ നിന്ന് നോക്കി ഒന്നു കൂടി മുന്നിൽ കൂടി നോക്കി. Checking ആയി. Pulsar എന്നറിയാൻ മുന്നിൽ പോയി നോക്കിയതാണോ (Q) side ൽ Pulsar എന്ന് എഴുതിയിരുന്നു (A). മുന്നിൽനിന്നു നോക്കിയാൽ MO5 Bike ന്റെ നമ്പർ മനസ്സിലാക്കാൻ കഴിയില്ല (Q). ഞാൻ പുറകിൽ നിന്നാണ് നോക്കിയത് (A). Bike കേളുഗുഡ്ഡെ ഭാഗത്തേക്കു പോയി . ഞാൻ പള്ളിയിലേക്ക് പോയി."

68. The learned Prosecutor argued that these facts testified by PW3 inconnection with the identification of MO5 during his examination in court. But from the reading of the testimony it is not possible to consider that these testimony are connected to the identification of MO5 from the court. The continuation of the sentence that "*Bike കേളുഗുഡ്ഡെ ഭാഗത്തേക്കു പോയി*", itself shows that the above sentence is not connected to the identification of

MO5 at the time of his examination. The argument of the prosecution can be accepted with respect to the point argued, if there was any question during the re examination seeking clarification.

69. Considering the assertion that he was rushed to the mosque after hearing the mosque attack through mike announcement, the possible conclusion is that he had only few seconds to watch others on the way to mosque. So also it is not believable that while rushing he checked the motor cycle and noticed the dresses of the riders and their body pattern. So, the testimony of PW3 that he could identify A1, A3 and MO5 is not a believable version. Therefore, the testimony of PW3 is inconsistent and improbable to the given circumstances he described, and thereby affects the foundation of his claim that A1 and A3 passed through the road in front of his home gate riding on MO5 at that midnight.

70. The learned Prosecutor submitted that the evidence given by PW5 well corroborated the evidence given by PW3 that three persons travelled on a motor cycle near to the road of the mosque. The only fact in connection with the subject matter as deposed by this witness is that he rushed to the mosque and on the way saw three persons on a bike. But he could not identify the persons as well as the motorcycle with features. So, the evidence of PW5 cannot be treated as a corroborative evidence for the testimony of PW3.

71. According the prosecution, PW3 proved that A1 to A3 are the riders of MO5 and were returning after committing the murder of the victim. The prosecution presented PW3 as the witness to identify the rider as A3.

The question is that the above features stated by PW3, are enough to identify a person riding on a motor cycle at midnight, who is quite stranger to him and how it is possible to identify a stranger based on pants and shirt are not answered by the prosecution. It is also pertinent to note that PW3 saw the movement of bike from his gate. This witness has not stated at least colour of the dress or any of the identifiable features of the rider. Only on the basis of the above said dress TIP was conducted and claimed that PW3 identified A3 is the person who was riding the motor cycle on that day. Same is the facts connected to the extreme pillion rider. By saying two features that he was a beard person wearing dhoti nobody can believe that after many days PW3 can identify that the pillion rider was A1.

72. PW62, the then Joint RTO of Kasaragod, who issued Ext.P67, the registration particulars of MO5, deposed that its RC owner is Amaresh.N, S/o Suresh. PW42, the mother of A3 and PW51 uncle of same A3 admitted that the RC owner is brother of A3. As far as considering the testimony of PW3 in the examination in chief and cross examination with respect to the number of motor cycle and features of the riders are badly inconsistent. If the version in the examination in chief is believed there are many doubts. He omitted to say from which side the number of the motor cycle was noticed. The registration number of a motorcycle is displayed on the rear side and front side of it. It is pertinent to note that except one alphabet all digits and alphabet of the registration number were testified by him. So, he can only say that either front or back side of the bike was noticed by him. But this fact is not stated by him and there was no question to this point from the prosecution side. It is also a notable thing that if he noticed the face of the riders of a moving motor cycle, definitely, it should be face to face. More over he has stated that he noticed the brand of the motor cycle by saying that it

was Pulsar. The brand name of MO5 is affixed on the both side of the petrol tank of it. To see this he has to see MO5 either side of it. So there is confusion about the watching of MO5 by him. This witness admitted that from his house the distance to the mosque is 250 and within three minutes he arrived the mosque from his home. Therefore, only few seconds were available to him to see the motorcycle if his testimony is believable. It is also pertinent to note that in the previous statement recorded by the investigating officer he has not stated that he was able to identify the motorcycle and for this omission there is no explanation. The interesting fact is that MO6 and MO7 are identified by this witness during the examination but nothing is stated by him as identifying features of the dress of the rider. MO6 and MO7 are introduced as the pant and shirt of A3. PW3 never stated anything about the shirt of A3. So, how can he identify MO7 is the shirt of A3 when he saw the riders is an unanswered question which uprooted the reliability of testimony of PW3 as well as identifying feature of A3. The above stated inconsistent versions of PW3 are enough to treat his testimony as untrustworthy.

73. PW97 admitted that PW3 has not stated to him that he can identify the bike and MO6 to 8. He has also not stated that the extreme pillion rider of the motor cycle was wearing T Shirt but stated that it was shirt. The point emerged from the identification of MO6 to 8 as the dress of A1 and A3 by PW3 from the witness box itself cast doubt as he simply answered that yes those are the dress of A1 and A3. So the facts stated by PW3 during the examination claiming that A1 a and A3 were passed in front of his gate in MO5 are unreliable. Therefore applying Vadivelu Thevar case(Supra), PW3 also comes with in the category of wholly unreliable with respect to the facts testified by him connecting A1, A3 and MO5.

74. Next relevant question is that what is the effect of TIP conducted for A1 and A3 through PW3. PW89, same Judicial Magistrate of First Class, Hosdurg who conducted TIP for A2 also conducted TIP for A1 and A3 at Central Prison, Kannur at 10 am on the same day and Ext.P129 is the memorandum issued by her. PW3 appeared before her in the prison in compliance of summons issued and satisfied that he was not influenced or coerced by others and appeared voluntarily. He was permitted to sit in a room after closing doors and windows and thereafter she met the suspects/accused and appraised them about the TIP procedures. Exts.P129 (a) and P129(b) are the name, address and signature of A1 and PW3 respectively. She selected 18 non-suspects with similar physical features and age group of A1 and A3 and conducted TIP at the Central Prison hall. The accused and non-suspects were in similar dress. A1 and A3 were mixed with non-suspects and PW3 was asked to identify them. Three rounds were conducted for TIP after shuffling their positions. PW3 identified both A1 and A3 correctly. The proceedings was started at 10.20 am and concluded at 12 noon. Ext.P129 (c) is the name, address and signatures of non suspects. Ext.P129(d) to P129(n) are the position of the non-suspects and accused lined up for TIP, statement of PW3, statements of A1 and A3 and index of TIP.

75. In the cross examination the learned Magistrate replied that the age of the suspect was in between 20 years and 25 years and age of the non suspect No. 3 is 38 years, 4<sup>th</sup> non suspect is aged 34 years 5<sup>th</sup> non suspect is aged 30 years. Three non suspect in Ext P129 and P 130 are same. The learned Prosecutor argued that just because of age difference of the accused and non suspects the result of TIP cannot be thrown. The argument of the defense side is that the wide age gap between the suspect and non

suspect are sufficient to disbelieve the TIP result since the procedure adopted by PW89 is clear violation of the settled rules. There is merit in the submission of the defence side considering the admission of PW89 that the age of A1 and A3 is in between 20 and 25. This answer itself shows that PW89 has not ascertained the age of the suspect prior to the TIP. So the identification of A1 and A3 by PW3 in TIP is remained in doubt. So for the above stated reasons, the result of TIP is not useful as corroborative evidence for the testimony of PW3 that A1 and A3 are the riders passed through the road in front to his house at that midnight.

76. So, the result of the analysis of evidence given by PW3 is that there are many unbelievable and doubtful areas touching to crucial claims of the prosecution and therefore his testimony claiming the A1 and A3 were passed in front of him on MO5 at the midnight of the date of incident are wholly unreliable and only liable to be rejected. So the evidence given by PW3, cannot be used against the accused as the proof for the charged offences.

#### **Recovery of Material Objects:**

77. The learned Prosecutor emphasized that the confessions provided by the accused, coupled with the consequential discovery of facts and material evidence, along with the presence of the deceased's blood on A1's clothing, collectively established that the murder of the victim was perpetrated by A1 to A3 out of communal hatred. According to the learned Prosecutor these facts are well corroborated by testimony of other witnesses and materials produced. The accused have offered no explanation for the facts

presented by the prosecution, and they maintained silence during their examination under Section 313(1)(b) of the CrPC.

78. The learned defence counsel emphatically resisted the claims of the prosecution side and submitted that, the evidentiary materials proffered by the prosecution, purportedly derived from disclosure statements of the accused, lack reliability due to the non observance of requisite procedural protocols by the investigative team. Furthermore, the credibility of the testimonies from PW2 and PW3 is impugned, as they are deemed untrustworthy, having been influenced, and are devoid of substance and merit.

**Section 27 of the Evidence Act reads as follows:**

“27. How much of information received from accused may be proved.— Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

79. This provision embodies the doctrine of confirmation through subsequent events. It holds that if information from an accused in police custody leads to the discovery of a fact, it validates the truthfulness of the information, whether it's confessional or exculpatory. However, the recovery of an object alone does not constitute such a discovery under this section. The interpretation of the "fact discovered" in the section includes the origin of the object and the accused's awareness of it, but the provided information must specifically relate to this aspect. That apart, it is trite that merely on the

basis of a fact discovered on the confession of an accused, while in police custody, the prosecution cannot seek his conviction without establishing other corroborating circumstances beyond any pale of dispute. The Apex Court in ***Baboo and Others v. State of Madhya Pradesh, 1979 KHC 762*** has held that in the absence of substantive evidence, recovery has no probative value. In ***Vijay Thakur v. State of Himachal Pradesh, 2014 KHC 4606***, Honble Supreme Court held that in a murder case based on circumstantial evidence, discovery evidence under S.27 of the Evidence Act cannot be wholly relied upon when chain of events is incomplete.

#### **Recovery of MO5:**

80. PW10 is the Junior Superintendent of Kasaragod Collectorate. He was examined as the independent official witness for the recovery of MO5, motor cycle. His testimony with respect to the recovery is that on 24.03.2017 the office of the District Collector over phone instructed him to reach the office of the investigating team of the case at 5.30 am. Thus, he reached there and at that time, Junior Superintendent of Election Sasikumar (CW28) , PW15 Junior Superintendent of (Revenue Recovery), PW12 , the Revenue Recovery Tahsildar Manoj \_were also present there. He and CW28 accompanied PW69, the Inspector of Crime Branch. In their room A3 was brought and PW69, instructed them to follow the team for the purpose of collecting evidence. A3 stated that the bike is kept in a place and if followed him he can point out the bike. Thereafter, face of A3 was covered and the team as led by A3 traveled through Kelugudde and when reached at the end of the road A3 instructed to stop the vehicle. The entire team moved forward, as lead by A3 and from the southern side courtyard of a house with tiled roof a bike was pointed out by A3. It was a black colour 'Pulsar' motor

cycle bearing No. KL 14 L 816. It was found as parked there. The house owner (PW51) stated to PW69 that he is the uncle of A3. The key of the motor cycle was brought by him from the house of A3 and PW69 examined it. After preparing Ext.P5 mahazar, PW69 effected seizure of MO5 motor cycle and MO 15 key. MO 5 was taken by one of the police officer of the team. In the cross examination he admitted that MO5 was kept in an open place. They travelled approximately for 10 minutes from the camp office. Ext.D1 is the statement denied by him that he never stated to the investigating officer that the vehicle was taken from the house of the accused.

81. The learned defence counsel pointed out that this witness has not stated any thing in his previous statement recorded under Section 161 of CrPC that he can identify the bike and key and the accused disclosed that the bike was kept in a place and he can pointed out it. Therefore, the learned defence counsel argued that the evidence given by PW10 for the disclosure statement of A3 and consequential recovery of MO5 by PW69 are not at all reliable as there is non compliance of requirement under Section 27 of Indian Evidence Act. The learned Public Prosecutor replied that it was a mistake in the deposition that PW10 stated that the vehicle was recovered from the house of the accused. So, Ext.D1 statement cannot be treated as a contradiction for the testimony of PW10.

82. PW69, was examined mainly to prove the disclosure statement allegedly given by A3. He was instructed by PW97 to proceed further as per Ext.P73 direction. He deposed that Ext.P74 is the disclosure statement of A3 that “ബൈക്ക് ഞാൻ ഒരു സ്ഥലത്ത് രഹസ്യമായി വെച്ചിട്ടുണ്ട് എൻ്റെ കൂടെ വന്നാൽ ബൈക്ക് വെച്ച സ്ഥലം കാണിച്ചുതരാം” As per his request PW10 and CW27 were

sent by the District Magistrate of Kasaragod. He repeated the same facts testified by PW10 in connection with alleged recovery of MO5 and 15. Thereafter, MO5 was examined by PW36, the Forensic Expert, who traced out blood stain on the back side of MO5. Ext.P5 along with Ext.P74 produced in the court on the same day describing in Ext.P75 property list prepared by him. In the cross examination he admitted that there were two residential houses near to the place from where MO5 seized. The details of MO5 and MO15 are not stated in Exts.P5 and P75 to identify it. In the first and second page of Ext.P5 neither himself nor any witness signed. He admitted that in Ext.P74 there is correction for the date which was not initialed by him.

83. Analysing the evidence stated above there is no doubting circumstance for the recovery effected for MO5 and MO15. The mistake of date in Ext P74 is explained well by PW69. The point raised by the learned prosecutor is that the blood stain found in MO5 is the circumstance that A3 used MO5 for transporting A1 and A2 for the murder of the victim. PW36 deposed only that on the rear mud guard of MO5 blood stain detected. But it was insufficient to analysis at least to find blood group. There was no attempt from the prosecution side by asking a question about the age of the blood stain at least to find out it was recent or old. So only for the reason that MO5 was recovered on the basis of Ext P74 of A3, it cannot be treated that an incriminating fact is brought out to prove that MO5 was used by A3 to transport A1 and A2. In the absence of corroboration, the recovery of MO5 failed to achieve in establishing any circumstance against the accused for their involvement in the death of the victim.

84. To prove MO6 and MO7 dresses prosecution relied oral testimony of PW97, PW19 and PW22 in addition to Ext P181 and P17 . PW97 testified

that A3 while in his custody given Ext 181 disclosure statement on 31.03.2017 that “എന്റെ പാസ്സും ഷർട്ടും എന്റെ വീട്ടിലുണ്ട് എന്റെ കൂടെ വന്നാൽ വീട് കാണിച്ചു എന്റെ പാസ്സും ഷർട്ടും വെച്ച സ്ഥലത്തു നിന്ന് എടുത്തു ഹാജരാക്കി തരാം ”. PW19 and PW22 are the two village officers, Kalanadu Village and Kasargod Village respectively, accompanied PW97 as directed by Additional District Magistrate on request. These three witnesses stated identical facts that as lead by A3 the team reached at a house and from the bed room inside of a concrete almirah A3 taken out a check shirt (MO6) and black pants (MO7) among the folded dresses and handed over to PW97. Ext.P17 is the mahazar for effecting seizure of MO6 and MO7.

85. The crucial question is that what is the evidential value of MO6 and MO7 connecting the alleged incident. The recovery of these two dresses need not doubt. But no explanation from PW97 for his failure to ask any question to other persons residing in that house about MO6 and 7. During the examination of PW42, who is the mother of A3, no question was put by the learned prosecutor in connection with MO 6 and 7. It is already found that the testimony of PW3 is not at all reliable to prove the identity of A3. The testimony of these witnesses connected to MO 6 and 7, as well as the two documents produced for effecting the seizure of these two dresses failed to bring any circumstance connecting A3 and the alleged incident.

#### **86. Recovery of MO 18 , MO8 and M09**

Prosecution mounted a strong argument, contending that the recovery of MO1, MO8, and MO9 serves as compelling evidence of A1's direct involvement in inflicting the injuries documented in Ext P49 on the victim Relying the testimony of PW97, PW12 and PW15 and also relying MO19 to

21, it is the contention of the prosecution that MO18 was recovered solely based on the confession of A1 and therefore Section 27 of Evidence Act is applicable against A1. All the mandatory procedures for the recovery of MO18 were complied with, and it was examined by PW52 after being produced in a sealed condition. PW92 proved that the blood found in MO18 belongs to the victim as the blood group is AB+ve and after DNA examination PW93 also deposed that it was the blood of the victim. So, the prosecution argument is that since it has been proven that MO18 was stained with the blood of the victim, it was the weapon used by A1 to attack the victim.

87. The defense side vehemently opposed the confession alleged against A1, as well as the recovery of MO18, MO8, and MO9. They argued that none of the procedures were complied with by PW97. Furthermore, the recovery witnesses introduced new facts during their examination. Therefore, the defense asserts that neither the disclosure statement nor the alleged recovery can be used against the accused.

88. PW61 is the then SHO of Kasaragod. He testified that by 12.00 midnight on 20.03.2017, he received telephonic information that Choori Mosque was attacked. So, this information forwarded to Flying Squad and other officers and he also reached the Mosque. To control law and order situation he and other officers were reached there and in the room of the Mosque, he found a person lying under a shelf touching the wall of the room in full of blood. This witness also repeated that there was blood in the room, shelf, wall and carpet. Bleeding was continued from the injured. In front of the room of PW2, concrete pieced were found as scattered and one among them is comparatively big. PW2 replied to him that when he opened the door after hearing the sound, one person threw stone against him. Even though he

asked details to PW2, he is not in a position to say further. Therefore, to control law and order situation he went outside as there was communal violence in the locality. On 21.03.2017 at 2 am he returned back to the police station for registering the FIR and on the basis of Ext.P1 given by PW1, at 2.05 am, he registered Ext.P65 FIR in this case. Ext.P22(a) is the FIR registered by him u/s 379 IPC against A1 and A2 alleging theft of motor cycle of the complainant in that case and subsequently he came to know that it was settled and compounded in the court. He investigated a case for offence u/s 326 and 308 r/w 34 of IPC registered in his police station against A1 and A2. Ext.P66 is the report of that case. He identified A1 and A2 were the accused persons in both cases. He also identified MO1 as the lungi found in the body of the deceased. In the re examination he admitted that there was police picket near to Uma Nursing Home.

89. So, Ext P65 FIR was registered at 02:05 am on 21.03.2017, the witness provided a thorough explanation for the two-hour delay. They cited multiple clashes in the area and attributed the delay to the deteriorating law and order situation. Ext P215 Series are the 15 FIRs registered subsequent to the incident in this case fortified the reason stated by PW61. Therefore, the prosecution contends that the delay in registering the case does not affect their case.

90. PW60 is the then Circle Inspector of Police, Kasaragod and on 20.03.2017 at 12.00 hours somebody over phone informed that a person was stabbed from the Choori Mosque and he rushed to the spot and reached at 00.25 hours. By that time DySP and other police officials reached there. He found the injured on the south-western side of the owl tank of the mosque

lying on the floor wearing lungi as bleeding. There was blood on the floor, wall and almirah and outside wall of that room. At the front of the room there were concrete pieces. PW2 and others present there replied him that at 12.00 hours outside of the room they heard sound and when PW2 opened his door a person standing near to the oil tank pelted stone. So, he done mike announcement. Thereafter people gathered there. This officer instructed immediate scene guard and instructed the Sub Inspector to register FIR. After some time, he came to know that the injured was succumbed to his injuries. Even though questioned PW2, he was not in a position to say anything more. The people gathered were in a charged condition. By that time to control law and order the IG and ADGP arrived. Subsequently, District Collector declared prohibitory order and hartal was observed on that day in that locality. For the subsequent incidents 39 cases were registered. Investigation was conducted under Sreenivasa IPS. In the cross examination he replied that he cannot remember whether he had given statement to the investigating officer that a person hurled stone against PW2. He has not identified MO1 in the presence of the investigating officer.

91. PW25 is the Senior Civil Police Office of Kasaragod Police Station. His role is only to guard the dead body of the victim in the mosque and thereafter, he went along with the Circle Inspector and from Medical College Hospital, Pariyaram, the inquest of the dead body completed and finally the dead body handed over to relative of the victim. PW30 is another Police Officer of Kasaragod police station who was examined to prove that he was on scene guard duty after 4 am on 21.03.2017. PW31 is the Civil Police Officer of same police station who received the phone call at 12 hours on 20.03.2017 about the problems in the mosque and he passed that information to Sub Inspector and Circle Inspector and Flying Squad.

Thereafter, he along with Sub Inspector reached the mosque and found the deceased in pool of blood. The deceased was taken to ambulance and brought to the hospital. Thereafter he was engaged in guard duty of the room and closed the room and light. Till the arrival of PW30 he was attended the scene guard duty.

92. PW26 who is the police officer of Flying Squad of Kasaragod is cited as a witness to prove that he was on duty in the area of mosque on 20.03.2017, who reached the mosque along with the team members as per the wireless information and found the deceased lying in a pool of blood as wearing a lungi in a room of the mosque. After few minutes, the DySP and other police officers arrived there. As per the direction of DySP he went to Pariyaram Medical College Hospital and the dead body kept in the Mortuary. The hospital staff handed over MO1, MO16 and MO17, and on 21.03.2017 at about 4 pm from the police station these material objects were handed over to PW58.

93. PW70 is as the driver of the ambulance in which the victim was brought to the hospital. PW37, Assistant Engineer of KSEB, Nellikkunnu Section was presented by the prosecution side to prove that there was no electricity failure on 20.03.2017 near the area of Choori Mosque at the relevant time of the incident. Ext.P30 is the report submitted to him by the investigating officer stating above said facts. PW38, Madhur Grama Panchayath Secretary was examined to prove that the ownership of the house of the accused persons as well as PW1. Ext.P31 is the ownership certificate for the house of PW1. Ext.P32 to P34 is the ownership certificate of house of A3, A1 and the mosque.

94. PW59 is the Circle Inspector of Adhur police station and a member of the first investigation team of this case. PW58 instructed him to conduct inquest of the dead body of the deceased and therefore while conducting the inquest of the dead body from the medical college, he was there and the dead body forwarded for post mortem. Ext.P3 is the inquest report signed by himself and local witnesses and Ext.P2 is the report submitted by him with respect to the inquest. Exts.P62, P63 and P64 are the documents in connection with the handing over dead body and his attendance for the inquest procedure.

95. PW78 is the Addl. Sub Inspector of Kasaragod police station who was on night officer duty on 20.03.2017. At 11 pm at that night he started for patrolling duty and at about 12 mid night he received an information to reach in the Choori Mosque area and he rushed to that mosque main gate. The people gathered there were in a violent mood. They were not permitted to enter the mosque compound. When they returned from there, PW61 came and along with him this witness and other officers went to the mosque. In a room near to oul tank a person was lying only wearing lungi on the floor in a pool of blood. There was blood in the room as well as on is the wall. Infront of the room of PW2 he saw stone pieces on the floor and scratch on the wall.

96. PW44 is the Senior Civil Police Officer of Kasaragod Control Room, who witnessed the preparation of inquest report of the deceased. Ext.P40 is the mahazar for seizure of Ext.P41 series photos and Ext.P42 compact disc of the inquest procedure with Ext.P43 certification under Section 65B of the Evidence Act. PW54 is the police photographer who took photo of the victim from the scene of occurrence and were presented along with Ext.P44 covering letter.

97. PW13 is connected to sniffer dog movements. Through him Ext.P8 confronted by the prosecution side as it is the mahazar prepared for the route of sniffer dog movement on 23.03.2017. His version is that the dog travelled 200 metre towards southern side and then 200 metres towards eastern side from the mosque. PW17 is the sniffer dog handler. This witness also stated the movement of sniffer dog as stated by PW13. PW14 is the witness for Ext.P9 observation mahassar of scene of occurrence prepared by PW97.

98. PW87 was the then District Collector of Kasaragod. He was examined to prove the request forwarded by PW97 requesting to depute 4 official witnesses for the purpose of investigation of this case and allowed 4 officers to participate in the investigation. Ext.P24 is the proceedings signed by him for deputing PW12 and three other officers. PW88 is the then Additional Secretary (Home), Govt of Kerala who issued prosecution sanction, Ext.P128 to prosecute the accused for offence u/s 153A of IPC. In the cross examination this witness explained that Ext.P128 was issued after perusing the case records and satisfying that the prosecution for the said offence is to be conducted in the matter.

99. PW90 is the wife of the deceased. She has deposed her marriage with the deceased and residential details in Karnataka state, employment of deceased in Choori Mosque. The deceased was the sole dependent of her. Her husband had no hostility with any person and she is now living with her parents with the support of them and others. MO11 is the album of her husband MO12 is the diary of the deceased.

100. The role of PW47 is the attesting witness of Ext.P46 mahazar for effecting seizure of Exts.P4, P4(a) salary bills of the deceased from the mosque produced by PW7. PW6 is the secretary of the mosque. He identified MO10 as the knife taken into custody by PW58 from the room of the deceased. The witness deposed that it is the weapon used for animal sacrifice during the Bakrid. PW7 is that he is the president of the Mosque Committee. He was examined to prove Ext. P3 inquest report and the salary bills for the deceased, Exts. P4 and P4(a). PW65 is as the relative of the deceased, who received the dead body as per Ext.P64. PW66 is the father of the deceased. PW68 is the colleague of the deceased and deposed that on the date of the incident, there were five persons including himself and deceased stayed in the Mosque. Deceased was residing left side of the oul tank, Azeez was residing right side of the oul tank. Other two persons were stayed in the upstairs hall of the Mosque. At 11 pm he began to sleep and after some time his colleague Hyder called him and informed that PW2 giving mike announcement. Through the window they found that people gathering in the Mosque and moving towards the room of the deceased. Thereafter, he also went to there and from outside of the room of the deceased found that the deceased was lying on the floor in blood. After some time, the deceased was taken to the hospital in an ambulance and thereafter informed the death of the victim. This witness also identified MO10 and MO12 to MO14. He admitted that the deceased had two mobile phone and MO10 knife was used by the deceased for butchering.

101. PW58 is the then DySP of Kasaragod who is the officer who arrived the scene of incident immediately after the alleged incident. He testified that on 20.03.2017 till 11.30 pm, he was on law and order patrolling

duty and at 12.05 am on the next day, he received an information that something is happening in the Choori Mosque. So, he rushed to the spot after passing the information to Circle Inspector of Kasaragod. By that time, Sub Inspector and two police men already arrived in the mosque, lying of the deceased in pool of blood was found. The dhoti of the injured was tied little above the waist of him. PW2 replied him that by 12 midnight after hearing sound, he opened the door and saw a person standing near to the aluminium gate of the mosque and that man pelted stone against him. So, PW2 closed his door and went to the Mosque and done mike announcement saying that the mosque is under attacked after the arrival of people he came out.

102. Thereafter, in an ambulance the injured was taken to the Govt. Hospital and later the accompanying police officer informed the death of the victim. So, further procedure the dead body taken to Pariyaram Medical College for autopsy arranging police officers for scene guard duty. Next day, the District Police Chief engaged him as the investigating officer of the case. Inquest for the dead body conducted, Dog Squad arrived and examined the scene of occurrence and surrounding area, the scientific officers collected 9 samples in 9 sealed packets which were seized as per Ext.P19 mahazar by him. Ext.P26 is the report submitted by the scientific officers. Subsequently as shown by PW2, Ext.P2 mahazar of the crime scene prepared by him by 1 pm. In Ext.P2, he gave detailed description of the scene of occurrence with its measurement and items found there. MO13 and MO14 are the mobile phones, MO12 is the diary, MO10 is the knife, MO11 is the photo album, MO39 card reader, MO40 memory card, MO41 a Tata sim card, MO42 Vodaphone sim card, MO 43 series 3 sim cards of Airtel, MO44 a box in which MO39 and MO43 were kept were seized from the room of the

deceased by this officer. From the shelf in the room a mobile phone of Videocon without sim card and a Nokia 2015 mobile phone box also taken into custody. This witness further testified that the aluminium gate outside of the room is having 75 cm height and 4 meter width. On the eastern side of the room there is a hall having length of 15 meters and 5 meter width. On the south-western side of the hall, there is a room with single door. On the outside tiled wall of the room, above 1 ½ feet from the floor found a scratch of hitting stone and concrete stone pieces scattered on the floor below the scratch. MO4 is the concrete piece taken by him from there described in Ext.P2. This witness also stated that under the main switch board of the hall fixed on the south-western corner of the hall blood stain was found. He has recorded statement of PW2, PW6, and CW9 on the same day. The dhoti of the deceased and another dhoti used to cover the dead body and white dhoti used to spread on the stretcher to take the dead body, were received by him on 21.03.2017 at 4 pm as produced by PW26 and taken into custody as per Ext.P181 mahazar. He identified MO1 is the lungi of the deceased which was full of blood and MO16 and MO17 are the other two dhoti used to cover the body. Ext.P3 is the inquest report. Ext.P59 is the report submitted to the court explain the reason for delay in producing the seized items. After the direction of the State Police Chief, the investigation handed over to PW97 and handed over all the materials collected by him and the records. Exts.P60 and P61 are the report for handing over of investigation to PW97.

103. In the cross examination he clarified that the hall is situate on the eastern side of the room of the deceased and the door of that room also on the eastern side. He denied Ext.D6, previous statement recorded under Section 161 of CrPC, which is the statement that on 20.03.2017 at 12 hours, two or more persons trespassed in the room and stabbed the deceased with

a knife. He admitted that he received the information at 12.05 hours and arrived at the scene of occurrence and arrived there at 12.25 hours. There was no scene guard duty for the crime scene at the time of his arrival and only after his arrival, scene guard duty was arranged even though Sub Inspector and police party were already there in the mosque. He admitted that the sample of blood found under the switch board of the hall was not collected. The finger print expert had not marked door of the room. Neither from the entrance to the hall nor door frame of the room of the scene of occurrence nor from MO4 stone finger print was not collected. No explanation is provided by this investigating officer for his failure to make at least an attempt to collect finger print from the above said places and materials and also collection of blood sample found under the switch board. PW2 was not in a position to give statement as he was not in a condition to give statement. He has not stated any identifying features of MO39 to MO44 to PW97 and also not stated the details of MO10 given by PW68 to PW97. The statement of PW2 that a man standing near to aluminium gate pelted stone against him was not recorded by him. This witness also replied that he cannot remember Ext.D6 statement was given by him to PW97. The statement is that on 20.03.2017 at 12 hours, two or more persons entered in the Choori Mosque and stabbed the deceased with two knives. He also not directed his subordinate to record statement of PW2. The reason is PW2 was not in a position to give statement. This witness also stated that the people gathered there were in a violent mood after the incident happened in the Mosque. The clothes described as item Nos.1 to 3 in Ext.P18 were examined and measured its width, length, colour, tearing and age of those clothes. Item Nos.2 and 3 were clearly examined and item No.1 (MO1) was of soaked in blood. So, it was not possible to stretch but, he measured its length and width after measuring it. In

the seizure mahazar it is not stated that MO1 was soaked in blood and stucked. The details of MO10 and the place where it was kept in the room of the deceased also not stated to the investigating officer and in the mahazar. In the re-examination he clarified that he was under the duty of investigation of this case from 9 am to 5 pm on the date of incident and done all possible things for the investigation at that time. There was severe law and order situation.

104. PW79 is the Kasaragod Kudlu Group Village Officer. He was examined to prove the sketch and site plan of the scene of occurrence. He testified that on request he prepared the route map of sniffer dog and sketch for Ayyappa Nagar Anganwadi and its surrounding area, the properties of Radha M Shetty, Naveenkumar Shetty and Rajalaxmi. He also issued caste certificate of accused and defacto complainant and possession certificate of above said property. Exts.P94 and 94(a) are sketch of the Choori Juma Masjid. In the ground floor of the mosque there are two halls and there is oul tank on the southern side hall. There is another tank located at the entrance on the eastern side So he described the inside area of the Mosque and its surroundings. There is light on the western side of the room situated on the northern side of the Mosque. From aluminium gate there is direct vision to the room where the incident was happened and to the adjacent room. The aluminium gate exists on the south east side of oul tank. In the hall of the ground floor of the mosque there are three door and there is one staircase. At the front gate of the mosque, Vattampara - Kelugudde road exists. Near to the Mosque the house of PW1 and residence of one Kasim, Abdulla and Ahammed situate. There is street light near to the eastern side main gate of the Mosque. As per Ext.P96(a), on the southern side gate of the Mosque

there is mud road which proceeds to western side junction where the name board of the mosque is erected. From that point there is direct view towards northern side through the road. The eastern side of that point is Vattampara Uma Nursing home road. There is street light at Uma Nursing Home road junction. It's a 'T' junction and one road is to western side towards Kelugudde side. A hump is there on the road at that junction and also there is street light. The residence of PW3 exists on the western side of that hump. The hump at that junction exists on the Uma Nursing Home road which proceeds further to Kelugudde. Ext.P97 is the site plan of Anganwadi at Ayyappa Nagar. The eastern side road of that Anganwadi proceeds to south west direction towards Sannagudu. There is one barrel filled with water near to the Anganwadi and there is another Sintex tank without water near to the above said barrel. Ext.P98 is the site plan of property of Radha M Shetty. This witness testified that the mark '3' in Ext.P98 is the spot where from MO18 was recovered. The property where from MO18 was recovered exists at the end of Sannagudu road and MO18 was recovered 35 metres away from the western boundary of that property. There is pathway through the middle of the property in the east west direction. Ext.P99 is the site plan of property of Naveen Shetty. Ext.P100 is the site plan of the property of Shenoy Engineer and family. Ext.P101 is the certificate of possession for the property of Rajaklaxmi and Shenoy issued by him. Ext.P102 is the possession certificate of the above said Anganwadi. Ext.P103 is the possession certificate for the property of the Naveen Kumar Shetty and Ext. P104 is the possession certificate for the property of Radha M Shetty, Ext.P105 is the possession certificate for the property of PW1. Exts.P106 to P108 are the caste certificate of A1 to A3. This witness at the end of the examination in chief deposed that Old Choori is the Muslim majority area and Kelugudde is Hindu majority area.

105. He has answered in the cross examination that the door of the room where the alleged incident occurred is on the eastern side and the distance from the door to aluminium gate was not recorded in Ext.P94(a) and also not recorded the distance between the door of the northern side room and aluminum gate. He has also not stated the length, width and height of big oil tank. In Ext.P96 the direct view from the hump on the T junction of Uma Nursing Home junction is not stated but approximately it was 40 metres.. As per Ext.P96,the road noted as '5' proceeds towards northern side but he cannot say where the road was ending. The road noted as '6' ends at Surlu side. But these points were not stated in Ext.P96. National highway exists 8.5 metres away from Uma Nursing Home Junction. On all 4 side of the mosque there is compound wall. On both side of the mosque, there are residential houses. In the re-examination this witness replied that the height of the aluminum gate is below one metre. From the southern side road of the mosque to T junction the distance is approximately 230 metres.

106. Therefore, the testimony of this witness and the document presented him proved that the road in front of the house of PW3 is not exclusively to the said mosque. Hence, even if PW3 saw three men in a motorcycle in front of the road of his house it cannot be concluded that they are coming from the mosque. So also there is no substance in the argument of the prosecution that A1 to 3 came from the mosque after the incident through the road leading to the mosque.

107. PW97 is the investigating officer of this case. He started investigation based on Ext.P161 order of Dr.A Sreenivas IPS. Subsequently other officers also added to the team as per Ext.P162 order and continued

the investigation started by PW58. He identified all the material objects produced in this case. He explained that MO1 lungi of the deceased compared with the Ext P18 seizure mahazar prepared by PW58 and he noticed many tearing in MO1 which was not described in Ext P18. So, on 22.03.2017 at 3.15 pm he prepared Ext.P20 another mahazar and recorded the noticed tearings found in MO1. He explained the reason for recording these features of MO1 is that after examining Ext.P3 inquest report he noticed similarity of tearing in MO1 and injuries of the victim noted in Ext.P3. On the basis of statement of PW3 instructed the team members to investigate motor cycle of Kasaragod registration with number '816' and finally it was found that motor cycle is in the ownership of one Amareesh who is working in abroad and his brother A3 is regularly using it. Thereafter, the tower location of A3's mobile phone investigated. For the investigation sniffer dog was brought to the scene of occurrence and in Ext.P8 the route of the sniffer dog recorded. He understood that accused persons were committed the murder and on 23.03.2017 they were arrested from a place near to paddy field at Kelugudde. The arrested persons were brought to 'Visiting Officers Quarters' which is functioning as the office of the investigating team. In the questioning of them their involvement in the incident was revealed. Exts.P11 to P13 and P164 to P169 are the arrest memo and inspection memo for recording the arrest of A1 to A3. At the time of arrest of A3, MO25 mobile phone was taken into custody from him as per Ext.P 10 mahazar. MO23 is the mobile phone taken into custody from A1 and MO24 is the mobile phone of A2. MO26 is the sim card of MO23 and MO27 and 27(a) are the two sim cards in the mobile phone of MO24. MO28 is the sim card of MO25 phone. Ext.P170 is the report to add the name and address of the accused persons and Ext.P171 is the report to add Section 153A and 201 of

IPC in the case. A1 was brought in the presence of recovery witnesses and he repeated the disclosure statement, Ext.P180 that “ എന്റെ ചെരപ്പ് ഞാൻ കിടന്ന shed ല് ഉറിച്ചാടിയിട്ടുണ്ട് എന്റെ കൂടെ വന്നാല് ചെരപ്പ് ഉറിച്ചാടിയ സ്ഥലം കാണിച്ച് ചെരപ്പ് എടുത്തു തരാം”. Thereafter, along with the witnesses and police party as led by A1, reached near to Kelugudde Anganwadi and as demanded by A1 the vehicle stopped and the team with A1 alighted from the vehicle and proceeded to northern side as led by A1 through the pathway of an areca plantation and reached behind the house of Shenoy Engineer. From a shed constructed with laterite stone, near to the well of that house, A1 taken out one pair of sandal manufactured by ‘Cuubix’ company and produced it. So, at 5 20 pm by Ext.P16 mahazar seized MO29, the chappals. As far as considering MO29, even after it was examined by scientific experts, nothing was revealed as the circumstance supporting prosecution allegations against A1. Thereafter, on the basis of Ext.P181 disclosure statement of A3, that, എന്റെ pants ഉം, shirt ഉം എന്റെ വീട്ടിലുണ്ട് എന്റെ കൂടെ വന്നാല് വീടു കാണിച്ചു എന്റെ pants ഉം, shirt ഉം വെച്ച സ്ഥലത്തു നിന്ന് എടുത്ത് ഹാജരാക്കി തരാം" and as led by him along with witnesses and officers reached at a place near to one Tharavattambalam and A3 demanded to stop the vehicle. The team along A3 proceeded further 75 metres from that temple and reached at a house facing east. From a shelf kept in the bed room of that house, A3 taken out a check shirt and black pants, MO6 and MO7 and taken into custody as per Ext.P17 mahazar.

108. Ext.P93 was the mahazar prepared for seizing MO45 blood sample of A1 collected by the doctor. Ext.P182 is the remand report for producing the accused in the court after the police custody and Ext.P183 is the report of medical examination of A1. Ext.P184 is the OP ticket for the

medical examination of A1. Ext.P185 and Ext.P186 are the report and OP ticket of A2 for medical examination and Ext.P187 and Ext.P188 are the report and OP ticket of A3. Ext.P189 and P190 are the forwarding note and report for forwarding seized items for analysis by Forensic Science Lab. Ext.P191 is the covering letter for forwarding the items and Ext.P199 is the specimen seal impression used for forwarding the samples. Ext.P26, Ext.P192 to Ext.P202 are the property lists to produce material objects seized in this case in the court. Ext.P33 is the report submitted by PW37 to show that there was no power failure at the night of the incident. Ext.P80 is the mahazar prepared for seizing Ext.P38, 82, 83 and 118, the details of A3 produced by PW85.

109. Ext.P203 is the forwarding note prepared by him to forward the mobile phones and sim cards of A1 to A3 for forensic examination. Ext.P116 is authenticated copy of the WhatsApp message produced by PW85. As per Ext.P116 message, A3 sought three days leave from PW85 to go to Bangalore for his treatment. In the investigation it is revealed that A3 never went to Bangalore as stated in Ext.P116. Ext.P205 is the report to add Section 449 and 295 of IPC in this case. Ext.P40 is the mahazar prepared for seizing of Exts.P41 to P44, the photos and CD of deceased. He also collected Call Data Records and Customer Application Form of the mobile phone number of the accused persons and PW2 and the documents were produced as per Ext.P208 in the court. Ext.P209 to Ext.P211 and Ext.P213 are the documents for producing the seized items in the court. Ext.P153 is the CDR of the mobile phone number of PW2, Ext.P155 is the CDR of mobile phone number of A2, Ext.P133 is the CDR of mobile phone number of A3. The reason for two hours delay in registering the FIR is that, the Circle Inspector instructed SHO, Kasaragod to provide scene guard duty and to

register FIR. While the Sub Inspector went to register the FIR on the way he was involved to keep law and order after the the communal clash spread in consequence of the incident in this case. At 2 am, PW1 arrived the police station and registered the case at 2.05 am. He admitted that Ext.P36 series and Ext.P37 series are the statements given by PW41 and PW42. Respectively. Ext.P48 series, Ext.P57 series Ext.P58 series Ext.P110 series, Ext.P113 series, Ext.P114 series and Ext.P115 series are the statements of PW51, PW56, PW57, PW81, PW82, PW83 and PW84 respectively.

110. The conclusion arrived in the investigation is that A1 to A3 due to the hostility towards Muslim community especially, the members of that community in Choori area, on the date of incident searched for a member of that community in order to finish such person and in furtherance of that common object, with dangerous weapon of knife came in in MO5 to the Mohiyudeen Jama Masjid of Old Choori and A1 and A2 trespassed in the mosque and A1 entered in the room of the deceased and stabbed with the knife and murdered the victim. Hearing the sound, PW2 came out of his room and A2 who pelted stone against him. After committing of the murder, A1 and A2 returned in MO5 bike along with A3, who was awaited near to the gate of the mosque. A1 and A2 were brought to the house of A3 and A1 washed his clothes in order to destroy evidence. Therefore, A1 to A3 committed the offence charged in this case.

111. For the recovery of MO18, MO8 and 9, PW97 deposed that Ext P172 disclosure statement was given by A1 during his custody on 23.03.2017 that “ എന്റെ pants ഉം, shirt ഉം എന്റെ വീട്ടിലുണ്ട് എന്റെ കൂടെ വന്നാൽ വീടു കാണിച്ചു എന്റെ pants ഉം, shirt ഉം വെച്ചു സ്ഥലത്തു നിന്ന് എടുത്ത് ഹാജരാക്കി തരാം.” PW12, the Revenue Recovery Tahsildar of Kasaragod during the relevant

period and PW15, Junior Superintendent of Kasargod collectorate were the witnesses for disclosure statement and for effecting seizure of MO 18 knife. PW12 was examined to prove the recovery of MO8 and MO9 and MO18. His testimony is that on 24.03.2017 as per the instruction of the Collector's camp office, he reached at 5.30 am to the office of the investigating officers of this case. There were PW10, PW15 and CW28.

112. As far as considering MO9 nothing was retrieved as incriminating connected to the victim. The learned prosecutor admitted that blood stain in that shirt was not identified. So it is clear that there is no evidence to believe that MO9 was connected in any manner with alleged incident. PW12 testified that A1 was brought in front of them by PW97 and A1 replied that if they accompanied him he will show the knife and dress. Thereafter the face of the accused was covered with a mask and in the vehicle along with PW15, PW97 and other police officers the team started at 6 am and passed through Kelugudde and finally stopped the vehicle at the end of the road as demanded by A1. Before alighting from the vehicle, the face of A1 was again covered with mask and as led by him they walked 100 metre through the arecanut plantation and finally reached at a place near to plantain and from there A1 taken out a knife and given to PW97. PW97 stretched that folded knife. The blade of the knife is made of steel was blood stained. The He identified the knife as MO18. There was a button like thing in its handle. The Inspector took MO18 in a plastic cover and sealed with wax, affixed SHO seal and marked as 'P1'. Thereafter the plastic cover covered by another brown paper and sealed by PW97. Ext.P6 mahazar was prepared for effecting seizure of MO18. Same are the testimony of PW15 and 97, with respect to the disclosure statement given by A1, recovery and seizure of

MO18. They also identified MO19 to 22 are the card board piece, covers and label used for packing MO18.

113. PW41 is the owner of the property where MO18 allegedly recovered. She turned hostile to the prosecution case by deposing that she never saw the police officers in her property and categorically denied Ext.P36 and Exts.P36(a) to P36(c) statements recorded by the investigation officer under Section 161 CrPC. She categorically asserted that she has no idea about the accused persons.

114. The testimony of PW97, PW12 and PW15 for the recovery of MO8 and MO9 are as follows. After recovery of MO18 the team along with A1 returned after passing approximately 500 meters they reached at Ayyappa Bhajana Mandiram road and A1 asked to stop the vehicle. As lead by A1 the team walked through a path way and reached at a single storied house and from the washing line tied in the court yard of that house A1 pointed out a very old wet mundu (dhoti) and little wet full sleeves T Shirt. The items were seized after describing in Ext P7 mahassar. The home belongs to the father's sister of A1 where he along with family is residing. There was blood stain in dhoti and shirt and the dress are identified as MO8 and MO9.

115. In page No.68 of the notes of argument submitted by the learned Prosecutor it is clearly admitted that all steps were taken to cover the faces of the accused at the time of effecting recovery. In page No.53 of the notes of argument also, same facts admitted by the prosecution side that after wearing masks for covering their faces accused persons were brought for recovery. The recovery witnesses also stated that all the face of the accused were covered with veil during the recovery of materials. PW97 testified that

A1 brought in his official vehicle to the place of recovery after covering his face and mask was again used to cover the face of A1 while bringing him from the vehicle since mask was removed while he was sitting in the vehicle and after wearing mask A1 lead the team approximately 100 metres through the pathway and among the plantain he taken out MO-18 and handed over to PW97. So, it is clearly that while effecting recovery of MO-18, the face of the accused was covered. PW12, who was examined as witness for recovery of MO18, deposed as follows, "അതിനുശേഷം പ്രതിയെ കറുത്ത മുഖംമൂടി അണിയിച്ചു വാഹനത്തിൽ കയറ്റി. വാഹനത്തിൽ ഞാനും അരുൺ ബാബുവും C.I. യും മറ്റു രണ്ടു Police കാതം രാവിലെ 6 മണിക്ക് പുറപ്പെട്ടു . കേളുഗുഡെസ്സ് എന്ന സ്ഥലത്തുകൂടി നേരെ പോയി റോഡ് അവസാനിക്കുന്ന സ്ഥലത്ത് വാഹനം നിർത്താൻ പ്രതി ആവശ്യപ്പെട്ടു. കേളുഗുഡെസ്സിൽ നിന്ന് കരകൂടി മുന്നോട്ടു പോയ ശേഷമാണ് പ്രതിയുടെ മുഖംമൂടി അഴിച്ചിരുന്ന . ഇറങ്ങുന്നതിന് മുമ്പ് വീണ്ടും മുഖംമൂടി ധരിപ്പിച്ചു. പ്രതി കാണിച്ച വഴിയെ ഞങ്ങൾ മുന്നോട്ട് 100 മീറ്റർ പോയി". So, this witness also categorically stated that the face of A1 was fully covered from the very moment of starting from the office of PW97 and till return to the office of PW97. It is pertinent to note that PW97 and PW12 categorically stated that only at the time of sitting in the vehicle the veil of A1 was removed. The testimony of these witnesses are clear that the material used to cover A1 is not a face mask, since the word is used by them is 'മുഖംമൂടി'. PW97 has no case that it was possible for A1 to see the things as his vision was not disturbed by veil even after wearing 'മുഖംമൂടി'. Subsequently, according to the prosecution, A1 taken out MO8 T shirt. So, there is no dispute that from starting from the office of PW97 till completing the recovery the entire face of A1 was covered with black veil. Hence, it is the duty of the prosecution to explain how A1 can lead to the place of recovery after covering entire face by black veil and produce MO18, MO8 and MO9. This itself gives sufficient room for doubting the recovery . MO8 and MO9 recovered from the house of A1. PW97 did not take any step to ask at least a question to any of the family

members of A1 residing in that house or attempted to ask a question to connect the dress to A1. None of the person connected to that house even cited as witness in this case. No explanation is provided for omitting this area from the investigation.

116. So, the above stated background demands ascertaining of the points that MO18, MO8 and MO9 are the properties of A1 and MO18 was used by A1 to attack the victim. The above analysis of the evidence of PW97, PW12 and PW15 cast doubt over the recovery of MO18, MO8 and MO9 for following three reasons Viz;

A) the face of A1 was fully covered and then how it is possible to lead the team to the place after walking more than 100 meters and take out the properties. PW97 has no case that the eyes of A1 was not covered or he can see the things even though face was covered. The word testified by PW12 and 15 is that A1 brought with 'mukhammoodi'.

B) None of the near by persons of the alleged recovery cited or questioned by PW97 while effecting seizure or there after. There is no explanation from the prosecution for omitting to ask any thing to the persons residing in the house where from MO18, MO8 and MO9 allegedly recovered.

C) for MO18, MO8 and MO9 were subjected to DNA examination but no attempt was made by the prosecution to compare these properties with DNA of A1. The DNA test was conducted with respect the victim and the result is that there is blood of the victim in MO18 and MO8. The notable fact is that MO8 is a very old mundu. The description testified by the prosecution witness is that 'കരിമ്പനടിച്ച പഴയ മുണ്ട്.' So, if MO8 was the dress of him A1 there is

strong possibility to detect DNA of him in that dress. The omission or reluctance of the prosecution to test MO18 and MO8 with DNA of A1 cast very serious doubt over the prosecution claim that MO18 is the weapon used by A1 and MO8 was the dress of him used at the time of inflicting injuries on the victim. No explanation is given by the prosecution for this serious failure in the investigation.

D) Moreover no attempt was made by the investigating team to ascertain the source of MO18, which is comparatively new. Where from MO18 was procured or purchased by A1 is material point to be ascertained to substantiate the claim of the prosecution. The omission of the investigating team to collect evidence for procurement of MO18 also cast serious doubt over the assertion that MO18 was the weapon of A1.

117. For the above stated four reasons there is substance in the argument of the defense side that MO18, MO8 and MO9 were not connected to A1 and there is chance to spread blood of the victim from MO1 and other blood stained properties collected from the scene of occurrence kept with the investigating team in MO18, MO8 and 9. So, the recovery of MO18 , MO8 and MO9 cannot be treated as the circumstance against the accused.

#### **118. Recovery of MO2 and MO3**

Another set of evidence claimed by the prosecution side against A2 is the recovery of MO2 and MO3. The recovery lead to these two items also connected to the testimony of PW2 in addition to the disclosure statement allegedly recorded by PW97. PW19 and PW22 are the witness for the alleged confession and recovery effected through A2. PW97 has not stated

when A2 given disclosure statement leading to the recovery of MO2 and MO3. He stated that A2 given confession statement in the presence of PW19 and PW22 that, മുണ്ടും ഷർട്ടും ഒരു plastic കൂട്ടിലിട്ടു ഒരു കവുങ്ങിൻ തോട്ടത്തിൽ വെച്ചിട്ടുണ്ടെന്നും എന്റെ കൂടെ വന്നാൽ അവ വെച്ച സ്ഥലം കാണിച്ചു മുണ്ടും ഷർട്ടും ഞാനെടുത്തു ഹാജരാക്കി തരാം. Ext P179 is the extract of disclosure statement of A2.

119. PW19 the Village Officer deputed by the District Collector as per the request of the investigating officer, testified that on 31.03.2017 he reached the office of PW97. This witness deposed that, “2-ാം പ്രതി നിധിൻ എന്നയാളെ മൊഴി ആവർത്തിച്ചു പറയിപ്പിച്ചു.” The timing of that disclosure statement is not stated by PW19 also. The word 'പറയിപ്പിച്ചു' resembles force used for obtaining that statement. PW22, another witness presented by the prosecution side as the witness for disclosure statement and recovery by A2 also not stated when the disclosure statement was given by A2 leading to the recovery of MO2 and MO3. It is true that he deposed that on 31.03.2017 after 3 pm, he arrived in the office of PW97.

120. The testimony of PW97, PW19 and PW22 for the alleged recovery of MO2 and MO3 are identical. Approximately 3.30 pm they started journey for recovery along with A2. The team travelled through the road in front of an Anganvadi and reached at the end of the road at Sannakudlu and stopped the vehicle as asked by A2. From there as lead by A2 they walked approximately 100 meters and reached at a house belongs to one Narayana Naik and A2 taken out a plastic cover from the bushes near to the laterite stone wall of the court yard of the house. When open that cover found a saffron color dhoti (MO2) and a full sleeve blue T shirt (MO3) with white and red colored lines and seized it after describing in Ext P15 mahassar.

121. The evidence given by PW19 and 22 shows that A2 brought to recovery of MO2 and MO3 without covering his face. So, he can be identified by any person. This fact also fatal to the prosecution affecting the credibility of the testimony of PW2 given against A2. The prosecution tried to connect MO2 and MO3 are the materials to prove the identity of A2 as a corroborative evidence what deposed by PW2. Already found that due to serious omissions and improvements appeared in the testimony of PW2 his evidence cannot be relied. As stated above on the case of recovery of MO8 and 9 , with respect MO2 and 3 also none of the persons nearby to the alleged place of recovery was not examined. PW97 has not stated the reason for omitting to ask any question to the persons residing in the house, where MO2 and 3 were allegedly recovered even though the alleged recovery was near to its court yard. The unexplained omission of PW97 to record time of giving the disclosure statement by A2 also cast doubt for the veracity of the evidence produced by the prosecution claiming that A2's disclosure lead to recover MO2 and 3 as the dress used by A2 at the time of incident. So the analysis of above stated materials produced as evidence by the prosecution it cannot be concluded that MO2 and MO3 are the dress of A2 at the alleged time of the incident. Therefore due to above stated reasons, the recovery of MO2 and MO3 cannot be treated as a circumstance against the accused to cast liability of the charged offences.

122. PW19 and PW22 were also cited as the witnesses for the recovery of MO29 chappal of A1. The testimony of these witnesses for the alleged recovery are identical to what PW97 stated in the above paragraph, for the recovery of MO29. Nothing was revealed from MO29 as incriminating and from its recovery. Nobody deposed that it was the footwear used by the

assailant at the time of incident. So the testimony connected to MO29 has no relevance for the case on hand.

### **Recovery of MO1**

123. The learned Prosecutor connecting MO1 and MO18 pointing the involvement of A1 in the alleged incident, argued that the tearing in MO1 are corresponding to the injuries sustained to the victim, and thereby claimed that all the injuries are produced by MO18. In support of this argument the Prosecutor relied firstly the testimony of PW52 and submitted that the Doctor who conducted the postmortem examination verified MO18 and opined that the injuries in the dead body are possible by that knife. To connect this point it is also relied Ext P206 report of the scientific expert and submitted that fiber contents of MO1 were detected in MO18. This fact is not denied by the accused when they were examined under Section 313 (1)(b) of Cr PC. PW93 the DNA expert reported and deposed that the blood of the victim found in MO18 and MO1. PW97 detected many tearing in MO1 corresponding to MO18. The learned Prosecutor explained that the reason for omitting the severances in MO1 by PW58 is that MO1 was not possible to stretch at that time as it was soaked in blood. The reason for the severances in MO1, according to the Prosecutor, is that MO1 was above the waist of the victim. Another point raised by the Prosecutor is that there was no doubting circumstance about the custody of MO18, MO1 to MO3 and MO6 to 9 with the investigating team. PW97 submitted Ext.P173 report to keep the recovered properties in safe custody for the purpose of investigation. Ext.P192 to P202 property list proved that MO18, MO1 to 3 and MO6 to 9 were produced in the court without any tampering. So, the learned Prosecutor argued that there was no doubting circumstance for mixing these properties during the custody with the investigation team. PW52 clearly

deposed that injuries found in the dead body are possible by MO18. The learned Prosecutor further submitted that, the scientific evidence revealed that MO18 is the weapon used to inflict injuries on the victim and therefore A1 was the person attacked the victim and consequentially death was happened. So, according to the learned Prosecutor, this is a clear case of murder committed by A1 due to enmity towards Muslims and A2 and A3 actively participated with A1 to achieve their motive of murdering a Muslim.

124. Resisting vehemently the above arguments, the learned defence counsel replied that the tearing or severances in MO1 claimed are created as an after thought. None of the person handled MO1 noticed any of such severances or tear or mark in MO1. Ext P20 mahazar prepared by PW97 is a concocted document. PW58, prepared Ext P18 on 21.03.2014 in which he described the details of MO1 including its length and width as item number one. In that document there is nothing about the severances or tearing in MO1. So, the learned counsel argued that there was no tearing in MO1 on 21.03.2017. None of the witnesses who saw the victim as injured and the witnesses who later handled the dead body and MO1 including PW58 has not stated about severances in MO1. Therefore, it is clear that to create false evidence subsequently created severances in MO1 with already arranged knife and the same knife was produced as it was recovered by A1 as per his confession. So, there is no substance in the argument of prosecution connecting MO1 and MO18 with A1. The learned counsel also replied that the finding of fibers of MO1 and blood of the victim in MO18 shows that both these items were kept together in the custody of the investigating team. PW97 has not stated where these items were kept and under whose custody. So the fiber particles of MO1 allegedly found in MO18 are falsely created to

shape prosecution narratives. Therefore, the learned counsel emphatically denied the claims of the prosecution.

125. Considering the above stated rival contentions, following materials produced by the prosecution side are to be analysed. PW63 is the Motor Vehicle Inspector of Kasaragod through him Exty.P70, the driving license of A2 was marked and he deposed that as per that document the blood group of A2 is B+ve and Ext.P71 is the driving license of Ext.A3 and the blood group is B+ve. The same facts are reiterated by PW72, who produced same documents with certification under Section 65 B of Evidence Act.

126. PW75 is the Casualty Medical Officer of General Hospital Kasaragod who collected MO45 blood sample of A1 on 02.04.2017. Exts.P90 to P92 are the OP tickets of A1 to A3. In the cross examination she has testified that the blood sample was entrusted to PW77, the record room Keeper Ramakrishnan. The record room and casualty are two different rooms and record room is not meant for keeping blood sample. There is laboratory in the hospital. If blood sample is taken for DNA test it will be entered in a register and it will be recorded in the Sample Collection Register. PW76 is a doctor attached to the same hospital, who confirmed the death of the victim and deposed that he was brought as dead. PW2 was also examined by him. But there is no document for the treatment.

127. PW77 is the then Nursing Assistant and record room keeper of Kasaragod General Hospital. He deposed that MO45, the blood sample of A1 collected by PW75 entrusted to him after covering and sealing of it. On 02.04.2017 it was entrusted to the Police Inspector. Ext.P93 is the mahazar

signed by him for collecting MO45 and covering letter. He further testified that there is separate official post for record room keeper in the hospital.

128. PW36 is the Scientific Officer of Regional Forensic Science Lab, Kannur who inspected the scene of occurrence on 21.03.2017 at the request of the investigating officer. He inspected the spot along with Assistant Director Biology and collected 7 sample from the scene of occurrence and two sample from the premises. Following are the samples collected by him:

1. Blood stain collected in cotton gauze floor carpet in north side of south west room of Muhiyuddeen Juma Masjid Old Choori.
2. Blood stain collected in cotton gauze from the door of the shelf found at north east corner of scene of occurrence.
3. Blood stain collected in cotton gauze from the floor carpet about 1 metre south side from the item No.1.
4. Blood stain collected in cotton gauze from the floor carpet in front of the shelf at north east corner of the scene of occurrence
5. Blood stain collected in cotton gauze from the wooden chair found in the scene of occurrence.
6. Blood stain collected in cotton gauze from the south side wall of the scene of occurrence.
7. Chilly powder like substance collected from the way behind the Izzathul Islam Higher Secondary Madrassa Choori situated in the same compound in the Juma Masjid.
8. Cigarette buds collected from the way behind the Izzathul Islam Higher Secondary Madrassa Choori.
9. Blood stain collected in cotton gauze from the south side wall out side the scene of occurrence.

129. The collected samples were taken in separate packets, covered with brown paper affixing label with details of the case and sealed properly and the sample handed over to PW58. Ext.P26 is the report prepared on that date for the collected samples describing the details of them. Ext.P27 is the detailed report of examination of the samples. On 24.03.2017 a motorcycle bearing No.KL 14 L 816 examined from the Kasaragod police station compound in the presence of PW69 and Ext.P28 is the report of the examination of that motor cycle. He detected blood stain by Benzidine test on the right back side of the motor cycle. The blood stain was insufficient for collection and examination. On the same day, in the presence of PW97 he examined Ayyappa Nagar Anganwadi, Kelugudde and detected the blood on muddy soil at the western side of the drum near laterite stone in front of the Anganwadi. The blood was insufficient for collection and examination. Ext.P29 is the report submitted for the detection of blood at that place. In the cross examination, he admitted that at the scene of occurrence blood was sufficient for collection. Near to the Anganwadi there is one Ayyappa Bhajana Mandir and many residential homes. At the time of examination of that place, Anganwadi employees and local people assembled there.

130. PW92 is the scientific officer of Forensic Science Laboratory (FSL), Thiruvananthapuram and Ext.P143 is the report submitted by her after examining the samples forwarded to her. Ext.P143(a) is the covering letter for sending Ext.P143. She has testified that MO18 is the item No.4, MO21 is item NO.5, MO8 and MO9 are item Nos.6 and 7, MO2 and MO3 are the item Nos.8 and 9, MO6 and 7 are the item Nos.10 and 11, MO30 to MO35 are the and MO38 are item Nos.13 to 18 and 21, MO37 is item No.20, MO36 is item No.19 in her Ext.P143 report. In the cross examination she clarified that item No.1 to 4, 6 to 8, 13 to 18, 20 and 21 were forwarded to DNA Division as per

the request in forwarding note, Ext.P149. She testified as follows:- On 06.04.2017, she received 8 sealed packets. Seals were intact. The packet contains 22 items.

- Item No.1- Lungi (worn by the Deceased Usthad)
- Item No.2- Dhothi (Spread on Stretcher)
- Item No.3-White Coloured Lungi( used to cover the deceased)
- Item No.4- Metallic Knife ( recovered at the instance of A1 )
- Item No.5- Soil( collected from the place of recovery of knife)
- Item No.6- White Dhothi (A1)
- Item No.7- Rose coloured full sleeve shirt.(A1)
- Item No.8-Saffron Dhothi(A2)
- Item No.9- T-Shirt Blue,red coloured (A2)
- Item No.10- Black Pant (A3)
- Item No.11- White, Blue Shirt (A3)
- Item No.12- Footwear (A1)
- Item Nos.13 to 18- Cotton gauze (collected from Scene of occurrence)
- Item No.19 – Chilli powder collected from the premises of the Mosque.
- Item No.20 – Cigarette buds collected from the premises of the Mosque
- Item No.21 – Cotton Gauze( near the place of incident)
- Item No.22 – Blood sample collected in EDTA Tube.

She deposed that Items Nos.1 & 4 was forwarded to physical division. All items except 19 & 20 were examined with standard scientific tools. She deposed about the details of examination and the result of examination.

The result of examination:

- a. Items Nos. 1 to 4, 6, 13 to 18 and 21 contain human blood belonging to the group "AB".
- b. Items Nos.7, 8 & 12 contain blood which are insufficient for determining the origin and group.
- c. The blood is not detected on item No.5, 9 to 11 and 20.

131. She has further testified that blood was detected on item Nos. 1 to 4, 6, 7, 8, 12 to 18, 21. Blood was not detected on item Nos.5, 9 to 11 and 20. after conforming the presence of blood by spectroscopic test, the blood stains were subjected to Gel Diffusion test item 1 to 4, 6, 13 to 18, 21 contain human blood. Items 7, 8 and 12 contained blood which were found to be insufficient for determining origin and group. The blood stains on item No. 1 to 4, 6, 13 to 18, 21 subjected to ABO system for blood grouping and contained human blood belonged AB group.

132. PW93 is the Asst. Director, DNA Division of FSL, Thiruvananthapuram. She testified that the parcel was received by her Division which contained 5 sealed packets. She has examined the forwarded item namely,

1. A torn lungi with white green and violet colours. Dark brown stains found on it.
2. A torn white coloured double dhoti with brown coloured borders. Dark brown stains found on it.
3. A white coloured lungi with bluish green borders and check designs. Dark brown stains found on it.

4. A metal knife of folding type having metallic handle maximum length of 17 cm fully extended blade was sharp at one edge pointed towards the tip. Brown stains found on it.
6. An old torn dirty white coloured doubt dhoti with deep green and golden coloured borders. Diffused brown stains on it.
7. An old torn light rose coloured full sleeved T shirt. Diffused brown stains found on it.
8. A deep safron coloured single dhoti with white black and brown borders. Light brown stains found on it.
9. A pair of old soiled cubix brand footwear having brown light brown, black and yellow colours.

Item No.13 to 18 and 21 are pieces of cotton gauze. Item No.20 is 5 partially burned cigarette buds, some liquid blood kept in EDTA vial labelled as of A1 was in a sealed envelope with label and specimen seal and also seal of Government General Hospital, Kasaragod. The material objects received by her Division examined by her using scientific technique. DNA extracted from item No.1 to 4, 6, 13 to 18, 21 and 22. DNA could not be extracted from item No.7, 8, 12 and 20. Ext.P144 is the result of her examination of these items. The result of examination.

1. DNA profiles of items 1, 2, 3, 4, 6, 13, 14, 15, 16, 17, 18 and 21 are identical to each other and hence belonging to one and the same male person.
2. DNA could not be extracted from item No.12. So comparison of this item with accused Ajesh (item No.22) is not possible.
3. DNA could not be extracted from the items Nos.7, 8 and 20.

133. She has narrated the examination procedures followed by her in the Lab. She has reiterated that DNA could not be extracted from Item No.12 and it was not possible for comparison with the profile of A1. She identified that MO29 is item No.12 examined by her and MO16 is item No.2, MO17 is item No.3, MO1 is the item No.1, MO18 is item No.4, MO8 and MO9 are item Nos.6 and 7. MO30 to 35 and MO38 are item No.13 to 18 and 21.

134. She was subjected to detailed cross examination. She replied that she has MSc in Botany degree and MPhil in Micro Biology. There was specific request for DNA test in forwarding note. She admitted that item No.1 to 4 were received as unsealed packets. Item No.1 is a torn lungi. She has not examined blood stain in the edge of tears in item No.1. In the re-examination she reiterated that there is possibility of contamination in all items examined by her.

135. Ext.P206 is the report sent by Forensic Science Lab, Thiruvananthapuram after the examination of MO1 and MO18. The report was prepared by Assistant Director Rahila.R. The document was marked through PW97. The details of examination in Ext.P206 are :

#### Details of examination

The material objects involved in this case were examined in the laboratory using scientific aids. on examination there were 15 numbers of severances were found on the lungi in item No.1.

On microscopic examination very small particles of fibres of lungi in item No.4 were detected. on the knife in item No.4 also on detailed examination all the severances found on the lungi had regular edges.Test

cuts mares on T1, T2, T3, T4 and T5) were made on the lungi in item No.1 using the weapon contained in item No.4 and were pared with the evidence severances found on the lungi. On detailed examination the severances found the lungi contained in item No.1 were made by the weapon contained in item No.4.

#### Result of examination

The severances found on the lungi contained in item No.1 are made by the weapon contained in item No.4.

136. Through PW3, MO1, the lungi worn by the deceased admitted in evidence. No more details was stated by PW3 with respect to MO1 as he stated that it was the lungi of the victim. PW11 is the person who helped to take the body of the deceased to ambulance. He identified MO1 lungi of the deceased, MO16 white dhoti used for the structure in which the body was taken and MO17 white dhoti used to cover the dead body. In the cross examination he replied that MO1 along with MO15, MO16 and MO17 shown to him at the time of recording his statement by the investigating officer. He has not deposed about any mark or severances in MO1.

137. In the cross examination, PW25 replied that when he saw the body of the deceased first time, MO1 was not wearing as folded "മരണപ്പെട്ടയാൾ ഞാൻ കണ്ടപ്പോൾ ലൂക്കി മാടി കെട്ടിയിട്ടില്ലായിരുന്ന് ." In the re-examination PW26 this witness deposed that when PW58 examining MO1, it was fully blood stained and could not stretch it. But in the further cross examination this witness deposed that these new facts were not stated to the investigating officer at the time of recording his statement. The relevance of this witness is that he is the one of the first person who saw MO1 in the dead

body as it was not tied above the waist of the victim as folded. Even though he has stated in the re examination that MO1 could not stretch as it was full of blood, in the cross examination, he admitted that these facts were not stated to the investigating officer. So, it is clear that the fact stated in the re-examination with respect to MO1 is unreliable as it was introduced only first time as answer to the question in the re-examination.

138. PW27 is the witness of Ext.P18 mahazar for effecting seizure of MO1, MO16 and MO17. This witness in the cross examination admitted that in Ext.P18 the length, width and colour of MO1 are stated. The length of MO1 is 194 cm, width is 125 cm. He witnessed for measuring all these three dresses but, he answered that due to blood in all these three dresses were not examined after opening it. He has not stated to the investigating officer that MO1 was fully soaked in blood and unable to open. PW58 in the cross examination reiterated that MO1 was measured with length and width. He admitted measuring of MO1 by stating that “നീളവും വീതിയും അളന്നാണ് എടുത്തിയത്” and in Ext P18 he has not stated that MO1 was stucked as it was soaked in blood. So, the testimony of this witness with respect to MO1 that it was not able to stretch at the time of seizing is quite unbelievable as it is an introduction of new fact as an after thought.

139. Another doubt arising from the analysis of evidence is that how the severances are possible in MO1 as it was the lungi worn by the victim at the time of the incident. Major injuries noted by PW52 in the postmortem certificate are below the neck that is the trunk area of the body. So it is not possible to produce corresponding severances in MO1 for the said injuries of the victim as lungi is the dress using to cover below the waist of a person.

This fact is clear from the testimony of witnesses, who found the victim as injured in his room. None of these witnesses stated that MO1 was above the waist of the deceased. Therefore, there is doubt about the prosecution allegation that MO18 produced severance in MO1 at the time of inflicting injuries on the victim by A1. Moreover, PW97 has not explained under whose custody and which place MO1 to MO3, MO6 to 9 and MO18 were kept and he has not stated that these properties were kept separately to avoid contact of them. One of the unbelievable answer given by the learned Prosecutor for happening of severance in MO1 is that it was due to ceiling fan rotation in the room. Since the explanation has no face value as there is no such case for the prosecution at any stage of the trial of the case. The answer given by PW93 that the possibility of transferring DNA to an object by accidentally, intentionally or secondarily cannot be ruled out, is relevant and sufficient to disbelieve the claim of the prosecution that the severance in MO1 is produced at the time of inflicting injury on the victim by MO18. Therefore, fibers of MO1 and blood of the victim detected in MO18 cannot be treated as a circumstance to believe the allegation of prosecution that A1 used MO18 to inflict injuries on the deceased.

140. PW42 is the mother of A3 deposed that she has 3 children including A3, eldest son is working in Gulf country and youngest son is in Indian Army. A3 is employed in HDFC Bank in Kasaragod and normally he arrives at home at 7 pm . He used motor cycle of this brother to go to the office. The motor cycle was keeping in her home. Ext.P38 is the copy of her ration card. She also admitted that 9995680959 is the mobile phone number of her and 9809802562 may be the phone number of A3. She used to call A3 over phone if he is not at home. On 20.03.2017 at 9-30 pm called A3 over phone and at 10-30 pm A3 came and called him at 11,20 to eat food as he

was in the room as door was closed. A3 arrived her home. At 11.20 pm, he again called A3. He was sleeping so, she called him at 11 pm. She turned hostile to the prosecution and Ext.P37 series are the denied statements of her which are connected to the phone calls and arrival of other accused and admitted as contradictions.

141. PW51 is the uncle of A3. He also turned hostile by denying the prosecution version. He also deposed that A3 is working in HDFC Bank. In between his house and Choori Mosque, there are six bus stop. He denied Ext.P48 and Exts.P48(a) to P48(g) statements. He admitted that 9995133152 is his mobile phone number used to call A3 and PW42. The notable aspect is that no question was asked by the learned prosecutor to know the alleged affiliation and connection of A3 with RSS. For this omission no reason is given. PW97 has not stated that any attempt was made by him during the investigation to ascertain the connection of A3 and RSS. No attempt was made by PW97 to search and seize any of the material to find the alleged fanatic attitude of A3 as he is the affiliate of RSS. PW42 as the mother of A3 is the best person to say some thing about the attitude of A3 towards RSS and Muslims. The failure to conduct search in the room of A3 and omission to question PW42 and PW51 about the RSS connection of A3 are serious failure in the investigation which badly affected the root of the allegation in the charge that A3 as the fanatic RSS committed the alleged crime.

142. PW85, the Sales Manger of HDFC Bank, Kasaragod, deposed that his mobile phone numbers are 9544088306 and 7909944005. A3 is the sales executive of his office from the year 2013 as he was hired through Team Space Financial and Service Pvt. Ltd. On 20.03.2017 A3 was in his office and on the next day the bank was not functioned as there was Hartal in

Kasaragod, On 22.3.2017 he received a Whatsapp message from A3 from mobile phone number 9809802562 stating that he has stomach pain and feeling that it was ulcer he consulted a doctor and taking tablets. So he is going to Bangalore for three days and requested for leave. Ext.P116 is the copy of that message with certification of Section 65B of the Evidence Act. Ext.P117 is the CD of that message. Thereafter, he tried to contact A3 but he was not available. Later he received a message from his branch that A3 is involved in a case. So, later he was terminated from his post. Ext.P118 is the file for the details of A3, Ext. P38 is the copy of ration card, Ext.P81 is the copy of PAN card, and Ext.P82 is the employee verification report of A3, and Ext.P83 is the curriculum vitae of A3. The learned Prosecutor relying the testimony of this witness argued that the absence of A3 in the office on 22.03.2017 for false reason is a circumstance for his involvement in the crime. To support this argument the learned prosecutor argued that A3 never went to Bangalore as informed to PW85. The learned defence counsel replied that the testimony of PW85 In the cross examination itself uprooted the entire story of the prosecution. In page 3 of the cross examination PW85 answered that during the office time on 23.03.2017 he came to know that A3 is involved in this case. The working hours of the office is proved by the same witness ; ie from 9am to 6.30 pm. The question raised is that how it is possible for this witness to know the involvement of A3 prior to his arrest. So the learned defence counsel argued that A3 and other accused were in custody of police prior to the time and date stated by prosecution.

143. Considering the time and date of arrest of A3 and other accused, as per the testimony of PW97 and Ext P11 to 13 and Ext P164 to 166, A3 and other accused were arrested on 23.03.2017 at about 8pm from the paddy field at Kellugude. The question raised by the learned defence counsel based

on the testimony of PW85 is neither answered nor explained by the prosecution. So, the silence kept by the prosecution also cast serious doubt over the disclosure statement and alleged recovery of material objects including MO2 to MO9, and MO18.

144. The role of PW73 is that he collected employment details of A3 from PW85, Manager of HDFC Bank. Exts.P81 to P83 are PAN card copy, employees verification, ration card and application of curriculum vitae of A3 with his phone No.9809802562. Ext.P80 is the mahazar for seizure of these documents.

145. DW1 is the Executive Officer of Mallikarjuna Temple Kasaragod and custodian of all the records of the temple. The temple festival is conducted in all years from March 19 to March 23. Ext.X1 is the copy of invitation for the annual temple festival conducted in the year 2017. There is no answer for admitting this document as 'Ext X1' eventhough it was produced as per the prayer of defense side. I am of the opinion that this document would have been marked giving number as 'D series'. This witness testified that the temple festival will continue approximately upto 12 midnight. In the cross examination, he replied that 17 metres northern side of the temple is National Highway and that Karanthakkad junction is the name of that place. From that place to 20 metres east, Madhur road is starting towards northern side. Uma Nursing Home is 300 metres away from the western side. He also testified that Choori mosque also known to him and he used to pass through the road near to the Mosque. The argument of the defense side that the testimony of this witness probabalised that A3 went to that temple festival on that night and thereby he was not there in the mosque area during the relevant time. Considering the testimony of this witness it is brought out only

fact that on the date of incident festival of temple was conducted. So the presence of the accused in that festival on the night of the incident of this case cannot be ruled out completely.

**Call Data Records of Mobile phones of the accused:**

146. The prosecution has endeavored to corroborate the presence of A1 to A3 in the mosque during the pertinent time of the incident by relying on data extracted from their mobile phones. PW45 is the witness for seizure of call data records received by police railway courier. PW55 is the Civil Police Officer of Cyber Cell, Kasaragod who is also a member of investigating team and analysed phone number of A2 and A3 and submitted Ext.P56 report. PW16 is the another Senior Civil Police Officer of Kasaragod police station and witness for the arrest of the accused at 10 pm on 23.03.2017. In his presence and PW97 recovered mobile phones from them. MO23 is the mobile phone of A1, MO24 is the mobile phone of A2, MO25 is the mobile phone of A3, MO26 is the mobile phone sim card of MO23, MO27 is the sim card of MO24, MO27(a) is the second sim in the same mobile phone and MO28 is the sim card of MO25. Ext.P16 is the seizure mahazar prepared for the seizure of MO23 to MO27 and MO27(a). Exts.P11 to P13 are the arrest memo of A1 to A3.

147. PW86 is the scientific officer of the Forensic Department. He has examined the mobile phones and SIM cards of A1 to A3 seized at the time of their arrest. The witness was asked to examine the above mobile phones and SIM cards. Q1 is the mobile phone of A1 (9809948099).- MO23 IMEI - 911473606715644. Q2 is the SIM card of A1. – Bharati Airtel ICCID Number is89919500001138177660. Q3 is the mobile phone of A2 (9947704862) –

MO24. Q4 is the SIM card of A2 – Bharati Airtel. Q5 is the SIM card of A2 – Jio. Q6 is the mobile phone of A3 ( 9809802562) –MO25. Q7 is the SIM Card of A3. – Idea Cellular.

After examination of Q2, the witness has given three contact numbers entered in the SIM Card. They are :

- (1) Contact number 74 is 9947704862 saved as Nithin (A2).
- (2) Contact number 82 is 9633240488 saved as Pavan (PW84)
- (3) Contact number 29 is 9809802562 saved as AKI (A3)
- (4) Contact number 36 is 9446280211 saved as Amar ( PW82)
- (5) Contact number 102 is 9645902132 saved as Santhu. ( PW83)

He examined Q3 (A2's phone – 'Coolpad' make mobile phone). He identified the phone i.e. MO24.

148. It is further elicited in the chief examination about the following calls to the phone of A2 made by mother on the date of incident in between 11.22 PM on 20/03/2017 and 00.23 AM on 21/03/2017. All the calls are unattended. The call details are as follows:

SI No	UTC TIME	IST	Calls from Niranjini (A-2 's mother)	To A-2
1.		11.22 PM	9495227466	9947704862(not attended)
2.	17.35		9495227466	
3.	17.45	11.05 PM	9495227466	9947704862(not attended)

4.	17.58	11.15 PM	9495227466	9947704862(not attended)
5.	18.02		9495227466	
6.	18.31	11.28 PM	9495227466	9947704862(not attended)
7.	18.53	11.32 PM	9495227466	9947704862(not attended)
		0.1 am		9947704862(not attended)
		00.23 AM		9947704862(not attended)

Q4 is the Airtel SIM card of A2 in respect of Mobile No. 9947704862-  
ICCID – 89919509129924926370.

Q5 is another SIM of A2 (JIO). Nothing incriminating is there. Only SIM  
data are there.

Q6 is the mobile phone of A3 ie 9809802562.- MO25.

The call details are:

SL NO	UTC TIME	IST	FROM PW42	TO A3
1.	16:25	9:55 PM	9995680959	9809802562 - 0
2.	16:46	10:16PM	9995680959	9809802562 -0

3.	16:55	10:25 PM	9995680959	9809802562 –rejected
4.	17:03	10:33PM	9995680959	9809802562-3 seconds
5.	17:48	11:18 PM	9995680959	9809802562 - 0
6.	17:49	11:19PM	9995680959	9809802562 - 0
7.	17:50	11:20PM	9995680959	9809802562-7 seconds
8.	18:33	00:03 AM	9995680959	9809802562-0
9.	18:34	00:04AM	9995680959	9809802562-0
10.	18:34:25	00:04:25	9995680959	9809802562- 0
11.	18:35	00:05 AM	9995680959	9809802562- rejected
12.	18:36	00:06 AM	9995680959	9809802562- 0
13.	18:37	00:07 AM	9995680959	9809802562- 0
14.	18:38	00:08 AM	9995680959	9809802562–rejected
15.	18:42	00:12 AM	9995680959	9809802562- 0
16	18:43	00:13	9995680959	9809802562- 0

17	18:47:21	00:17:21	9995680959	9809802562-rejected
18.	18:47:34	00:17:34	9995680959	9809802562-rejected
19	18:49	00:19	9995680959	9809802562-14 seconds
20	18:53:55	00:23:55	9995680959	9809802562- 0
21	19:05	00:35	9995680959	9809802562-rejected
22	19:06	00:36	9995680959	9809802562- 24
23	19:11	00:41	9995680959	seconds
24	19:13	00:43	9995680959	9809802562- 0
				9809802562- 20 seconds

149. PW91 is the Nodal Officer of Bharati Airtel Kerala Circle. Through him the prosecution side attempted to prove facts connected to mobile phone number of A1 and A2. This witness testified that Ext.P131 is the covering letter. Ext.P132 is the application of Niranjini, mother of A2. Ext.P133 is the Call Data Records of 9947704862 (phone used by A2). Ext.P134 is 65B Certification, Ext.P135 is the photocopy of Niranjini's ID Card, Ext.P136 is the covering letter for producing the other phone, Ext.P137 is CAFF of A1, Ext.P138 is photocopy of ID Card of A1, Ext.P139 is the CDR

(9809948099),Ext.P140 is 65B certification and Ext.P141 is the Decoded Cell ID. As per Ext.P136 and P137 mobile phone No.9809948099 issued to A1. Ext.P139 is the call data details of that mobile phone number. Ext.P133 is the CDR of mobile phone No.9947704862. The prosecution claimed that this is the phone number used by A2.

150. As per Ext.P133 on 20.03.2017 at 20.58 hours, the Cell ID of the mobile phone is 46550-26643 and at 22.22 hours, also the phone was in the same Cell ID. At 22.29 hours and 22.34 hours also the Cell ID of that mobile phone is same. At 23.54 hours, a message received in that phone and the Cell ID at that time was 46550-37773. At 23.54.37 hours, another message was received in that number. The Cell ID of that mobile phone on 21.03.2017 at 00.03 hours was 46550-14751, on 20.03.2017 at 20.58 hours, a call received by that phone number from mobile phone 9809802562 (According to the prosecution, this is the mobile phone number of A3). The Cell ID of the mobile phone number was 46550-26643.

151. In the cross examination, he disclosed that he cannot say the distance between the different tower mentioned in Ext.P141 and also exact location of the tower marked in that document Ext.P141. He is also unable to say the distance between the place of incident and tower. There is a bio chemist unit in his office which will show the specific call ID. The radio frequency of mobile phone calls may vary from company to company. If two towers are there at the same distance and the capacity of the tower is weak the call will be transmitted by the nearest tower to it. He is also unable to explain the location of six towers in Ext.P141. Based on CDR it is not possible to say whether the call was cut of and it was a missed call. Finally, this witness deposed that average area covered by a tower is 800 metres which is

subject to the geographical condition of that area. The movement of a person holding a mobile phone can be followed by reference to Cell ID.

152. PW94 is the then Taluk Supply Officer through him Ext.P145, application for ration card of the family of A2 is marked. This witness stated that as per Ext.P145, the mobile phone number is shown 9447693084. This witness stated that Niranjini, Shivananda, Nithin Kumar, Nisha are the members of their family as per Ext.P145. PW95 is the Kannur Nodal Officer of BSNL. He was examined to prove Customer Application Form (CAF) of father and mother of A2. Ext.P146 and 146(a) are CAF and ID proof respectively for issuing mobile phone No.9447693084 in the name of father of A2 and Ext.P148 and 148(a) are CAF and ID proof respectively for issuing mobile phone No.9495227466 in the name of mother of A2. Therefore the prosecution succeeded in proving that the mobile phone number used by A2 was subscribed by his mother. Therefore it is proved that 9447693084 is phone number used by A2.

153. PW96 is the Kerala Circle Nodal Officer of Vodafone Idea Cellular Ltd. The purpose of examination of this witness to prove the mobile phone details of PW2 and A3. Exts.P151 to 154 are CAF of CW2, his ID proof, call data records from 20.03.2017 to 25.03.2017 of mobile phone No.9747356559 and its certificate u/s 65B of Evidence Act. This witness testified that above mobile phone number was subscribed PW2 himself. He further testified that mobile phone No.9809802562 is the mobile phone number subscribed by A3 and to prove this fact Ext.P156 CAF, Ext.P157 ID proof with Ext.P155 certificate produced. Ext.P155 is the CDR of the above said mobile phone number of A3. He described the tower location of these two mobile phone numbers as follows: On 20.3.2017 the mobile phone No. of PW2 was in the

tower ID of 4041973024522 from 9:16:56 hours to 17:21:36 hours. On 21.03.2017 at 0:5 hours, from that t mobile phone number an outgoing call to mobile phone No. 9895273969 for 52 seconds duration and at that time also the phone was in the same tower location. On the same day 00:13 hours another mobile phone call was as outgoing call done to mobile phone No.9747356559. At that time, the mobile phone was in the tower ID of 40419730-49971 and the duration of the call was 30 seconds. On the same date at 03:03:25 hours, a 36 duration call was made to the mobile phone No.9895273969. At that time the tower location was same.

154. With respect to the CDR of A2 following details are testified by him:

On 20.03.2017 at 22:33 hours, a call received from 9995680959 for duration of 4 second received. On the same date at 23:20 hours again another call received for 9 seconds from the same mobile phone number and during this time the mobile phone tower location was at the tower of 40419380512919. On 21.03.2017 at 0:17:49 hours, a message received by the mobile phone number of A2 from the same tower location. On that date at 0:19:07 hours, from the same mobile phone number a call received by A2 for a duration of 11 seconds. At that time also the mobile phone of A2 was in the same tower location. On the same date at 0:26 hours, an outgoing call made by A2 to the mobile phone No.9633246488. The duration of call was 10 seconds. At that time the mobile phone of A2 was in the tower location of 404193805124529. On 20.03.2017 at 23:17 hours, an incoming call received from A2 mobile phone for 14 seconds duration from 7012396607 and the tower location was 4041973024522. On 21.03.2017 at 0:36:43 hours from 9995680959, 25 seconds duration incoming call received by the mobile phone of A2 and the tower location was 404193805124529. On the same

date at 0:43 hours, another phone call received from same mobile phone number in the mobile phone number of A2 and call duration was 21 seconds. On the same date 0:47:47 hours, and 0:47:54 hours, an incoming call received by mobile phone of A2 from mobile phone No.7012396607. On the same date 0:17, 0.26 and 0.43 hours, three outgoing calls were made by mobile phone of A2 to the mobile phone number 9633246488. As per Ext.P156 the mobile phone number was subscribed by Amareesh, son of Suresh.N of Kasaragod Municipality. The prosecution case is that the subscriber is the brother of A2 and the mobile SIM card was used by A2 since the subscriber brother is in foreign country. This witness further testified that as per Ext.P155 almost all days the mobile phone was in the same tower location, 24529. On 21.03.2017 after 0.45 hours that mobile phone was in the area of tower ID No.24529. As per Ext.P155 the subscriber never left State of Kerala. In the cross examination this witness testified that Ext.P153 and P155 generated from the computer system on 15.5.2017. He answered to the question that whether he has direct knowledge about the contents in Ext.P152 and 155, he answered that the system was not in his control. In order to deal computer system, there is a separate wing. The frequency of each mobile phone service provider are different depends upon particular terrain and call condition. He cannot say the compact ability of Ext.P153 and P155 and if the software is not compatible final print out will be different. If tower capacity is weaken the nearest tower will cater the area if the latter tower is more reachable. In his office there is map for showing tower limits. Approximate area of a tower location in normal case is 1 – 3 kms.

155. The argument of the learned Prosecutor is that above testimony and documents of the service providers proved that A2 and A3 were actively in contact with each other just before and immediately after the murder of the

victim and they were in the tower location of the same Mosque. So it is claimed that all these accused were in the Mosque during the relevant time of the incident and A3 was moving from one tower to another tower on the date of incident and the tower location is nearby the scene of occurrence.

156. But considering the features of the above testimony and documents admitted in evidence none of the above witnesses stated the exact location of the nearest mobile phone tower of the mobile phone SIM cards produced by the prosecution as belongs to A1 to A3 and the nearest mobile phone tower to the said Mosque. The learned Prosecutor claimed that the nearest tower to the Mosque is at Surlu which 200 meters away from the Mosque. To support this claim, the testimony of PW97 is relied. It is true that Ext 141, the Decoded Air Tel Cell ID list shows ID number 46550-37773 is at Meeppuri (Sree Anand Building, Surlu, RD Nagar), Kasaragod. The question that how PW97 arrived at a conclusion that the above tower is at 200 meters away from the Mosque is not answered. Nothing was revealed by PW91, through whom Ext P141 marked, about the tower location. Moreover, PW91 answered that he is also unable to say the distance between the place of incident and nearest tower of that place. There is a bio chemist unit in his office which will show the details of specific call ID. The radio frequency of mobile phone calls may vary from company to company. He is also unable to explain the location of six towers in Ext.P141. Finally, this witness deposed that average area covered by a tower is 800 metres which is subject to geographical condition of that area. PW96 also testified that proximate area of a tower location in normal case is 1 – 3 kms. It is true that in the re-examination PW97 stated that Surlu is a place 200 meters away from Choorippally. For this what is the material relied by him is nether stated nor produced.

157. It is pertinent to note that PW79, the Village Officer of the area of the said Mosque stated nothing about the distance between the nearest mobile phone tower and the Mosque. He only testified that one road ends on the side of Surulu. Even then no question was put to him by the prosecution side to ascertain the location of the tower and its distance to the Mosque. PW97 failed to record statement of this witness to know the distance between the tower and the Mosque. So, the prosecution side either failed to produce one of the relevant material. Therefore, the mere statement of PW97 that the distance from Surulu to Choorippally is 200 meters is unreliable. Therefore, the conclusion is that even though it is proved that A2 and A3 are with in the tower located at Surulu and there were contacts between them by phone calls at the night of the incident in this case, in the absence evidence for the proximity of tower location and the mosque, the call data produced cannot be considered as the evidence for the presence of the accused in the said Mosque.

**158. The Conclusion:**

(1) As per the final report, the sole reason for committing the murder of the victim is hatredness of A1 to 3 against Muslim community and the reason for the enmity of A1 against Muslims is that on 16.05.2016 during the election Kerala State Legislative Assembly, he was attacked by few Muslim youth due to communal hatredness. So vengeance A1 and A2 attacked Muslims and three incidents were happened as they attacked 5 Muslim persons, CW50 to 55. So these witnesses are very crucial to prove the allegations in the charge.

The learned Spl. Prosecutor filed petition to amend the charges already framed by the learned predecessor Judge for

incorporating allegation that A1 to A3 on account of personal enmity towards Muslim community and also on account of being fanatic workers and believers of RSS and belong to Hindu community committed the murder of the victim. So the petition was allowed and the charge amended and included above allegations that A1 to A3 are fanatic workers and believers of RSS and belong to Hindu community, arrived at the Mosque and A1 trespassed into the room of the victim by A1. So, the motive alleged as per the charge is only one that the accused as the fanatic workers and believers of RSS have personal enmity against Muslim community of locality of the Mosque.

Considering the allegations of prosecution it is necessary to prove the three incidents stated in the final report as the evidence for the alleged motive. But among the above stated six witnesses only CW50 was examined as PW32. All remaining witnesses specifically stated in the final report namely CW 51 to 55 were given up by the prosecution. In the above points it is already found that none of the three incidents allegedly projected as reason for enmity of accused against Muslim community is not at all proved. Moreover, the prosecution side failed to establish any kind of connection of the accused with RSS. For the above claimed previous incidents no case was registered against the accused alleging any communal element, even then two alleged previous incidents were happened in the presence of many police officers. Nothing was produced to prove the allegation that A1 to 3 are fanatic workers and believers of RSS. Therefore, it is already found that the prosecution miserably failed to prove the motive alleged against the accused.

(2) The two witnesses, PW2 and PW3, were projected as the material witnesses to prove the involvement of the accused persons. But in the above analysis it is already found that their testimony is unreliable as all the facts connecting to the identity of the accused persons were stated only at the time of examination. None of the previous statements of these two witnesses recorded by PW58 and PW97 could not show the facts connected to the identity of A1 to A3. So, the testimony of PW2 and PW3 is wholly unreliable and cannot be used as evidence for the allegations that the accused were committed the alleged offences in the charge.

(3) PW58 recovered MO13, MO14 and another Videocon made mobile phone without SIM card and were taken into custody. MO13 and 14 seized from the pillow of the deceased. From the same room of the deceased, 3 Airtel sim cards, one Vodafone sim card, one Tata sim card, one memory card and one card reader (MO 41, MO42, MO43 series) were also seized. So, it is clear that 3 mobile phones, a memory card and 5 SIM cards were recovered from the room of the deceased immediately after the incident. None of the mobile phone and SIM cards were examined by the investigating officer. There was no attempt from the investigating team to identify the call details and images stored in the said materials. No explanation is provided by the prosecution side for their serious lapse, prime materials seized from the scene of occurrence, were not touched by any of them for the purpose of investigation. These electronic data stored devices recovered from the crime spot immediately after the incident were omitted to sent for analysis by an expert in the field. The phone seized from accused and PW 2and PW3 were analysed

but nothing was useful for the prosecution case. The failure of the investigating officers to investigate with respect to the contents and data of above said phone materials cast serious doubt in the manner in which the investigation was started, conducted and concluded. So the prosecution spoiled one of the best opportunity to know with whom the deceased was interacted and what was the transactions of him. To rule out all possibilities the analysis of these devices recovered from the crime spot was necessary . This failure of the investigation is never explained by the prosecution. The silence in this matter itself is sufficient to uproot the prosecution allegations. Therefore, it can be safely concluded that the investigation is not up to the standard and one sided. So, the accused are entitled benefit of doubt.

(4) The seizure of MO1 by PW58 and preparation of Ext.P18 and subsequent preparation of Ext.P20 additional seizure mahazar by PW97 for the same MO1 creates plethora of doubts about the reliability of seizure of MO18 and allegation of use of it for inflicting injuries on the victim. The unanswered question is that even after MO1 was measured by PW58 with length and width in the presence of witnesses he was unable to see any severances in MO1. The reason stated by him is that it was soaked in blood so unable to stretch MO1. This is unbelievable considering the measurement of length and width taken by him for the same MO1. At the same time, on the next day, PW97 opened MO1 and found severances and recorded in Ext.P20. The date of Ext.P18 is 21.03.2017 and date of Ext.P20 is 22.03.2017. If the claim of these two officers believed how it was possible to PW97 to open blood soaked and stuck MO1

is an unanswered question, which cast doubt over the allegations against the accused. Therefore, the fiber particles of MO1 found in MO18 by the expert cannot be treated as an evidence to connect MO18 and the injuries noted by PW52 in the dead body. Another fact connected to this confusion created by the investigating officers is that how the severance in MO1 is possible since the injuries were sustained on the trunk part of the deceased. The prosecution has no case that the lungi like MO1 using for covering the upper part of the body. The notable fact is that in Kerala, the practice of using MO1 like lungi is to cover below the area of waist of a person. So also, the claim of the prosecution that severance in MO1 is connected to the injuries of the victim as it was produced by MO18 is remained in doubt. This is another reason to doubt the allegations against the accused. So, MO18 cannot be treated as the weapon used by A1 to inflict injuries on the victim.

(5) The alleged recovery of MO8, 9 and MO18 conducted based on alleged disclosure statement of A1 is also doubtful for the reason that he was admittedly brought for recovery as covered with '*Mukhammoodi*'. It's difficult to fathom how someone could effectively lead an investigating team while keeping his entire face covered and accurately identify concealed material. Another failure of the investigating officers is that none of the person residing in the home of A1 to A3 were questioned with respect to the allegedly seized items. There was no attempt to find any material connecting the incident from the house of A1 to A3 and their alleged fanatic affiliation to RSS. These unanswered area also cast serious doubt

over the claim of prosecution that MO2 to MO9 and MO18 are the material objects connected to the murder of the victim.

(6) MO4 is produced as the stone hurled against PW2 and thereby Mosque was attacked by A2. Considering the testimony of PW58 and contents in Ext.P2 mahazar, the only conclusion can be arrived is that, if MO4 like material is thrown against such a tiled wall , there will be corresponding damage to the wall. But PW58 and others could find only only minor scratch caused to the tiled wall after hitting MO4 to the wall. Therefore, the claim of the prosecution that MO4 is one of the piece of a stone pelted by A2 against PW2 is remained in doubt.

(7) The failure of investigating officer to conduct DNA test for MO8, MO9 and MO18 with the blood sample of A1 to ascertain that this materials are used by him is also a doubtful factor to disbelieve prosecution allegations. It is already found in the above paragraph that MO8 is an old dhoti and therefore, there is possibility of remaining human fluid and body discharge of the person, who used it. If analysed MO8 with blood sample of A1 the result will prove that he used it or not. The reluctance to conduct DNA analysis of MO8 with blood sample A1 shows that the investigation was one sided. Therefore, this failure in the investigation is sufficient to consider that there are serious omission in the collection of evidence in this case. So, this is another reason to doubt the allegation of prosecution against A1 that he inflicted injuries on the victim.

(8) The evidence produced are failed to prove sharing of common intention by the accused. More over prosecution side never raised

allegation of criminal conspiracy against the accused for committing the alleged offences.

159. The argument of the learned Special Prosecutor that, none of the accused provided any explanation during the examination under Section 313 (1)(b) of CrPC, for the facts divulged by the witnesses and material objects produced, sans merit and liable to be rejected as the prosecution failed to establish the chain of circumstances against the accused. So, the cumulative effect of the above stated eight reasons is that , the allegations in the charge that A1 to A3 being the fanatic workers and believers of RSS, infurtherance of common intention to murder any Muslim person and with intention to promote hostility and hatredness between Hindus and Muslims, arrived at the Mosque in MO5 and infurtherance of their common intention A1 and A2 trespassed in the Mosque and A1 by MO18 inflicted injuries on the victim, and A2 guarded A1 and attacked PW2 with MO4 and damage caused to the Mosque, and subsequently all three accused left the place and destroyed evidence of the offence committed by them are not proved beyond reasonable doubt. Therefore the prosecution failed to prove that the victim was murdered by A1 to A3 beyond reasonable doubt. Therefore, the accused are entitled benefit of doubt. Hence the offence u/ss 449, 302, 153A, 295, 201 r/w 34 of IPC charged against the accused have not been sufficiently proven beyond reasonable doubt and therefore they are not guilty for these offences.

The points are answered accordingly.

160. **Point No. vi:** In the result, the accused are not found guilty of the offence u/ss 449, 302, 153A, 295, 201 r/w 34 of IPC and they are

acquitted u/s 235(1)of Cr.P.C. Their bail bonds stand cancelled and they are set at liberty.

MO1 to 4, MO6 to 12, 16 to 22, 29 to 38, 44, 45 are valueless and shall be destroyed after the period of appeal. The remaining MOs shall be confiscated after the period of appeal.

(Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in open Court, this, the 30<sup>th</sup> day of March, 2024).

**DISTRICT JUDGE,  
KASARAGOD.**

**APPENDIX OF EVIDENCE**

FORM 62

**List of Prosecution/ Defence/Court Witnesses**  
( Rue 134 Criminal Rules of Practice, Kerala)

**A. Prosecution Witness:**

Rank	Name	Whether Eye witness, Police Witness, Expert Witness, Medical Witness, Other Witness.
PW1/CW1	Hashim.C.H	Other witness
PW2/CW2	Abdul Azeez Musliar	Other witness
PW3/CW3	T.M.Abdul Hameed	Other witness
PW4/CW4	Mohammed Suhaid	Other witness
PW5/CW7	Mohammed Basith.K.A	Other witness
PW6/CW8	C.A.Sulaiman	Other witness
PW7/CW16	Abdul Gafoor C.A	Other witness

PW8/CW17	Mahamood Vatayakad	Other witness
PW9/CW19	Hydarali.M	Other Witness
PW10/CW27	K.K.Joseph	Official Witness
PW11/CW10	Junaid.C.A	Other Witness
PW12/CW29	K.Manoj	Official Witness
PW13/ CW24	Abdullakunhi.C.H	Other Witness
PW14/CW26	Anees.C.A	Other Witness
PW15/CW30	Arun Babu	Official Witness
PW16/CW31	Ranjithkumar.A.M	Police Witness
PW17/CW36	Ranjith.S	Police Witness
PW18/CW41	Madhusoodhanan.K.V	Police Witness
PW19/CW35	Sasidhara.K Pandit	Official Witness
PW20/CW37	Sheeja.S	Police Witness
PW21/CW38	Ajin S Balan	Police Witness
PW22/CW34	Prakashan.M	Official Witness
PW23/CW42	Mohammed Bilal.K.M	Other Witness
PW24/CW44	Mohammed Ashhal Thansif	Other Witness
PW25/CW61	Vijayan.K	Police Witness
PW26/CW57	Mohanan Menokki	Police Witness
PW27/CW58	Rajesh.M	Police Witness
PW28/CW59	Shejith.P	Police Witness
PW29/CW60	Suresh.P.V	Police Witness
PW30/CW63	Sunil Kumar.A.N	Police Witness
PW31/CW64	Kishore Kumar.K.V	Police Witness
PW32/CW50	Abdul Kasif Arfan.C.A	Other Witness
PW33/CW56	Vijayan.K	Other Witness
PW34/CW77	M.Geetha	Official Witness
PW35/CW78	Maniraj.N	Official Witness

PW36/CW79	Deepesh.K	Expert Witness
PW37/CW65	Mathew P.Louis	Official Witness
PW38/CW76	K.Mahalingeshwara Sharma	Official Witness
PW39/CW40	Mohanan.V	Police Witness
PW40/CW68	D.Rajesh Shenoy	Other Witness
PW41/CW67	Radha M Shetty	Other Witness
PW42/CW69	Mohini.K	Other Witness
PW43/CW32	Balakrishnan Nair.C.K	Police witness
PW44/CW81	Lakshmi Narayanan	Police Witness
PW45/CW83	Vinodkumar.P.B	Police Witness
PW46/CW48	Sunilkumar.S	Police Witness
PW47/CW80	Abbas Nishad.S.S	Other Witness
PW48/CW85	Siraj.K.M	Other Witness
PW49/CW84	Ameer.A.M	Other Witness
PW50/CW33	Jayanthi.B.U	Other Witness
PW51/CW70	Gangadharan.K	Other Witness
PW52/CW90	Dr.S.Gopalakrishna Pillai	Medical Expert Witness
PW53/CW92	Dr.Augustine Joseph,	Medical Witness
PW54/CW93	Haris PathiriKodan	Police Witness
PW55/CW89	Sivakumar.P	Police Witness
PW56/CW46	Midhun.K	Other Witness
PW57/CW47	K.Rakshith Kumar.	Other witness
PW58/CW99	M.V.Sukumaran.	Police witness
PW59/CW96	Sibi Thomas	Police witness
PW60/CW95	Abdul Rahim.C.A	Police witness

PW61/CW98	Ajithkumar.P	Police witness
PW62/ Addl.Witness Summoned as per order in CrI.MP No. 4280/2018	A.C.Sheeba	Official Witness
PW63/ Addl.Witness Summoned as per order in CrI.MP No. 4280/2018	S.A.Sankara Pillai	Official Witness
PW64/CW73	Dineshkumar.V.K	Official Witness
PW65/CW13	Abbas T.M	Other witness
PW66/CW14	Sulaiman.T.A	Other witness
PW67/CW22	Annathunissa.B.M	Other witness
PW68/CW21	Abdul Razak	Other witness
PW69/CW97	M.V.Anilkumar	Police Witness
PW70/CW62	Aboobacker Siddique.	Other witness
PW71/CW71	Pramodkumar.O	Official Witness
PW72/CW72	Ranjith.T.V	Official Witness
PW73/CW82	John.K.M	Police Witness
PW74/CW88	Rathanakaran.E	Police Witness
PW75/ Addl.Witness Summoned as per order in CrI.MP No. 3567/18	Dr.Fathimath Rubeena.S.R	Medical Witness
PW76/CW91	Dr.Manoj.S	Medical Witness
PW77/ Addl.Witness Summoned as per order in CrI.MP No.3567/18	Ramakrishnan.K	Official Witness

PW78/ Addl.Witness Summoned as per order in Crl.MP No. 3567/18)	Rajeesh Theruvath Peedikayil	Police Witness.
PW79/CW75	P.A.Muhammad	Official Witness
PW80/ Addl.Witness Summoned as per order in Crl.MP No. 3567/18)	A.A.Kusuma	Official Witness
PW81/ Addl.Witness Summoned as per order in Crl.MP No. 3567/18)	Ajithkumar.K	Other witness
PW82/ Addl.Witness Summoned as per order in Crl.MP No.3567/18)	Amar.K	Other witness
PW83/Addl.Witness Summoned as per order in Crl.MP No.3567/18	Santhosh Narayanan	Other Witness
PW84/ Addl.Witness Summoned as per order in Crl.MP No. 3567/18	Pavankumar.B.K	Other Witness
PW85/CW66	Sanju Jayaram Das	Other Witness
PW86/ Addl.Witness Summoned as per order in Crl.MP No. 163/19)	Suresh.S.R	Expert witness
PW87/Addl.Witness Summoned as per order in Crl.M.P.No.164/2019	Jeevan Babu.K	Official Witness

PW88/ Addl.Witness Summoned as per order in CrI.MP No. 4356/18)	Simji Joseph	Official Witness
PW89/CW94	Alpha Mamai.K,	Judicial Witness
PW90/Addl.Witness Summoned as per order in CrI.MP No.378/19)	Saida.M.E	Other Witness
PW91/CW87	Ashokan.C	Official Witness
PW92/Addl.Witness Summoned as per order in CrI.MP No.378/2019	Suja. J.S	Expert witness
PW93/Addl.Witness Summoned as per order in CrI.MP No.378/2019	Sreevidya.K.V	Expert witness
PW94/Addl.Witness Summoned as per order in CrI.MP No.1058/2019	Janardhanan Nair	Official witness
PW95/Addl.Witness Summoned as per order in CrI.MP No. 1059/2019)	Chackochan	Official Witness
PW96/ Addl.Witness Summoned as per order in CrI.MP No 1060/2019	Sahin Komath	Expert witness
PW97/CW100	P.K.Sudhakaran	Police Witness

**B. Defence Witness:**

Rank	Name	Whether Eye witness, Police Witness, Expert Witness, Medical Witness, Other Witness.
DW1	Babu.M	Other Witness

**C. Court Witness: Nil****List of Prosecution/ Defence/ Court Exhibits****A. Prosecution Exhibits:**

Sl No	Exhibit Number	Date	Description
1	P1/PW1	21.03.2017	First Information Statement in Cr.No.210/2017 of Kasaragod PS
2	P2/PW6	21.03.2017	Scene Mahazar in Cr.No.210/2017 of Kasaragod PS
3	P3/PW7	21.03.2017	Inquest Report in Cr.No.210/2017 of Kasaragod PS
4	P4/PW7	Nil	Salary Bill of deceased for the month of February 2017.
5	P4(a)/PW7	Nil	Salary Bill of deceased for the month of March 2017.
6	P5/PW10	24.03.2017	Recovery Mahazar U/s 27 of IEA (Bike and key)
7	P6/PW12	24.03.2017	Recovery Mahazar U/s 27 of IEA (knife)
8	P7/PW12	24.03.2017	Recovery Mahazar (Shirt and Mundu of A1)
9	P8/PW13	23.03.2017	Observation Mahazar (Way which dog travelled)
10	P9/PW14	24.03.2017	Scene Observation Mahazar
11	P10/PW16	23.03.2017	Seizure Mahazar (Mobiles and Sim cards)
12	P11/PW16	23.03.2017	Arrest Memo of A1
13	P12/PW16	23.03.2017	Arrest Memo of A2
14	P13/PW16	23.03.2017	Arrest Memo of A3
15	P14/PW18	NIL	Election bandavas duty of the police personnel issued from the Kasaragod Police Station.
16	P15/PW19	31.03.2017	Recovery Mahazar U/s 27 of IEA ( A2's dress)
17	P16/PW19	31.03.2017	Recovery Mahazar U/s 27 of IEA (A1's chappal)
18	P17/PW19	31.03.2017	Recovery Mahazar U/s 27 of IEA (A3's dress)

19	P18/PW27	21.03.2017	Seizure Mahazar
20	P19/PW28	21.03.2017	Seizure Mahazar
21	P20/PW29	22.03.2017	Addl.Seizure Mahazar (showing the tearings on MO1)
22	P21/PW32	08.06.2016	Certified copy of FIS in Cr.No.378/16 of Kasaragod P.S
23	P22/PW33	23.03.2017	Certified copy of FIS in Cr.No.248/17 of Kasaragod P.S
24	P22(a)/PW61	23.03.2017	Certified copy of FIR in Cr.No.248/17 of Kasaragod P.S
25	P23/PW33	31.10.2018	Certified copy of Petition filed under section 320(1) of Cr.P.C in CC 46/18 of J.F.C.M-I, Kasaragod
26	P24/PW34	24.03.2017	Proceedings of District Collector, Kasaragod
27	P25/PW35	31.03.2017	Proceedings of Deputy Collector (General), Kasaragod
28	P26/PW36	21.03.2017	Examination of Scene of occurrence in Cr.No.210/17 of Kasaragod P.S
29	P27/PW36	21.03.2017	Report on the examination of Scene of occurrence in Cr.No.210/17 of Kasaragod P.S
30	P28/PW36	24.03.2017	Report on the Vehicle involved in Crime No.210/17 of Kasaragod P.S
31	P29/PW36	24.03.2017	Report on the examination of the Scene of occurrence in Crime No. 210/17 of Kasaragod P.S
32	P30/PW37	04.04.2017	Report of the Assistant Engineer, Electrical Section, Nellikkunnu to the C.I of Police , Costal Police Station.
33	P31/PW38	26.05.2017	Ownership Certificate issued by Madhur Grama Panchayath in respect of Building No. MP II/544 (MP XI 230A new)
34	P32/PW38	09.05.2017	Ownership Certificate of Building No. XII-424 B of Madhur Grama Panchayath (PW42)

35	P33/PW38	17.05.2017	Ownership certificate of Building No. XII- 20 (old No. IX-393) of Madhur Gramapanchayath (Subrahmanya)
36	P34/PW38	17.05.2017	Ownership certificate in respect of XI- 229 (old No. XI- 543) (Choori Old Juma Masjid Mosque)
37	P35/PW39	15.11.2016	Certified copy of report of deleting section 324 IPC and adding section 326 IPC in Crime No. 378/16 of Kasaragod PS
38	P36/PW41	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW41 "24.03.2017 തീയതി-----കറെ ആളുകളെയും കണ്ടിരുന്നു.
39	P36 (a)/PW41	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW41 "ചൂരിപള്ളിയിലെ -----എടുക്കാൻ വന്നതാണെന്ന് അറിഞ്ഞു".
40	P36 (b)/PW41	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW41 31.03.2017 തീയതി -----കണ്ടെടുത്തതും ഞാൻ അറിഞ്ഞിരുന്നു".
41	P36 (c)/PW41	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW41 "എന്റെ കവുങ്ങിൻ തോട്ടത്തിൽ ----- വേലികൾ ഒന്നും കെട്ടിയിട്ടില്ല.
42	P37/PW42	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW42 "31.03.2017 തീയതി -----ഡ്രസ് എടുത്തിരുന്നു.
43	P37 (a)/PW42	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW42 "രാത്രി 12 ½ മണി -----എന്നയാളുമാണ് വന്നത്".
44	P37 (b)/PW42	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW42 "അജേഷിനെ മുമ്പ് -----വന്നിട്ടും അറിയാം.

45	P37 (c)/PW42	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW42 “അവരെത്തിനാ-----വാതിൽ തുറന്നു കൊടുത്തത്.”
46	P37 (d)/PW42	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW42 “അവർ ഭക്ഷണം കഴിച്ച് എന്ന് പറഞ്ഞു.----- ടെറസിൽ കിടന്നു.”
47	P37 (e)/PW42	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW42 “ രാവിലെ----- അറിഞ്ഞത് .”
48	P37 (f)/PW42	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW42 “ഞാൻ രാവിലെ 7 മണിയോടെ -----എന്നോട് ഒന്നും പറഞ്ഞില്ല.”
49	P37 (g)/PW42	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW42 “7 മണിക്ക് ----- കണ്ടുതലേക്ക് പോയി.”
50	P38/PW42	Nil	Copy of Ration Card of PW42
51	P39/PW43	24.03.2017	Observation Mahazar (Anganvadi)
52	P40/PW44	28.04.2017	Seizure Mahazar
53	P41 to P41 (ac)/ PW44	22.03.2017	Photographs of deceased (30 in Numbers).
54	P42/PW44	Nil	CD of Photographs
55	P43/PW44	22.03.2017	Certificate submitted under section 65 B of Indian Evidence Act by PW54
56	P44/PW44	22.03.2017	Covering letter of Photographer, Photographic Bureau, District Police Office, Kannur to Inspector of Police, Adhur.
57	P45/PW45	12.06.2017	Seizure Mahazar
58	P46/PW47	22.05.2017	Seizure Mahazar
59	P47/PW50	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW50 “24.03.2017 തീയതി -----കണ്ടിരുന്നു.

60	P47 (a)/PW50	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW50 “ശാസ്ത്രീയ ----- കണ്ടിരുന്നു.
61	P47 (b)/PW50	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW50 “അന്വേഷിച്ചതിൽ ----- പറഞ്ഞിരുന്നു.
62	P47 (c)/PW50	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW50 “C1 തയ്യാറാക്കിയ -----ഒപ്പു വെച്ചിരുന്നു. .
63	P47 (d)/PW50	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW50 “അടുത്ത ദിവസങ്ങളിൽ -----ചെയ്തിരുന്നില്ല .
64	P48/PW51	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 51 “ അവൻ KL 14 L 816-----ഉണ്ട്.
65	P48 (a)/PW51	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 51 “ 21.03.2017 തീയതി -----ഉണ്ടായിരുന്നു.
66	P48 (b)/PW51	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 51 “രാത്രി ----- എനിക്കറിയില്ല”.
67	P48 (c)/PW51	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 51 “ തീയതി----- കൊണ്ടുപോയിരുന്നു”.
68	P48 (d)/PW51	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 51 “അപ്പോഴാണ്----- അറിഞ്ഞത്”.
69	P48 (e) /PW51	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 51“ 21ആം തീയതിക്ക് -----എടുത്തിരുന്നില്ല”.
70	P48 (f)/PW51	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 51 “ ബെക്ക് ----- ചോദിച്ചിരുന്നില്ല”.
71	P48 (g)/PW51	25.04.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 51“ 24.03.17 തീയതി -----കൊടുത്തിരുന്നു.

72	P49 /PW52	22.03.2017	Postmortem Certificate issued from Department of Forensic Medicine, Medical College, Pariyaram.
73	P50/PW53	30.03.2017	Accident Register cum Wound Certificate of A2, issued from Government General Hospital, Kasaragod.
74	P51/PW53	30.03.2017	Accident Register cum Wound Certificate of A1, issued from Government General Hospital, Kasaragod.
75	P52/PW53	24.03.2017	OP Ticket of A3 issued from Government General Hospital Kasaragod
76	P53/PW53	24.03.2017	OP Ticket of A1 issued from Government General Hospital, Kasaragod
77	P54/PW53	24.03.2017	OP Ticket of A2 issued from Government General Hospital Kasaragod
78	P55/PW53	24.03.2017	Proceedings of the Superintendent, General Hospital, Kasaragod ( Order No. A1-926/2017)
79	P56/PW55	12.06.2017	Report of Analysis of call details by CPO 2045 Cyber Cell, Kasaragod.
80	P57/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 “ 18.03.2017 തീയതി -----പോയിരുന്നു”.
81	P57 (a)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 “ കളി കഴിഞ്ഞ് -----ചോദിച്ചു”.
82	P57 (b)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 “ എന്തു പറ്റിയതാണെന്ന് -----പറഞ്ഞു ”.
83	P57(c)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56“ അവർ -----പറഞ്ഞു ”.
84	P57(d)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 “ അപ്പോൾ -----കൊണ്ടു വന്നു കൊടുത്തു “.

85	P57 (e)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 "തോട്ടിൽ ഒരു ----- കിടക്കുന്നുണ്ടായിരുന്നു".
86	P57 (f)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 " അവർക്കു ----- എടുത്ത താലേന്നും പറഞ്ഞു".
87	P57(g)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 "റോഡിൽ വീണവരിൽ -----മനസ്സിലായി".
88	P57(h)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 " ഒച്ച കേട്ട് ----- ഇനിയും തിരിച്ചറിയാൻ വരും ".
89	P57(i)/PW56	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 56 "ജ്യോതിയേട്ടനോട് -----എന്നു പറഞ്ഞു".
90	P58/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 "18.03.17 തീയതി-----കളിക്കാൻ പോയി ".
91	P58(a)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 "കളി കഴിഞ്ഞ് രാത്രി -----നോക്കി ".
92	P58(b)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 "അപ്പോൾ----- ഇട്ടിരുന്നു.
93	P58(c)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 "അവൻ ----- എന്ന് പറഞ്ഞു"
94	P58(d)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 "ആ സമയം -----വീണു കിടക്കുന്നതു കണ്ടു. "
95	P58(e)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 "അയാളുടെ -----വീണു കിടക്കുന്നുണ്ടായിരുന്നു "
96	P58(f)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 "അവരുടെ ----- പറഞ്ഞു"

97	P58(g)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 “അപ്പോൾ ----- കൂടലിലേക്ക് പോയി.”
98	P58(h)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 “ഞങ്ങൾ ----- ജ്യോതിയേട്ടനോട് പറഞ്ഞു.”
99	P58(i)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 “ ജ്യോതിയേട്ടൻ -----ഫോണിൽ പറഞ്ഞു.”
100	P58(j)/PW57	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 57 “ഞങ്ങൾ ----- എനിക്ക് കണ്ടാലറിയാം .”
101	P59/PW58	21.03.2017	Report requesting to keep the property in police custody
102	P60/PW58	22.03.2017	Report regarding handing over the investigation.
103	P61/PW58	21.03.2017	Proceedings of the District Police Chief Order No. D1-14342/17/G
104	P62/PW59	21.03.2017	Report regarding the Inquest.
105	P63/PW59	21.03.2017	Passport of men quitting their station in respect of PW25
106	P64/PW59	21.03.2017	Kacheet regarding handing over the dead body of the deceased.
107	P65/PW61	21.03.2017	First Information Report in Cr.No. 210/17 of Kasaragod P.S
108	P66/PW61	31.03.2017	Certified copy of Report regarding adding full address of the A1 and A2 by the SI of Police , Kasaragod P.S
109	P67/PW62	11.01.2019	Registration particulars of Vehicle Reg.No. KL-14-L-816. Bajaj Pulsar-150
110	P67 (a)/PW62	11.01.2019	Certificate under section 65 B(4) of Evidence Act
111	P68/PW62	10.01.2019	Registration particulars of Vehicle Reg.No. KL-14-K-6067 Honda Activa
112	P68 (a)/PW62	11.01.2019	Certificate under section 65 B(4) of the Evidence Act

113	P69/PW62	11.01.2019	Driving License particulars of PW3
114	P69 (a)/PW62	11.01.2019	Certificate under section 65-B(4) of the Evidence Act
115	P70/PW63	11.01.2019	Driving License Particulars of A2
116	P70 (a)/PW63	11.01.2019	Certificate under section 65 B(4) of Evidence Act
117	P71/PW63	11.01.2019	Driving License Particulars of A3
118	P71 (a)/PW63	11.01.2019	Certificate under section 65 B(4) of the Evidence Act.
119	P72/PW64	11.01.2019	Driving license particulars of A1
120	P72 (a)/PW64	11.01.2019	Certificate under section 65 B(4) of the Evidence Act.
121	P73/PW69	23.03.2017	Permission regarding investigation charges.
122	P74/PW69	24.03.2017	Extract of confession statement of A3
123	P75/PW69	24.03.2017	Property list in crime No.210/17 of Kasaragod PS
124	P76/PW71	28.04.2017	Driving License particulars of PW3
125	P77/PW71	29.03.2017	Registration Particulars in respect of Vehicle KL-14 L-816 Bajaj Pulsar- 150
126	P78/PW72	11.05.2017	Driving license particulars of A3
127	P79/PW72	11.05.2017	Driving License particulars of A2
128	P80/PW73	18.04.2017	Seizure Mahazar
129	P81/PW73	Nil	Copy of Pancard of A3 with PAN number APX PN 0934Q
130	P82/PW73	12.03.2013	Pamac Employee verification form in respect of A3 issued from PAMAC FINSAVE PORT Ltd, Calicut.
131	P83/PW73	Nil	Curriculum Vitae of A3
132	P84/PW74	14.03.2017	No objection order by Inspector of Police, Kasaragod in granting mike permission
133	P85/PW74	16.03.2017	License to use Loudspeaker to Khabadi Tournament

134	P86/PW74	Nil	Invitation Notice of Khabadi tournament held on 18.03.2017
135	P87/PW74	11.03.2017	Request of grant permission to use Loudspeaker.
136	P88/PW74	16.03.2017	License to use the Loud Speaker
137	P89/PW74	Nil	Notice of Badminton Tournament held on 18.03.2017 at Choori Meepuguri ground.
138	P90/PW75	02.04.2017	OP Ticket of A2 issued from Government General Hospital, Kasaragod
139	P91/PW75	02.04.2017	OP Ticket of A3 issued from Government General Hospital, Kasaragod
140	P92/PW75	02.04.2017	OP Ticket of A1 issued from Government General Hospital, Kasaragod
141	P93/PW77	04.04.2017	Handing over Mahazar
142	P94/PW79	06.05.2017	Plan of Masjid Building issued from Village Office, Kudlu Group.
143	P94 (a)/PW79	06.05.2017	Enlarged Scene plan of Spot of incident (old Choori Juma Masjid Building) issued from Village Office, Kudlu Group.
144	P94 (b)/PW79	06.05.2017	Index and Topo details issued from Village Office, Kudlu Group.
145	P95/PW79	06.05.2017	Scene plan (in Crime No. 210/17 of Kasaragod PS) issued from Village Office, Kudlu Group.
146	P95 (a)/PW79	06.05.2017	Index and Topo details issued from Village Office, Kudlu Group.
147	P96/PW79	06.05.2017	Scene plan (in Crime No. 210/17 of Kasaragod P.S) issued from Kudlu Group Village.
148	P96 (a)/PW79	06.05.2017	Index and Topo details issued from Village Office, Kudlu Group.
149	P97/PW79	06.05.2017	Scene plan in (Crime No. 210/17 of Kasaragod P.S) issued from Village Office, Kudlu Group.

150	P97 (a)/PW79	06.05.2017	Index and Topo details issued from Village Office, Kudlu Group.
151	P98/PW79	06.05.2017	Scene plan (in Crime No. 210/17 of Kasaragod P.S) issued from Village Office, Kudlu Group.
152	P99/PW79	06.05.2017	Scene plan (in Crime No. 210/17 of Kasaragod P.S) issued from Village Office, Kudlu Group.
153	P100/PW79	06.05.2017	Scene plan (in Crime No. 210/17 of Kasaragod P.S) issued from Village Office, Kudlu Group.
154	P101/PW79	11.05.2017	Certificate of Possession of Rajalakshmi. R.Shenoy issued from Village Office, Kudlu Group.
155	P102/PW79	11.05.2017	Possession certificate of Anganvadi issued from Village Office, Kudlu Group.
156	P103/PW79	11.05.2017	Certificate of Possession of Naveenkumar Shetty
157	P104/PW79	11.05.2017	Certificate of Possession of PW41
158	P105/PW79	11.05.2017	Caste Certificate of PW1 issued from Village Office, Kudlu Group.
159	P106/PW79	11.05.2017	Caste Certificate of A1 issued from Village Office, Kudlu Group.
160	P107/PW79	11.05.2017	Caste Certificate of A2 issued from Village Office, Kudlu Group.
161	P108/PW79	11.05.2017	Caste Certificate of A3 issued from Village Office, Kudlu Group.
162	P109/PW80	05.05.2017	Caste Verification report of deceased issued from Office of the Tahsildar, Madikeri Taluk, Kodagu District.
163	P110/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 "18.03.2017 തീയതി B.M.S ന്റെ ----- ഞാൻ പോയിരുന്നു".

164	P110(a)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “അജേഷിനേയും നിധിനേയും -----R.S.S. പ്രവർത്തകരാണ്.
165	P110 (b)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “പോലീസ് അജേഷിന്റെ വീട്ടിൽ ----- ഉണ്ടായിരുന്നില്ല”.
166	P110 (c)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “പോലീസ് അജേഷിനെ അന്വേഷിച്ച് വന്നപ്പോൾ -----നടക്കുന്നതായി എനിക്കു തോന്നി”.
167	P110 (d)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “കബഡി ദിവസം രാത്രിയിൽ ----- അന്വേഷിച്ച് പറയണം എന്നു പറഞ്ഞു ”.
168	P110 (e)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW81 “ഞാൻ അജേഷിന്റെ -----എന്നെ കാണാൻ വേണ്ടി പറഞ്ഞു.”
169	P110 (f)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “ 22 ആം തീയതി രാത്രി അജേഷ് ----- രാജേഷും നിധിനും എന്റെ വീട്ടിലേക്ക് വന്നു.”
170	P110 (g)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “ ഞാൻ അജേഷിനോട് എന്തിനാണ് ഒളിക്കുന്നത് ----- എന്നു ചോദിച്ചു”.
171	P110 (h)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “ കബഡിയുടെ അന്ന് ചൂരിയിൽ -----എനിക്ക് അവരുടെ പെരുമാറ്റത്തിൽ സംശയം തോന്നി”.

172	P110 (i)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “ ഞാൻ അവരോട് എന്തെങ്കിലും -----അവരാണ് ചെയ്തതെന്ന് പറഞ്ഞു.”
173	P110 (j)/PW81	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 81 “ 23 ആം തീയതി വൈകുന്നേരം ----- ഗ്രൗണ്ടിന്റെ അടുത്തുനിന്നും പോലീസ് പിടിച്ചു ”.
174	P111/PW82	Nil	Image recovered from Q3/UFED Report (Photo)
175	P112/PW82	Nil	Image recovered from Q3/UFED Report (Photo). Eschewed from consideration as it was marked subject to proof. But no proof was produced.
176	P113/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “ഞാൻ R.S.S. ന്റെ ശവയ്ക്ക് പോകാറുണ്ട്. ----- അവിലേഷ്യം, അജേഷ്യം പങ്കെടുത്തിരുന്നു ”.
177	P113 (a)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “എന്റെ അടുത്ത സുഹൃത്ത് -----എന്റെ അകന്ന ബന്ധുവും കൂടിയാണ് ”.
178	P113 (b)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “നിധിനും, അജേഷ് @ അപ്പുവും എന്റെ ചങ്ങാതിമാരാണ്.”
179	P113 (c)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “ 18.03.17 തീയതി ഞാൻ സുഹൃത്തുക്കളായ ----- അവിലേഷിനെ അവിടെ കണ്ടിരുന്നു”.
180	P113 (d)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “ഞാൻ 5 ½ മണി വരെ ഗ്രൗണ്ടിൽ ഉണ്ടായിരുന്നു. -----ഹർഷയെ കേളുകുന്ന് വീട്ടിൽ ഇറക്കി.

181	P113 (e)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “ ശേഷം എന്റെ വീട്ടിൽ -----അവന്റെ വീട്ടിലേക്ക് പോയി”.
182	P113 (f)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82“ പിറ്റേ ദിവസം ഞായറാഴ്ച -----നിധിനും അപ്പുവും ഉണ്ടായിരുന്നു ”.
183	P113 (g)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82“വൈകുന്നേരം 6 ½ മണി വരെ ----- ഞങ്ങൾ എവിടെയും പോയില്ല ”.
184	P113 (h)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82“ ഞാൻ പിറ്റേ ദിവസം രാവിലെ 11 മണി വരെ----- നിധിനും ഉണ്ടായിരുന്നു. ”.
185	P113 (i)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 "ഞാൻ നിധിനെ വിളിച്ച് ----- രീചാർജ്ജ് ചെയ്യാൻ പറഞ്ഞു"
186	P113 (j)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82“അവിടെ അഖിലേഷിനെ -----രീചാർജ്ജ് ആക്കി ”.
187	P113 (k)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82“അഖിലേഷ് എന്നെ വീട്ടിൽ വിട്ടു -----ഉറങ്ങാൻ കിടന്നു ”.
188	P113 (l)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82“കുറച്ചു കഴിഞ്ഞ് ----- ഫോണിൽ പറഞ്ഞ കാര്യം പറഞ്ഞു"
189	P113 (m)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “അപ്പോൾ 12 മണി ആയിട്ടുണ്ടാകും ----- ശിവേട്ടൻ വന്നിരുന്നു എന്നു പറഞ്ഞു ”

190	P113 (n)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “അപ്പോൾ അവിലേഷ് അവന്റെ -----ഫോൺ കട്ടാക്കി ”
191	P113 (o)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “അപ്പോൾ സമയം 1 മണി -----അന്വേഷിച്ചു വന്ന കാര്യം പറഞ്ഞു.
192	P113 (p)/PW82	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 82 “ 21 ആം തീയതി----- ചൂരിയിൽ കച്ചറ ആയിട്ടുണ്ടെന്ന് പറഞ്ഞു ”
193	P114/PW83	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 83 “അപ്പവും നിധിനും അവിലേഷും സുഹൃത്തുക്കളാണ്”.
194	P114 (a)/PW83	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 83 “കാസറഗോഡ് ഹർത്താലുണ്ടായിരുന്ന ദിവസം ----- അവൻ നിന്റെ കൂടെ ബന്തിയോട് ഉണ്ടെന്നു പറയണം ”
195	P114 (b)/PW83	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 83 “23.03.17 തീയതി രാത്രി ഞാൻ -----പോലീസിനോട് പറഞ്ഞു”
197	P114(c)/PW83	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 83 “അജേഷും നിധിനും ----- അറിഞ്ഞതാണ്”
198	P114(d)/PW83	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 83 “അവിലേഷ് എന്നെ ഫോൺ വിളിച്ചപ്പോൾ ഈ കാര്യം പറഞ്ഞിരുന്നില്ല .”
199	P115/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 84 “ 19 ആം തീയതി രാവിലെ 9 മണി വരെ -----ഞാൻ ഗ്രൗണ്ടിലേക്ക് പോയി”.

200	P115 (a)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 84 “നാട്ടിലെ പിള്ളേർ അപ്പ, നിധിനം ----- മുറിഞ്ഞിന് എന്നു പറഞ്ഞു”
201	P115(b)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 84 “അജേഷും നിധിനം ഉണ്ടായിരുന്നു. അവരെ കൂടാതെ മറ്റു ചിലരും ഉണ്ടായിരുന്നു.”
202	P115(c)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 84 “ വാസുവേട്ടന്റെ മോളുടെ ----- തിരിച്ചു വീട്ടിലേക്ക് പോയി. ”.
203	P115 (d)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW 84 “ഭക്ഷണം കഴിച്ച ശേഷം ----- കുറെ ആൾക്കാരെ വിളിച്ചിരുന്നു”.
204	P115(e)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 “അതു കഴിഞ്ഞ് 5 ½ മണിക്ക് -----എന്റെ വീട്ടിൽ പോയി ഉറങ്ങി”.
205	P115 (f)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 “തിങ്കളാഴ്ച രാവിലെ 7 ½ മണിയോടെ -----ഭാര്യ വീട്ടിലേക്ക് പോയി.
206	P115(g)/PW84	25.03.2017	Relevant portion of 161 statement of PW84 “ഞാൻ എന്റെ Activa സ്കൂട്ടറിൽ വീട്ടിൽ എത്തി-----കട്ട് ചെയ്തു.
207	P115 (h)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 “അവിലേഷ് വീണ്ടും വിളിച്ചു ശിവണ്ണൻ -----അടുത്ത് പോയി”.
208	P115(i)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 “ശിവണ്ണൻ എന്നോട് -----നോക്കാം എന്നു പറഞ്ഞു”.
209	P115(j)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 “ഞങ്ങൾ കണ്ടത്തിന്റെ അടുത്ത് നോക്കി----- വീട്ടിലേക്കു പോയി”.

210	P115(k)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 "വീട്ടിൽ എത്തിയപ്പോൾ -----കഴുത്തറുത്ത് കൊന്നിട്ടുണ്ട് എന്ന് പറഞ്ഞു".
211	P115(l)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 "ആ സമയത്ത് തന്നെ -----ഞാൻ വീട്ടിൽ പോയി".
212	P115(m)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 "ഞാൻ ശിവണ്ണന്റെ ---- തുളുവിലായിരുന്നു സംസാരിച്ചത്."
213	P115(n)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 'ചൊവാഴ്ച ഹർത്താൽ ആയതുകൊണ്ട് എവിടെയും പോയില്ല".
214	P115(o)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 "അമ്മു എന്നോട് -----അവന്റെ വീട്ടിൽ പോയി".
215	P115(p)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 "അവൻ പുളളാരോട് സംസാരിച്ചിനി -----എന്നും പറഞ്ഞു".
216	P115(q)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 "അപ്പോഴാണ് അപ്പുവും -----എന്ന് അറിഞ്ഞത്".
217	P115(r)/PW84	25.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW84 "അപ്പുവും നിധിനും അഖിലേഷും R.S.S. പ്രവർത്തകരാണ് . അവർ R.S.S.ന്റെ പരിപാടികൾക്ക് വരാറുണ്ട്".
218	P116/PW85	22.03.2017	Whats App message received by Sanju from A3 (Phone No: 9809802562)
219	P116 (a) /PW85	12.01.2019	Certificate under section 65 (B) (C) of Indian Evidence Act 1872.
220	P117/PW85	Nil	Compact Disc
221	P118/PW85	Nil	Basic Information sheet of A3
222	P119/PW86	06.06.2017	Cyber Forensic Analysis Report.

223	P120/PW86	Nil	DVD
224	P121/PW86	06.06.2017	Certificate under section 65 B issued by Scientific officer Forensic Science Laboratory, Thiruvananthapuram.
225	P122/PW86	Nil	Photographs retrieved from M024
226	P123/PW86	Nil	Photographs retrieved from M024
227	P124/PW86	Nil	Photographs retrieved from M024
228	P125/PW86	Nil	Photographs retrieved from M024
229	P126/PW86	Nil	Photographs retrieved from M024
230	P127/PW86	Nil	Photographs retrieved from M024
231	P128/PW88	15.06.2017	Government Order (Rt) No. 1564/2017/Home (S.S.B) Department
232	P129/PW89	29.03.2017	Memorandum of Test Identification Parade conducted by J.F.C.M-II, Hosdurg at Central Prison, Kannur in Cr. No.210/ 2017 of Kasaragod PS
233	P129 (a)/PW89	29.03.2017	Name address and signature of accused in Test Identification parade of A1 and A3
234	P129(b)/PW89	29.03.2017	Name, address and signature of PW3 in Test Identification Parade
235	P129 (c)/PW89	29.03.2017	Name, address and signature of Non suspects in Test Identification Parade
236	P129 (d)/PW89	29.03.2017	First Chance Row from Left to right in Test Identification Parade.
237	P129 (e)/PW89	29.03.2017	Second chance Row from Left to right in Test Identification Parade.
238	P129 (f)/PW89	29.03.2017	Third chance Row from Left to right in Test Identification Parade.

239	P129 (g)/PW89	29.03.2017	Position of accused and non suspects in the Test Identification Parade, First chance, second chance and Third Chance
240	P129 (h)/PW89	29.03.2017	Statement of PW3 in Test Identification Parade
241	P129 (i)/PW89	29.03.2017	Statement of PW3 in Test Identification Parade
242	P129 (j)/PW89	29.03.2017	Statement of Accused No.1 in Test Identification Parade
243	P129 (k)/PW89	29.03.2017	Statement of Accused No.3 in Test Identification Parade
244	P129 (l)/PW89	29.03.2017	Statement of Accused No.1 recorded after the Test Identification Parade
245	P129 (m)/PW89	29.03.2017	Statement of Accused No.3 recorded after the Test Identification Parade
246	P129 (n)/PW89	29.03.2017	Index of Test Identification Parade
247	P130/PW89	29.03.2017	Memorandum of Test Identification Parade conducted by PW89 at Central Prison, Kannur in Cr. No.210/ 2017 of Kasaragod PS
248	P130 (a)/PW89	29.03.2017	Name, address and signature of A2
249	P130 (b)/PW89	29.03.2017	Name, address and signature of PW2.
250	P130 (c)/PW89	29.03.2017	Name, address and signature of Non suspects in Test Identification Parade (Sl.No. 1 to 9)
251	P130 (d)/PW89	29.03.2017	First chance row from left to right in Test Identification Parade.
252	P130 (e)/PW89	29.03.2017	Second chance row from left to right in Test Identification Parade
253	P130 (f)/PW89	29.03.2017	Third chance row from left to right in Test Identification Parade.

254	P130 (g)/PW89	29.03.2017	Position of accused and non-suspects in Test Identification Parade, First , Second chance and Third chance (PW2)
255	P130 (h)/PW89	29.03.2017	Statement of PW2 recorded prior to Test Identification Parade.
256	P130 (i)/PW89	29.03.2017	Statement of PW2 recorded after the Test Identification Parade
257	P130 (j)/PW89	29.03.2017	Statement of accused No.2 recorded prior to the Test Identification Parade
258	P130 (k)/PW89	29.03.2017	Statement of accused No.2 recorded after the Test Identification Parade
259	P131/PW91	16.05.2017	Forwarding letter of CDR and CAF Mob No. 1. 9633246488 2. 9947704862
260	P132/PW91	Nil	Copy of Airtel Prepaid Enrolment form of Niranjini.K (Bharathi Airtel)
261	P133/PW91	Nil	Call details of Mob.No.9947704862 (Bharathi Airtel)
262	P134/PW91	16.05.2017	Certificate u/s 2(O) of IT Act 2000 in respect of 1. Mob.No. 9633246488 2) 9947704862
263	P135/PW91	Nil	Copy of I.D.Proof (Election) of Niranjini.K
264	P136/PW91	09.06.2017	Forwarding Letter of C.C.of CDR and CAF in respect of Mob.No.1. 9809948099 2. 9947704862
265	P137/PW91	05.08.2015	Airtel prepaid enrolment form of A1
266	P138/PW91	Nil	Copy of Aadhar No. 423017938899 of A1
267	P139/PW91	09.06.2017	Call details of Mob.No.98099448099 of Bharathi Airtel.
268	P140/PW91	09.06.2017	Certificate under section 2(O) of I.T act, 2000

269	P141/PW91	11.10.2018	Request for C.C. of decoded Airtel Cell ID List.
270	P142/PW89	15.03.2019	Covering letter from JFCM-I, Hosdurg Non suspects in Test Identification Parade omitted to be incorporated.
271	P143/PW92	16.05.2017	Examination report of Scientific officer (Biology) , Forensic Science Laboratory, Thiruvananthapuram.
272	P143 (a)/PW92	16.05.2017	Covering letter from the Director , Forensic Science Laboratory, Thiruvananthapuram.
273	P144/PW93	12.05.2017	Report No.B1-3578/FSL,/17 Thriuvanathapuram regarding forwarding note sent to the Scientific Officer Serology Division, FSL, Thriuvanathapuram.
274	P145/PW94	13.05.2019	Copy of Ration Card No. 2468122125
275	P145 (a)/PW94	13.05.2019	Copy of Ration Card No. 2468122125 (correction of PIN No.)
276	P146/PW95	08.07.2019	Copy of BSNL customer Agreement Form for prepaid cellular connection (9447693084)
277	P146 (a)/PW95	Nil	Copy of Election ID Card of Shivananda.K
278	P147/PW95	08.07.2019	Copy of BSNL customer Agreement Form for postpaid cellular connection
279	P147 (a)/PW95	Nil	Copy of Election ID Card of Shivananda.K
280	P148/PW95	08.07.2019	Application for re-verified mobile connection of Niranjini.K
281	P148 (a)/PW95	08.07.2019	Certificate issued by Nodal Officer BSNL
282	P149/PW95	08.07.2019	Application for Re-verified mobile connection of Shivananda.K
283	P149 (a)/PW95	08.07.2019	Certificate issued by Nodal Officer BSNL

284	P150/PW95	08.07.2019	Covering letter of details of customer application form in respect of mobile connection numbers 9495227466 and 9447693084.
285	P151/PW96	19.05.2008	Customer application form of PW2 for prepaid connection of Idea Cellular Ltd
286	P152/PW96	Nil	Copy of Election ID Proof
287	P153/PW96	17.05.2017	Call list of Idea Cellular Ltd
288	P154/PW96	Nil	Certificate issued from Idea Cellular Ltd
289	P155/PW96	17.05.2017	Call list of Idea Cellular Ltd
290	P156/PW96	15.01.2013	Copy of Consumer Application form of Idea Cellular Ltd
291	P157/PW96	29.09.2008	Election ID Proof of Amareesh.N
292	P158/PW96	Nil	Certificate issued from Idea Cellular Limited.
293	P159/PW96	Nil	Address details of Amareesh.N
294	P160/PW96	24.05.2017	Covering letter addressed to SP
295	P161/PW97	21.03.2017	Proceedings of Special Investigation Team
296	P162/PW97	22.03.2017	Proceedings of Dr.Srinivas.A, IPS, Superintendent of Police
297	P163/PW97	Nil	Report undertaking Investigation
298	P164/PW97	23.03.2017	Inspection Memo of A1
299	P165/PW97	23.03.2017	Inspection Memo of A2
300	P166/PW97	23.03.2017	Inspection Memo of A3
301	P167/PW97	24.03.2017	Arrest Notice of A1
302	P168/PW97	24.03.2017	Arrest Notice of A2
303	P169/PW97	24.03.2017	Arrest Notice of A3
304	P170/PW97	Nil	Identifiable accused adding Report

305	P171/PW97	23.03.2017	Sections 153 (A) , 201 IPC Adding Report
306	P172/PW97	23.03.2017	Extract of Confession (A1)
307	P173/PW97	24.03.2017	Report to Keep Property in Police Custody
308	P174/PW97	24.03.2017	Report to produce the accused in open Court.
309	P174 (a)/PW97	24.03.2017	Order of Magistrate
310	P175/PW97	24.03.2017	Remand Report of accused (A1 to A3)
311	P176/PW97	24.03.2017	Notice to Advocate Udayakumar for Legal Aid of accused (A1 to A3)
312	P177/PW97	24.03.2017	Report not to change the appearance of the accused
313	P177 (a)/PW97	24.03.2017	Order of Magistrate
314	P178/PW97	Nil	Report to add motor cycle bearing Reg.No.Vehicle No.Kl-14-L- 816 involved in the case.
315	P179/PW97	31.03.2017	Extract of confession statement of A2
316	P180/PW97	31.03.2017	Extract of confession statement of A1
317	P181/PW97	31.03.2017	Extract of confession statement of A3
318	P182/PW97	Nil	Report on producing the accused before the Court after the police custody
319	P183/PW97	30.03.2017	Medical OP ticket of A1 issued from Government General Hospital, Kasaragod
320	P184/PW97	01.04.2017	Medical OP ticket of -A1 issued from Government General Hospital, Kasaragod
321	P185/PW97	30.03.2017	Medical OP ticket of A2 issued from Government General Hospital, Kasaragod
322	P186/PW97	01.04.2017	Medical OP ticket of A2 issued from Government General Hospital, Kasaragod

323	P187/PW97	30.03.2017	Medical OP ticket of A3 issued from Government General Hospital, Kasaragod
324	P188/PW97	01.04.2017	Medical OP ticket of A3 issued from Government General Hospital, Kasaragod
325	P189/PW97	05.04.2017	Forwarding Note
326	P190/PW97	05.04.2017	Report submitted to forward the materials to FSL, Trivandrum
327	P191/PW97	05.04.2017	Covering letter from J.F.C.M -I, Kasaragod Address to the Director, FSL, Trivandrum
328	P192/PW97	Nil	Property List (M0.30 to M038 and Ext.P26)
329	P193/PW97	Nil	Property List (M0.23 to M028 )
330	P194/PW97	Nil	Property List (M0.10, M014, M039 to M044)
331	P195/PW97	Nil	Property List (M08 and M09)
332	P196/PW97	Nil	Property List (M016 and M017)
333	P197/PW97	Nil	Property List (M02 and M03)
334	P198/PW97	Nil	Property List (M06 and M07)
335	P199/PW97	Nil	Property List (M04)
336	P200/PW97	Nil	Property List (M029)
337	P201/PW97	Nil	Property List (M045)
338	P202/PW97	Nil	Property List (M018 and M022)
339	P203/PW97	Nil	Forwarding Note (Mobile phones of accused)
340	P203 (a)/PW97	Nil	Certificate of RFSL ,Thriuvananthapuram
341	P203 (b)/PW97	Nil	Certificate of RFSL, Thriuvananthapuram
342	P204/PW97	25.04.2017	Report for adding correct name of A3's father

343	P205/PW97	25.04.2017	Report to delete section 450 IPC and add sections 449 and 295 IPC
344	P206/PW97	18.04.2017	FSL report of examination conducted by Rahila.R, Assistant director, F.S.L Thiruvananthapuram. .
345	P207/PW97	01.06.2017	Address Adding report of A2
346	P208/PW97	Nil	Form No.15 (Photos of Inquest)
347	P209/PW97	22.05.2017	Form No.15 (Salary bill)
348	P210/PW97	Nil	Form No.15 ( Exts.P38, 81,82,83 and 118)
349	P211/PW97	Nil	Form No.15 ( Covering letter seized as per Exts.P93)
350	P212/PW97	Nil	Form No.15 (Covering letter submitted as per Ext. P211)
351	P213/PW97	Nil	Form No.15 (CDR Nos. 9809802562 and 9747356559, Election ID etc )
352	P214/PW97	24.03.2017	Letter issued from Testor Inspector regarding Inspection of Scene of Crime.
353	P215/PW60	21.03.2017	Copy of First Information Report in Crime No. 211/2017 of Kasaragod PS
354	P215 (a)/PW60	21.03.2017	Copy of First Information Report No in Crime No.213/2017 of Kasaragod PS
355	P215 (b)/PW60	21.03.2017	Copy of First Information Report in Crime No. 215/2017 of Kasaragod PS
356	P215 (c)/PW60	21.03.2017	Copy of First Information Report in Crime No. 216/2017 of Kasaragod PS
357	P215 (d)/PW60	21.03.2017	Copy of First Information Report in Crime No. 217/2017 of Kasaragod PS
358	P215 (e)/PW60	21.03.2017	Copy of First Information Report in Crime No. 218/2017 of Kasaragod PS

359	P215 (f)/PW60	22.03.2017	Copy of First Information Report in Crime No. 224/2017 of Kasaragod PS
360	P215 (g)/PW60	22.03.2017	Copy of First Information Report in Crime .No 225/2017 of Kasaragod PS
361	P215 (h)/PW60	22.03.2017	First Information Report in Crime . No. 227/2017 of Kasaragod PS
362	P215 (i)/PW60	22.03.2017	Copy of First Information Report in Crime . No. 228/2017 of Kasaragod PS
363	P215 (j)/PW60	22.03.2017	Copy of First Information Report in Crime .No. 229/2017 of Kasaragod PS
364	P215 (k)/PW60	22.03.2017	Copy of First Information Report in Crime . No. 230/2017 of Kasaragod PS
365	P215 (l)/PW60	22.03.2017	Copy of First Information Report in Crime .No. 232/2017 of Kasaragod PS
366	P215(m)/PW60	22.03.2017	Copy of First Information Report in Crime .No. 233/2017 of Kasaragod PS
367	P215 (n)/PW60	22.03.2017	Copy of First Information Report in Crime .No. 234/2017 of Kasaragod PS
368	P215 (o)/PW60	22.03.2017	Copy of First Information Report in Crime . No. 236/2017 of Kasaragod PS
369	P215 (p)/PW60	22.03.2017	Copy of First Information Report in Crime .No. 238/2017 of Kasaragod PS
370	P215 (q)/PW60	23.03.2017	Copy of First Information Report in Crime .No. 245/2017 of Kasaragod PS
371	P215 (r)/PW60	22.03.2017	Copy of First Information Report in Crime . No. 246/2017 of Kasaragod PS
372	P215 (s)/PW60	22.03.2017	Copy of First Information Report in Crime No. 212/2017 of Kasaragod PS
373	P215 (t)/PW60	22.03.2017	Copy of First Information Report in Crime No. 222/2017 of Kasaragod PS

374	P215 (u)/PW60	22.03.2017	Copy of First Information Report in Crime .No. 223/2017 of Kasaragod PS
375	P215 (v)/PW60	22.03.2017	Copy of First Information Report in Crime .No. 237/2017 of Kasaragod PS

### **B. Defence Exhibits:-**

Sl No	Exhibit Number	Date	Description
1	Ext.D1/PW10	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW10 "പ്രതിയുടെ വീട്ടിൽ നിന്നും വണ്ടി -----ഓഫീസിൽ എത്തിച്ചിരുന്നു."
2	Ext.D2/PW13	23.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW13 "ഞാൻ ഉടൻ -----കയറി നോക്കി".
3	Ext.D3/PW21	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW21 "ക്യൂവിൽ അടി -----എനിക്ക് ഓർമ്മയില്ല".
4	Ext.D4/PW39	07.06.2016	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW32" എന്റെ തലക്ക് -----റോഡിൽ വീണു."
5	Ext.D5/PW39	09.06.2016	Scene Mahazar
6	Ext.D6/PW58	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW58" എന്റെ അനോഷണത്തിൽ -----കുത്തി കൊലപ്പെടുത്തിയതാണ്'.
7	Ext.D7/PW66	Nil	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW66 "ശരീരത്തിൽ മുഴുവനും മുറിവുകൾ ഉണ്ടായിരുന്നു".
8	Ext.D8/PW83	26.03.2017	Relevant Portion of statement recorded u/S 161 Cr.P.C of PW83 "ഇന്ന് 01.04.17 തീയതി പോലീസ് എന്നെ വീണ്ടും വിളിച്ചത് കൊണ്ട് ഇപ്പോൾ വന്നതാണ്".

9	Ext.D9/PW90		Relevant Portion of statement recorded u/S 161 Cr.P.C of PW90 “ ഭർത്താവിനു നാട്ടിലോ -----എന്നോടു പറഞ്ഞിട്ടില്ല”.
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### **C. Court Exhibits:**

Sl No	Exhibit Number	Date	Description
1	Exhibit X1/ DW1	12.02.2017	Invitation Card of Sri Mallikarjuna Kshethra, Kasaragod (Varshika Mahothsava- 2017). Eschewed from consideration as it was marked subject to proof. But no proof was produced.

### **D. Material objects :**

Sl No	Material Objects	Description
1	MO1/PW1	Lungi (deceased)
2	MO2/PW2	Saffron Mundu
3	MO3/PW2	Blue T Shirt
4	MO4/PW2	Concrete Piece
5	MO5/PW3	Pulsar Bike (KL14-L-816)
6	MO6/PW3	Pant
7	MO7/PW3	Shirt
8	MO8/PW3	Green Coloured Dhoti
9	MO9/PW19	Light rose full Sleeve T Shirt
10	MO10/PW6	Sharp knife with wooden handle.
11	MO11/PW6	Photo ( deceased)
12	MO12/PW6	Diary

13	MO13/PW6	Samsung Mobile Phone (deceased)
14	MO14/PW6	Samsung Mobile Phone (Duos) (deceased)
15	MO15/PW10	Key of KL-14 C -816 Bike
16	MO16/PW11	Mundu lay on stretcher
17	MO17/PW11	Mundu covered the body
18	MO18/PW12	Knife
19	MO19/PW12	Card board piece.
20	MO20/PW12	Sealed cover contained knife
21	MO21/PW15	Plastic Cover
22	MO22/PW15	Label affixed on the cover.
23	MO23 /PW16	Intex mobile phone
24	MO24 /PW16	Cool pad Mobile phone
25	MO25	Micro max mobile phone
26	MO26	Idea Sim
27	MO27	Airtel Sim
28	MO27 (a)	Jio Sim
29	MO28	Airtel Sim
30	MO29/PW22	Chappal
31	MO30/PW36	Blood stain collected in cotton gauze from floor carpet in north side of south west room of Mohiudeen Juma Masjid Old Choori.
32	MO31/PW36	Blood stains collected in cotton gauze from the door of the shelf found at North east corner of scene of occurrence.
33	MO32/PW36	Blood stains collected in cotton gauze from floor carpet about one meter south side from the Item No.1
34	MO33/PW36	Blood stain collected in cotton gauze from the carpet in front of the shelf at northeast corner of the scene of occurrence
35	MO34/PW36	Blood stain collected in cotton gauze from the wooden chair founded in the scene of occurrence.

36	MO35/PW36	Blood stain collected in cotton gauze from the south side wall of the scene of occurrence.
37	MO36/PW36	Chilli powder like substance collected from the way behind the Izzathul Islam Higher Secondary Madrasa Choori situated in the same compound in the Juma Masjid.
38	MO37/PW36	Cigarate buds collected from the way behind the Izzathul Islam Higher Secondary Madrasa Choori.
39	MO38/PW36	Blood stains collected from the cotton gauze from the south side wall outside the scene of occurrence.
40	MO39/PW58	Card Chip Reader
41	MO40/PW58	Memory Card
42	MO41/PW58	Tata Sim
43	MO42/PW58	Vodafone Sim
44	MO43 Series/PW58	Airtel Sim Cards- 3 Nos
45	MO44 /PW58	Plastic Box
46	MO45/PW75	Blood collected in the EDTA Tube.

Sd/-  
**SESSIONS JUDGE,  
KASARAGOD**

**//True copy//**

**SHERISTADAR**

Typed by : Sujatha.K  
Compared by : Reshmi.P

IN THE COURT OF THE SESSION,  
KASARAGOD DIVISION

SESSIONS CASE No. 301/2017

Dated: 30.03.2024

To  
The Registrar,  
Hon'ble High Court of Kerala,  
Ernakulam.

The Judicial First Class Magistrate-I,  
Kasaragod

The Inspector of Police,  
Kasaragod

The District Public Prosecutor,  
Kasaragod.

The District Police Chief,  
Kasaragod.

The District Collector,  
Kasaragod.

