



2025:KER:69364

Crl.A. No. 1086 of 2019 and connected cases

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

THURSDAY, THE 18TH DAY OF SEPTEMBER 2025 / 27TH BHADRA, 1947

CRL.A NO. 1086 OF 2019

CRIME NO.303/2005 OF North Paravur Police Station, Ernakulam

AGAINST THE JUDGMENT DATED 21.08.2019 IN SC NO.412 OF 2012 OF ADDITIONAL
DISTRICT COURT & MOTOR ACCIDENT CLAIMS TRIBUNAL/RENT CONTROL APPELLATE
AUTHORITY, NORTH PARAVUR ARISING OUT OF THE ORDER IN CP NO.117 OF 2010 OF
JUDICIAL MAGISTRATE OF FIRST CLASS - I, NORTH PARAVUR

APPELLANT/6TH RESPONDENT:

KUMAR K.P., AGED 44 YEARS
S/O. PURUSHOTHAMAN, KANNACHIPARAMBIL HOUSE,
SOUTH SIDE OF IR VALAVU, MUNAMBAM KARA, KUZHUPPILLY VILLAGE.

BY ADVS.
SRI.P.K.VARGHESE
SHRI.M.T.SAMEER
SHRI.DHANESH V.MADHAVAN
SHRI.JERRY MATHEW
SRI.K.R.ARUN KRISHNAN
SMT.NAMITHA K.S.
SHRI.ATHUL.P
SMT.DEVIKA K.R.

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682 031

ADDL.2 SHARADA THANKAPPAN, AGED 69,
W/O THANKAPPAN, KURINJIPARAMBIL, MUNAMBAM 1 R VALAV P.O,
PALLIPORT, ERNAKULAM, PIN 683515

(ADDITIONAL RESPONDENT NO.2 IS IMPEADED AS PER ORDER DATED
18/8/2025 IN CRL.M.A.NO.1/2025)



2025:KER:69364

Crl.A. No. 1086 of 2019 and connected cases

2

BY ADVS.

SMT. NEEMA T. V., SENIOR PUBLIC PROSECUTOR

SRI.VIVEK VENUGOPAL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18.08.2025, ALONG WITH CRL.A.1177/2019, 1328/2019 AND 1331/2019, THE COURT ON 18.09.2025 DELIVERED THE FOLLOWING:



2025:KER:69364

Crl.A. No. 1086 of 2019 and connected cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

THURSDAY, THE 18TH DAY OF SEPTEMBER 2025 / 27TH BHADRA, 1947

CRL.A NO. 1177 OF 2019

CRIME NO.303/2005 OF North Paravur Police Station, Ernakulam

AGAINST THE JUDGMENT DATED 21.08.2019 IN SC NO.412 OF 2012 OF ADDITIONAL
DISTRICT COURT & MOTOR ACCIDENT CLAIMS TRIBUNAL/RENT CONTROL APPELLATE AUTHORITY,
NORTH PARAVUR ARISING OUT OF THE ORDER IN CP NO.117 OF 2010 OF JUDICIAL MAGISTRATE
OF FIRST CLASS - I, NORTH PARAVUR

APPELLANTS/ACCUSED NOS.4 & 5:

- 1 RAMESH @ VISHAPPAN RAMESH, AGED 40 YEARS
S/O. SREEDHARAN, IRINGATHURUTHI HOUSE,
MUNAMBAM KARA, KUZHUPPILLY VILLAGE.
- 2 SURESH @ KAMMATHIKALAM SURESH,
AGED 50 YEARS, S/O. KARTHIKEYAN, EDAKKUKARAN HOUSE,
MUNAMBAM KARA, KUZHUPPILLY VILLAGE.

BY ADVS.
SRI.P.S.SREEDHARAN PILLAI
SHRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SHRI.ARUN KRISHNA DHAN
SRI.ALEX ABRAHAM
SRI.P.VIJAYA BHANU (SR.)
SRUTHY N. BHAT

RESPONDENT/COMPLAINANT & STATE:

- 1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 31.
- ADDL.2 SHARADA THANKAPPAN, AGED 69,
W/O THANKAPPAN, KURINJIPARAMBIL, MUNAMBAM 1 R VALAV P.O,
PALLIPORT, ERNAKULAM, PIN 683515



2025:KER:69364

Crl.A. No. 1086 of 2019 and connected cases

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(ADDITIONAL RESPONDENT NO.2 IS IMPEADED AS PER ORDER DATED
18/8/2025 IN CRL.M.A.NO.2/2025)

BY ADVS.
SMT. NEEMA T.V., SENIOR PUBLIC PROSECUTOR
SRI.VIVEK VENUGOPAL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18.08.2025, ALONG WITH
CRL.A.1086/2019 AND CONNECTED CASES, THE COURT ON 18.09.2025 DELIVERED THE
FOLLOWING:



2025:KER:69364

Crl.A. No. 1086 of 2019 and connected cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

THURSDAY, THE 18TH DAY OF SEPTEMBER 2025 / 27TH BHADRA, 1947

CRL.A NO. 1328 OF 2019

CRIME NO.303/2005 OF North Paravur Police Station, Ernakulam

AGAINST THE JUDGMENT DATED 21.08.2019 IN SC NO.412 OF 2012 OF ADDITIONAL
DISTRICT COURT & MOTOR ACCIDENT CLAIMS TRIBUNAL/RENT CONTROL APPELLATE AUTHORITY,
NORTH PARAVUR ARISING OUT OF THE ORDER IN CP NO.117 OF 2010 OF JUDICIAL MAGISTRATE
OF FIRST CLASS - I, NORTH PARAVUR

APPELLANTS/ACCUSED NOS.1 AND 2:

- 1 BAIJU A.K., AGED 36 YEARS
S/O KRISHNAN KUTTY, ARAMIPPARAMBIL HOUSE, MUNAMBAM KARA,
KUZHUPPILLY VILLAGE.
- 2 KRISHNAKUMAR@ MUNAMBAM KRISHNAN, AGED 39 YEARS
S/O KRISHNANKUTTY, ARAMIPPARAMBIL HOUSE,
MUNAMBAM KARA, KUZHUPPILLY VILLAGE.

BY ADVS.
SHRI.M.SUNILKUMAR
SHRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SHRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SMT.S.LAKSHMI SANKAR
SRI.R.ANIL

RESPONDENT/COMPLAINANT:

- 1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR ,
HIGH COURT OF KERALA. ERNAKULAM,KOCHI -31
- ADDL.2 SHARADA THANKAPPAN, AGED 69,
W/O THANKAPPAN, KURINJIPARAMBIL, MUNAMBAM 1 R VALAV P.O,
PALLIPORT, ERNAKULAM, PIN 683515



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Crl.A. No. 1086 of 2019 and connected cases

6

(ADDITIONAL RESPONDENT NO.2 IS IMPEADED AS PER ORDER DATED
18/8/2025 IN CRL.M.A.NO.1/2025)

BY ADVS.
SMT. NEEMA T.V., SENIOR PUBLIC PROSECUTOR
SRI.VIVEK VENUGOPAL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18.08.2025, ALONG WITH
CRL.A.1086/2019 AND CONNECTED CASES, THE COURT ON 18.09.2025 DELIVERED THE
FOLLOWING:



2025:KER:69364

Crl.A. No. 1086 of 2019 and connected cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

THURSDAY, THE 18TH DAY OF SEPTEMBER 2025 / 27TH BHADRA, 1947

CRL.A NO. 1331 OF 2019

CRIME NO.303/2005 OF North Paravur Police Station, Ernakulam

AGAINST THE JUDGMENT DATED 21.08.2019 IN SC NO.412 OF 2012 OF ADDITIONAL
DISTRICT COURT & MOTOR ACCIDENT CLAIMS TRIBUNAL/RENT CONTROL APPELLATE AUTHORITY,
NORTH PARAVUR ARISING OUT OF THE ORDER IN CP NO.117 OF 2010 OF JUDICIAL MAGISTRATE
OF FIRST CLASS - I, NORTH PARAVUR

APPELLANT/ACCUSED NO.3:

PADMANABHAN BABU @ BABU, AGED 47 YEARS
S/O. KRISHNANKUTTY, ARAMIPPARAMBIL HOUSE,
MUNAMBAM KARA, KUZHUPPILLY VILLAGE.

BY ADV.
SRI.V.T.RAGHUNATH

RESPONDENT/COMPLAINANT:

- 1 STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031, (CRIME NO. 303/2005 OF N. PARAVUR POLICE STATION,
ERNAKULAM DISTRICT).
- ADDL.2 SHARADA THANKAPPAN, AGED 69,
W/O THANKAPPAN, KURINJIPARAMBIL, MUNAMBAM 1 R VALAV P.O,
PALLIPORT, ERNAKULAM, PIN 683515
(ADDITIONAL RESPONDENT NO.2 IS IMPEADED AS PER ORDER DATED
18/8/2025 IN CRL.M.A.NO.2/2025)
- BY ADVS.
SMT. NEEMA T.V., PUBLIC PROSECUTOR
SRI.VIVEK VENUGOPAL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18.08.2025, ALONG WITH
CRL.A.1086/2019 AND CONNECTED CASES, THE COURT ON 18.09.2025 DELIVERED THE
FOLLOWING:



COMMON JUDGMENT

K. V. JAYAKUMAR, J.

These criminal appeals are preferred impugning the common judgment of the Additional District and Sessions Court, North Paravur, dated 21.08.2019 in S.C. No.412/2012. The appellants in Crl. Appeal No.1328 of 2019 are the accused Nos.1 and 2. The appellant in Crl. Appeal No.1331/2019 is the accused No.3. The appellants in Crl. Appeal No.1177/2019 are the accused Nos.4 and 5. Accused No.6 is the appellant in Crl. Appeal No.1086/2019.

2. The appellants/accused Nos.1 to 6 faced the trial before the Additional District and Sessions Court, North Paravur for the offences punishable under Sections 143, 147, 148, 341 and 302 read with Section 149 of the Indian Penal Code (for the sake of brevity, 'IPC') and under Section 27 of the Arms Act.

3. The learned Additional Sessions Judge found the appellants guilty, convicted and sentenced them. Accused Nos.1 to 6 were sentenced to undergo imprisonment for life for the offence punishable under Section 302 read with Section 149 of IPC and to pay a fine of Rs.50,000/- each with a default clause. They were also sentenced to undergo imprisonment for various terms under Sections 143, 147, 148 and 341 read with Section 149 of IPC and Section 27(1) of the Arms Act.

**Prosecution case**

4. The prosecution case in brief is that the accused Nos.1 and 2 were inimical towards the deceased, Abhilash, since he attempted to commit the murder of accused No.2, Krishnakumar @ Munambam Krishnan, by hurling a country bomb. The prosecution further alleges that in order to wreak vengeance against the deceased Abhilash, the accused formed themselves into an unlawful assembly in prosecution of their common object, armed with deadly weapons like sword stick, iron rods etc. and on 19.05.2005 at about 8.35 pm, they followed Abhilash who was riding a motor cycle along with PW2 (Gilda Mendez) as a pillion rider. Further, the accused chased the motorcycle in an Ambassador car and when they reached 200 meters away from Perumpadanna bridge on Paravur – Cherai public road, they overtook and intercepted the motorcycle. In the meantime, the deceased Abhilash fell down. The accused Nos.1 to 6 attacked the deceased with swords and iron rods and caused severe injuries.

5. The prosecution further alleges that the 1st accused inflicted a cut injury with a sword on the back side of the neck and accused Nos.2 and 3 inflicted injuries on the leg of the deceased. The other accused also attacked the deceased with a sword stick and iron rod. The deceased breathed his last on the way to the hospital.

Registration of the crime and investigation

6. PW17 (M.K. Binukumar) registered Ext.P1(a)-FIR at 9.15 pm on 19.05.2005 on the basis of Ext.P1-FIS lodged by PW1 (Misha K.D.). PW18 (R.



Salim) took up the investigation on 20.05.2005. On that day, he conducted an inquest of the body of the deceased and prepared the Ext.P3 Inquest report. He seized MOs.6 and 7, the dresses worn by the deceased.

7. Thereafter, at 11.45 am, he prepared Ext.P4 scene mahazar in the presence of the witnesses. He seized the motorcycle bearing No.KL-7E-25710 and six pairs of chappals from the place of occurrence. On 22.05.2005, he seized an Ambassador car bearing No.KER 8730 from Puthiyakavu, as per Ext.P20 mahazar. He had also seized the sale agreement of the Ambassador car through Ext.P11 seizure mahazar. The dresses worn by PW2 was seized through Ext.P22 mahazar. He produced the material objects before the court as per Ext.P23 property list.

8. PW18 arrested the accused No.1 Baiju from Oum Karthikeya lodge, Chennai on 14.06.2005 and produced before the Egmore Metropolitan Magistrate. Later, he was taken to Kerala as per Ext.P24 transit warrant.

9. Later, accused No.1 was produced before the Judicial First Class Magistrate with a remand report dated 16.06.2025. As per the disclosure statement of accused No.1 and as led by him, the police party conducted a search in the Kallarackal canal, but the weapons of offence could not be found out. He prepared Ext.P27 mahazar. He also seized the dresses worn by accused No.1 as per Ext.P26 mahazar.

10. The 164 statement of PW2 was recorded by the Judicial First Class Magistrate Court, Aluva. Later, he came to know that Vadakkekara Police had seized four swords on 31.05.2005 and registered a crime under Section 102 of Criminal



Procedure Code. Thereafter, the Vadakkekara Police produced these swords before the SDM Court on 18.06.2005. In order to ascertain whether those swords were connected to this case, he submitted a report before the SDM court on 23.06.2005. PWs.1 and 2 appeared before the SDM Court and identified the swords. He submitted a report to forward the swords to Judicial First Class Magistrate Court, Paravur. Accordingly, the swords were forwarded to the Judicial First Class Magistrate Court Court, Paravur. He arrested accused No.6, Kumar, from Paravur on 12.07.2005, after preparing Ext.P30 series, documents. As per the disclosure statement of accused No.4, the iron rods were recovered from the bushes near to Perumpadanna bridge through Ext.P12 mahazar.

Proceedings in the trial court

11. The trial court framed the charge, after hearing the prosecution and the defence. When the charge was read over to the accused, they pleaded not guilty and claimed to be tried.

12. In order to prove the prosecution case, PWs.1 to 19 were examined and Exts.P1 to P38 were marked. MOs.1 to 11 were also identified and marked. After the closure of the prosecution evidence, the accused were examined under Section 313(1)(b) of Cr.P.C. They denied the incriminating circumstances put to them and maintained their stand of innocence. On the side of the defence, DWs.1 and 2 were examined and Exts.D1 to D18 and Ext.X-1 were marked.

**The contentions of the appellants**

13. Sri. B. Raman Pillai, the learned senior counsel for the appellants in Crl. Appeal No.1328 of 2019, submitted that the impugned judgment of the learned Additional Sessions Judge is patently illegal and unsustainable. The appreciation of evidence by the trial court is faulty.

14. The prosecution has failed to prove the motive which is the driving force in a crime. The version of PWs.1 and 2, the eyewitnesses, lacks credibility and trustworthiness. The non-citing and non-examination of the material witnesses constitutes a serious lapse on the part of the Investigating Officer. PWs.1 and 2 have not stated any names of the assailants to the doctor who examined the deceased Abhilash. It is further submitted that the blood-stained clothes worn by PW1 were not seized by the police.

15. The learned counsel for the appellants submitted that the trial and conviction of the appellants are vitiated by grave illegalities. The presence of PW1 at or around the scene of occurrence is highly improbable and cannot be believed.

16. The learned counsel for the appellants further pointed out that the prosecution has suppressed the real incident and the appellants were falsely implicated in the case on the basis of fabricated and concocted evidence. The appellants are the workers of BJP, while the deceased was a CPI(M) activist, a rival political party.

17. The evidence of PWs.1 and 2 is inconsistent and contradictory on material particulars. PW1 is a planted witness and he has not actually witnessed the



incident. Reliance was placed on the dictums laid down in **Baljinder Kumar @ Kala v. State of Punjab**¹ and **Vinobhai v. State of Kerala**².

18. Sri. B. Raman Pillai submits that PW2 (Gilda Mendez), the fiancée of the deceased Abhilash, is a highly interested/partisan witness and her version is not at all credible and reliable. Sri. B. Raman Pillai further submits that the statement of PW2 was recorded after a lapse of one month from the date of incident and no plausible explanation was offered for the said delay. The learned counsel has placed reliance on the judgment of the Apex Court in **Vijaybhai Bhanabhai Patel v. Navnitbhai Nathubhai Patel and others**³.

19. The learned counsel would further point out that the Ambassador car and the motor cycle involved in this crime was not produced before the court and marked. This is a serious lapse on the part of the Investigating Officer.

20. It is further pointed out that the prosecution has failed to allege and prove the specific overt acts of each of the appellants. The prosecution has no definite and consistent case as to the manner in which the incident had occurred and the weapons allegedly used for the commission of the crime. It is further submitted that the recovery of weapons is not properly proved by the prosecution. The learned counsel for the appellants further submitted that the medical evidence in this case is contradictory and inconsistent with the ocular version of PWs.1 and 2. The trial court has failed to appreciate the defence evidence in the correct

¹ 2025 KHC OnLine 6609

² 2025 KHC OnLine 7082

³ (2004) 10 SCC 583



perspective.

21. Sri. V. T. Raghunath, the learned counsel for the appellant in Crl. Appeal No.1331 of 2019 would submit that no evidence was adduced by the prosecution as to the presence of accused No.3. Furthermore, there is no evidence as to the overt act of accused No.3 and whether he was carrying a weapon. Sri. V. T. Raghunath further submitted that accused No.3 was falsely implicated in the case due to political animosity. The prosecution has no case that accused No.3 had animosity with the deceased Abhilash. The accused No.3 also raised a plea of alibi.

22. Sri. P. Vijayabhanu and Sri. Arjun Sreedhar, the learned counsels for the accused Nos.4 and 5 would also submit that those accused were not present at the place of occurrence and they have no specific overt acts.

23. Sri. M. T. Sameer, the learned counsel for the appellant in Crl. Appeal No.1086 of 2019 would submit that accused No.6 was not present at the place of occurrence and he has not shared any common object of the assembly.

The contentions of the Prosecution.

24. Smt. Neema T. V., the learned Public Prosecutor submitted that the impugned judgment of the learned Additional Sessions Judge is legally sustainable. The trial court appreciated the evidence on record, both oral and documentary, and arrived at a proper conclusion. No interference from this Court is warranted in this matter. The version of the eyewitnesses, PWs. 1 and 2, is reliable and trustworthy.



25. The learned Public Prosecutor further submitted that minor variations or discrepancies in the evidence was not sufficient to reject the whole evidence. Reliance was placed on the dictums laid down in the **State of U.P. v. M. K. Anthony**⁴ and **Leela Ram v. State of Haryana and another**⁵.

26. Adv. Vivek Venugopal, the learned counsel appearing for the victim (mother of the deceased) submitted that the prosecution has succeeded in proving the charge against the appellants beyond reasonable doubt. He pointed out that the contradictions and the omissions are minor and insignificant. The learned counsel has placed reliance on the judgment of the Apex Court in **State of Karnataka v. Suvarnamma**⁶.

Evidence let in by the prosecution

27. PW1 (Misha K. D.) testified that he is working as a supervisor in a chemical company. On 19.05.2005, at about 6.00 pm, he came to Paravur to remit his mobile bill. He could not remit the bill, since the working hours of the Airtel office was over. He returned to his house in Munambam at about 8 and 8.30 pm. When he reached Perumpadanna bridge, an Ambassador car overtook his motorcycle and waylaid a Hero Honda Passion bike. The said bike was driven by a young man along with a lady. The rider of the bike tried to flee away from the scene. At that time, five to six persons jumped out of the car. Accused No.4,

⁴ (1985) 1 SCC 505

⁵ (1999) 9 SCC 525

⁶ (2015) 1 SCC 323



Ramesh, and accused No.5, Suresh, caught hold of the rider of the motor bike and when he tried to escape, accused No.1, Baiju chased him and inflicted a cut injury on the back side of the neck. Accused No.2, Krishnakumar, inflicted an injury on the left leg while accused No.3, Babu on right leg. When he tried to intervene, the accused turned against him and abused him using filthy language.

28. Thereafter, the assailants proceeded towards Paravur in the car. On witnessing the incident, PW2 cried aloud. The injured was immediately taken by bystanders to Don Bosco Hospital. PW-1 also proceeded to the said hospital and, upon arrival, learned that the injured had succumbed to the injuries. He stated that he lodged Ext. P1 First Information Statement before the Paravur Police Station. He further deposed that he witnessed the incident in the illumination of the car's headlights and other vehicles passing along the road. PW-1 identified all the accused present in the dock and confirmed that he later came to know the deceased, Abhilash, was a resident of Munambam and that the lady accompanying him was an employee of Airtel. He also identified the swords and iron rods used in the attack. He added that the assailants were previously known to him, as they too hailed from Munambam, and that during the course of the investigation the police had shown the accused to him.

29. PW2 (Gilda Mendez) is the star witness in this case. She would say that during the year 2005, she worked in the office of the Airtel. The deceased Abhilash was her lover. Their marriage was fixed by their family members.



30. On 19.05.2005, Abhilash came to her office at about 7.30 pm to pick her up. On their way back home, when they crossed Perumpadanna bridge, a Grey colour Ambassador car overtook their bike and waylaid them. She does not remember the registration number of the car. At that time, a person jumped from the car uttering the words 'എടോ'. Seeing the assailants, the deceased tried to run away from the scene of occurrence. The assailants chased him and accused No.1 (Baiju) inflicted a cut injury with a sword on the neck of Abhilash. PW2 watched the incident in the light of the bus parked nearby. She identified all the accused who were standing in the dock. She would further add that she has previous acquaintance with accused Nos.1 and 2. They are the friends of Abhilash. Four accused persons were holding swords and two of them were carrying iron rods. She could not correctly say which accused was carrying which weapon. After the incident, the assailants proceeded to Paravur side in their car. The deceased was taken to the Don Bosco Hospital in the car of PW14 (Biju O.K.). PW2 also accompanied the deceased in the car.

31. After reaching the hospital, she contacted some of the friends of the deceased Abhilash. Later, the deceased was taken to Ernakulam. On that day, she was also admitted in the ICU of Don Bosco Hospital. When she regained her memory, she came to know that Abhilash is no more. She was discharged from the hospital on the next day. Ext.P2 is her 164 statement. She identified MO-6 jeans and MO-7 shirt, worn by the deceased. She also identified MO-8 and MO-9 dresses worn by her at the time of the incident. She also identified MO-10 chappals worn



by her. She further testified that a case was registered against the deceased Abhilash for hurling a bomb against accused No.2. The said animosity is the reason for the murder. PW2 further stated that the deceased Abhilash told her that the accused would attack him.

32. PW3 (Sunilkumar P.S.) is a witness to Ext.P3 inquest report. He would also say that there was previous animosity between the deceased Abhilash and accused No.2 Krishnan. PW4 (Shinil P.S.) is an attestor to Ext.P4 scene mahazar.

33. PW5 (Joy Antony) was the previous owner of the Ambassador car bearing Registration No. KER 8730. He sold the said car to his brother-in-law, Jose, in the year 1989. He further stated that Sri. Jose sold the car in the year 1997. PW6 (Madhu) is the Special Village Officer, who prepared Ext.P5, site plan.

34. PW7 (Chinnappan) was a police constable of Paravur Police Station. He accompanied PW18 (R. Salim) at the time of the arrest of accused No1., Baiju, from Oum Karthika Lodge, Chennai. PW18, the Investigating Officer, seized the relevant pages of the register of the said lodge through Ext.P6 mahazar. He also seized Ext.P8 copy of the receipt from the lodge.

35. PW8 (Garvasis P.J.) is the Scientific Assistant of the Regional Forensic Laboratory. He collected blood samples and a blood stained towel from the Ambassador car involved in the crime. He produced the samples before the Investigating Officer.

36. PW9 (Sijith Kumar K.S.) has purchased an Ambassador car bearing Registration No.KER 5730 from one Sajeesh as per Ext.P10 agreement dated



15.01.2005. He sold the car to one Sharma on 12.05.2005 as per an agreement. He did not support the prosecution case and declared as hostile. He denied the suggestion that the said vehicle was sold to accused No.1, Baiju for an amount of Rs. 16,500/-.

37. PW10 (K.N. Chandrababu) is a real estate broker. He would say that PW9 is his nephew. According to him, PW9 purchased an Ambassador car and later sold it after two months on the basis of an agreement for sale. He would further say that Paravur Police seized the car as per Ext.P11 mahazar.

38. PW11 (Sooraj A.S.) is a head load worker at Munambam harbour. He witnessed the seizure of MOs.4 and 5, iron rods by the Circle Inspector of Police from the western side of Perumpadanna bridge in the presence of accused No.4, Ramesh, and accused No.5, Suresh. He put his signature in Ext.P12 recovery mahazar. He added that accused Nos.4 and 5, Ramesh and Suresh, are acquainted with him as they are also hailing from Munambam. He also identified MOs.4 and 5, iron rods.

39. PW12 (Dr. Roy Mathew) issued Ext.P13, wound certificate of the deceased Abhilash, while he was working in Don Bosco Hospital on 23.05.2005. He also proved Ext.P14 admission and discharge certificate of PW2 (Gilda Mendez). PW12 would say that Gilda Mendez was very nervous on that day. As per Ext.14, she was admitted on 19.05.2005 and discharged on 20.05.2025.

40. PW14 (Biju O. K.) is a driver of Himalaya Group, who had taken the deceased to the Don Bosco hospital in a Tata sumo car. He stated that while he was



travelling from Ernakulam to Cherai, he saw a crowd on the road. When he stopped the vehicle, the people gathered there took a person inside the car. He took him to the Don Bosco Hospital along with PW2.

41. PW15 (Dr. P. Vijayakumar) is the Assistant Professor and the Deputy Police Surgeon, Department of Forensic Medicine, Medical College, Alappuzha, who conducted the postmortem examination on the body of Abhilash on 20.05.2005 and issued Ext.P16 postmortem certificate. He had noted the following 29 ante-mortem injuries in the postmortem certificate:

1. Abrasion 7x2 cm on over right forehead just above eye brow 1.5 cm to right of midline.
2. Abrasion 5.5x2 cm right side of face close to outer angle of eye.
3. Abrasion over an area 9x2 cm on outer aspect of right elbow.
4. Abrasion 0.5 x 0.5 cm back of right wrist.
5. Abrasion 0.5 x 0.5 cm back of right wrist.
6. Abrasion 7.5x2.5 cm over right side of hip over lying iliac crest 16 cm to the right of midline.
7. Abrasion 10x4 cm front of right knee.
8. Abrasion 7x4 inner aspect of right thigh just above knee.
9. Abrasion 10x2.5 cm inner aspect of right foot back and at ankle.
10. Abrasion 1.5 x 1 cm top of right foot, 8 cm away from tip of toe.
11. Incised wound 5x3 cm muscle deep under aspect of left heel.
12. Abrasion 3x3.5 cm inner aspect of left knee.
13. Incised wound 4x3 cm bone deep on back of head, just to left of occiput.
14. Superficial incised wound 9.5 at the root of neck and right side of neck, left end 2 cm to the left of midline:



15. Superficial incised wound 10x1 cm back of right shoulder 1 cm below injury No.14:
16. Superficial incised wound back of right shoulder 12 cm long ½cm below injury No.15, left end in midline.
17. Superficial incised wound 19 cm long top of left shoulder upper right end in midline and 2 cm below root of neck.
18. Superficial incised wound 22x 0.1 cm top of left shoulder, right end in midline, back of neck, left end at armpit.
19. Superficial incised wound 20 cm long 0.5 cm below injury No.18 left end in outer end of injury No.17
20. superficial incised wound 7.5 cm long 1 cm below injury No.18 right end at midline.
21. Superficial incised wound 16.5 cm long outer left end with an incised wound 5x5x2x1.5 cm 0.5 cm below injury No.20 with tailing for 8 cm.
22. Incised wound 4.5 x2 cm bone deep on back of left shoulder transverse 4 cm below top of shoulder. Superficial incised wound 3 cm extending to right and 9.5 cm to the left of the wound.
23. Superficial incised wound 17 cm back of left side of chest oblique lower inner end 6.5 cm to the left of midline and 17 cm below root of neck.
24. Incised wound 37x5x7 cm starting from front of neck 3 cm to the left of midline through front to right side of neck to right ear. Beneath this injury the thyroid cartilage, sternocleidomastoid muscle, carotid artery and other blood vessels were cut completely on right side. Strap muscles were partially cut. Transverse processes of 4.5 cervical vertebrae were cut.
25. Incised wound 10.5x9x3 cm outer aspect of right leg through ankle. The lower end of fibula fractured, fracture ends of talus found separate.



26. Incised wound 12 cm bone deep 2 cm below ankle of right leg, back end just above heel.
27. Incised wound 9 cm long muscle deep starting from front of neck 2 cm to the left of midline to right side of neck.
28. Incised wound 8 cm long 1 cm below injury No.27. The flap raised was obliquely cut for 3 cm to the right of midline.
29. Multiple cut injuries below injury No.24, 26, 27 and 28. The right lateral side of vertebral column was cut at the left of Atlas vertebra entering to spinal canal and destroyed the spinal cord. The under aspect of skull. The occipital condylar was chipped off the occipital bone. The blood vessels, muscles and other structures of right front, lateral and back aspect of neck were chopped off, including the thyroid and cricoid cartilages.

42. PW15 opined that the cause of death is the cut injuries inflicted on the neck of the deceased Abhilash.

43. PW16 (Prasad A.) was the Sub Inspector of Police, Vadakkekara Police Station. On 31.05.2005, he received reliable information that four sword sticks were found near Kallarackal bridge in an abandoned state. He seized four swords as per Ext.P17 seizure mahazar in the presence of the witnesses. Thereafter, he registered Ext.P18 FIR in crime No.233/2005 under Section 102 of Cr.PC. Those material objects were produced before the SDM Court as per Ext.P19 property list. Thereafter, he got information that the weapons recovered were allegedly used by the assailants in Crime No.303/2005 of Paravur Police Station. He identified those swords as MOs.1 to 3 and 11.

44. PW17 (M. K. Binukumar) registered the crime. PW18 (R. Salim) is the



Investigating Officer of the case. He conducted the major part of the investigation of the crime. PW19 completed the investigation and laid the final report.

45. DW1 (Dr. Poulose Mathai) is the Chief Physician in Don Bosco Hospital. He produced Ext.X-1 case sheet of the deceased. Ext.X-1 only contains the carbon copy of the intimation given to the police. The case sheet was not opened, since the deceased was not admitted in the hospital.

46. DW2 (Dr. Seema Gangadharan) was examined on the side of the defence. She deposed that she had seen the deceased Abhilash when he was taken to the Don Bosco hospital. The deceased was brought to the hospital by a lady. She issued Ext.P13 death intimation to the police. In Ext.P36, it is noted that there was an assault by some identifiable persons at 8.00 pm near Cherai bridge. DW2 further stated that it is PW2 (Gilda Mendez) who supplied the name and address of the deceased.

The defence case

47. The defence case is that the appellants are innocent and falsely implicated in the case due to political animosity. The appellants and the deceased belonged to rival political fractions. The appellant in Crl. Appeal No.1331 of 2019 (accused No.3) has also raised a plea of alibi.

Death of Abhilash – whether homicidal?

48. PW15 (Dr. Vijayakumar), the Assistant Professor and the Deputy



Police Surgeon, Alappuzha Medical College, who conducted the autopsy of the deceased Abhilash has noted as many as 29 ante-mortem injuries on the body of the deceased. He opined that the cause of death is the cut injuries inflicted on the neck of the deceased. PW1 (Misha K.D.) and PW2 (Gilda Mendez), who are the ocular witnesses, would categorically state that the accused inflicted injuries on the deceased using swords and sticks. On going through the evidence of PWs.1, 2 and 15, we do not find any reason to disagree with the conclusion of the learned Sessions Judge that the death of Abhilash is homicidal.

The analysis

49. The material witnesses in this case are PW1 (Misha K.D.) and PW2 (Gilda Mendez). Now, we shall proceed to evaluate the evidence of the material witnesses.

50. PW1 (Misha K.D) deposed that on 19.05.2005 at about 8.30 pm, when he reached Perumpadanna Bridge, plying his motor cycle, an Ambassador car overtook his motor cycle and waylaid a Hero Honda Passion bike. The said bike was driven by the deceased Abhilash along with his fiancée, PW2. Thereafter, five to six persons jumped from the car and attacked the deceased with swords and iron rods. He would say that accused No.4, Ramesh and accused No.5, Suresh, caught hold of the rider of the motor bike. When the deceased tried to run away, accused No.1, Baiju chased him and inflicted a cut injury on the back side of the neck. Accused No.2, Krishnakumar, inflicted an injury on the left leg while accused No.3, Babu,



inflicted injury on the right leg. He added that when he tried to intervene, the accused abused him in a filthy language.

51. PW1 would further depose that after the incident, the assailants proceeded to Paravur side in their car. Somebody took the injured to the Don Bosco Hospital and he also went to the hospital. When PW1 reached the hospital, he came to know that the injured had succumbed to the injuries. PW1 lodged Ext.P1 FIS at 9.15 pm in the Parvur Police Station. He would add that he saw the incident on the headlight of the car and the other vehicles, passing through the road. PW1 identified all the assailants, who are previously known to him, as they are also hailing from his place, Munambam.

52. PW1 was subjected to thorough and lengthy cross examination by the defence counsel. Exts.D1 to D4 and D6 to D8 are the contradictions of PW1 with respect to Ext.P1-FI Statement. During cross examination, he would say that he does not remember whether he stated in the FIS that he had seen the injured Abhilash being taken to Don Bosco Hospital. He has no explanation if the Police has recorded that fact in Ext.P1 FIS. This portion of FIS was marked as Ext.D1.

53. Further, PW1 would say that he has not stated in his FI statement that he has not seen the rider of the motor cycle falling from the vehicle. He gave a statement to the police that the rider of the motorcycle stopped the vehicle and tried to run away from the scene. The relevant portion of Ext.P1 FIS was marked as Ext.D2.

54. PW1 in his FI statement before the Police stated that he had seen the



accused inflicting cut injury below the knee of the deceased. However, during cross examination, he would say that he does not remember whether he stated to the Police that he witnessed the infliction of injury on the thigh of the deceased. The relevant portion of Ext.P1, FIS was marked as Exts.D3 and D4. PW1 clarified that he committed a mistake while lodging FIS and narrated the true facts in his subsequent statement.

55. In the court, PW1 would say that the car swerved and stopped at the place of occurrence and thereafter, the accused attacked the deceased. But in the FIS, it was noted that after the attack all the assailants entered the car, swerved the same and proceeded towards Paravur side. The said change in the version was marked as Ext.D6. In Ext.P1, he stated that the dead body of Abhilash was in Don Bosco Hospital. But during cross examination, he denied the said aspect. Ext.D8 contradiction is with regard to the manner in which the Ambassador car overtook the motor cycle.

56. A careful evaluation of the contradictions proved by the defence would indicate that the said contradictions are immaterial, irrelevant and insignificant for the determination of the fact in issue.

57. The learned counsels for the appellants would also point out Exts.D9 to D11 contradictions in the evidence of PW2 (Gilda Mendez). PW2 would say that she does not remember whether she stated before the police that the car in which the injured was taken to the hospital belongs to Himalaya Group. She would also say that she does not remember whether the friends of Abhilash from Munambam



came there and took the victim to Ernakulam hospital.

58. In **Bharwada Bhoginbhai Hirjibhai v. state of Gujarat**⁷, the Apex Court had occasion to explain the principles while evaluating the evidence:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of

⁷ (1983) 3 SCC 217



events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him--Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

59. In **Appabahi v. State of Gujarath**⁸, the Apex Court held that while appreciating the evidence, the courts must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

60. In **Leelaram's** case (supra), the Apex Court observed that the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. Unless the contradictions are of material dimensions, the same should not be used to jettison the evidence in its entirety. Further, mathematical niceties cannot be expected in criminal cases.

61. The learned Sessions Judge after a careful scrutiny of evidence took

⁸ (1988) Supp SCC 241



the view that the contradictions in the evidence of PWs.1 and 2 are immaterial and insignificant. The incident occurred on 19.05.2005 and the evidence was recorded in December 2018, after a lapse of about 13 years. Therefore, minor omissions and contradictions are bound to occur in the evidence.

62. We have carefully evaluated the evidence of PWs.1 and 2, the material witnesses of this case in the light of the dictums laid down by the Apex Court discussed above. PWs.1 and 2 were subjected to lengthy and thorough cross examination by the defence side. Therefore, the witnesses are liable to get confused regarding the sequence of events. We find that their versions are natural and truthful. The minor contradictions and omissions pointed out by the learned counsels for the appellants never cut the root of the prosecution story.

63. The learned counsels for the appellants submitted that certain material witnesses were not examined by the prosecution and the non-citing and the non-examination of the witnesses are fatal in this case. It is submitted that the statement of DW2 (Dr. Seema Gangadharan) who prepared the death intimation and forwarded to the Police was not examined. It is further submitted that the Investigating Officer has questioned three persons namely, Radhakrishnan, Praveen and Jineesh before the arrest of accused No.1. The said persons were released after interrogation. The non-citing and non-examination of the aforesaid three persons were questioned by the Police before the arrest of the accused No.1 is fatal, according to the learned counsels for the appellants. It is trite law that it is the quality of the evidence and not the quantity of the evidence adduced by the



prosecution to be considered while arriving at a conclusion as to the guilt of an accused.

64. In **Vadivelu Thevar v. State of Madras**⁹, the Apex Court observed that it is the quality of the evidence and not the quantity which is relevant for the adjudication of the fact in issue. The evidence of the eye witnesses inspires the confidence of the Court and the non-examination of one or more other witnesses has no relevance at all.

65. Yet another contention advanced by the learned counsels for appellants is that in Ext.P13 wound certificate, which is the earliest information about the incident, the names of the assailants were not stated. In Ext.P13, it is stated that the injured was taken to the Don Bosco Hospital by PW2 (Gilda Medez). According to PW2, the assailants are previously known to her. If that be so, the names of the assailants might have been stated by her to the Medical Officer at Don Bosco Hospital. It was argued that the non-mentioning of the names of the accused in the earliest document is fatal to the prosecution case.

66. We are unable to accept the said contention. It is pertinent to note that PW12 (Dr. Roy Mathew), who issued Ext.P13 wound certificate, stated that PW2 (Gilda Mendez) was very nervous on that day and she was admitted in that hospital and discharged on the subsequent day of the incident. Ext.P14 is the admission and discharge certificate of PW2.

67. It is further submitted that there is no acceptable version as to the

⁹ AIR 1957 SC 614



nature of overt acts allegedly attributed against the accused. No witnesses said that more than one injury was inflicted on the neck of the deceased. According to PWs.1 and 2, one cut injury was inflicted on the neck of the deceased. However, as per Ext.P15 postmortem certificate, PW15 (Dr. Vijayakumar) noted two injuries on the neck.

68. Therefore, learned counsels for the appellants would submit that the case of the prosecution that PWs.1 and 2 who had witnessed the incident itself appears to be false. PW15 has noted as many as 29 ante-mortem injuries in the body of the deceased. The non-explanation by the material witnesses (PW1 and PW2) as to how 29 injuries were found on the body of the deceased falsifies the story of the prosecution. PW1 (Misha K.D.) spoke about the cut injury inflicted by accused No.1 on the back side of the neck of the deceased Abhilash and injuries inflicted on the left leg by accused No.2 and about the injuries inflicted by accused No.3 on the right leg. PW2 (Gilda Mendez) would also say that accused No.1 (Baiju) inflicted cut injury with a sword on the neck of the Abhilash. She would say that four accused persons were holding swords and two of them were carrying iron sticks.

69. When a group of six persons attacks the victim with swords and iron sticks, it may not be possible for the witnesses to give an exact version as to who inflicted injuries and on which part of the body the injuries were inflicted. Moreover, the evidence was recorded after a lapse of 13 years of the incident. The non-explanation of each and every injury allegedly inflicted by the assailants on the deceased is not fatal, as rightly concluded by the learned Sessions Judge.



70. Yet another argument advanced by the learned counsels for the appellants is that the prosecution has no definite and consistent case as to the weapons of offence. The discrepancies with regard to the material objects allegedly used by the assailants casts serious doubts in the prosecution story.

71. PW16 (Prasad A.), the Sub Inspector of Police, Vadakkekara Police Station had seized four sword sticks which were found near Kallarackal bridge in an abandoned state. He seized those swords as per Ext.P17 seizure mahazar and registered Ext.P18 FIR under Section 102 Cr.P.C. He produced those weapons before the SDM Court as per Ext.P19 property list. Later, when he got information that those weapons were used by the assailants in Crime No.303/2005 of Paravur Police Station, he submitted a report before the SDM court. He identified those swords as MOs.1 to 3 and MO-11.

72. In cross examination, PW16 stated that all the four swords found by him are rusted. At the time of seizure, one of the swords was rusted. Further, three swords were having brass grips. He would say that the swords shown to him during the trial were not having the brass grips. He explained that it might have been damaged by the lapse of time.

73. According to the learned counsels for the appellants, since there are some discrepancies with regard to the description of the material objects, the prosecution case is to be discarded. We are not persuaded by the said argument. Minor discrepancies in the description of the swords seized by the prosecution is not



a ground to reject or doubt the entire prosecution story.

74. Yet another argument advanced by the learned counsel for the appellants is that the Ambassador car and the motor cycle involved in the incident were not produced before the court and identified through the witnesses. PW18 (R. Salim), the Investigating Officer, gave evidence to the tune that he had seized the Ambassador car and the motorcycle after preparing seizure mahazars. The mere non-identification of the vehicles in the court, by itself, is not a ground to reject or doubt the prosecution narrative in its entirety.

75. Another contention advanced by the counsel for appellants is that the statements of PW2 (Gilda Mendez) were recorded after a gap of about one month and therefore the possibility of false implication cannot be ruled out. PW18, the Investigating Officer, would say that the previous statement of PW2 was recorded on 24.05.2005. PW18 would categorically say that PW2 was not in a position to give a statement to the Police. PW12 (Dr. Roy Mathew) would say that PW2 was very nervous on the alleged day of occurrence and she was admitted in the ICU and discharged on the subsequent day. Ext.P14 is the admission and discharge certificate of PW2. On going through the evidence, it could be seen that a satisfactory and plausible explanation is offered for the delay of four days in recording the statement of PW2.

76. It is further argued that the non-seizure of the dresses worn by PW1 (Misha K.D.) is fatal to the prosecution story. We are not persuaded by the argument that the non-seizure of dresses is a serious ground to disbelieve the prosecution



story.

77. The learned counsels for the appellants submitted that accused No.1 to 6 were roped in this case only with the aid of Section 149 of the Indian Penal Code. The prosecution has no case that none of them were carrying weapons with them and no overt acts were alleged against accused Nos.1 to 6. In the absence of such evidence, the conviction against accused Nos.1 to 6 cannot be sustained.

78. Before further discussion, it may be useful to extract Sections 141 and 149 of the Indian Penal Code.

"141. Unlawful assembly.—

An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, 11[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

149 - Every member of unlawful assembly guilty of offence committed in prosecution of common object.—



If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

79. In **Yunis @ Kariya v. State of Madhya Pradesh**¹⁰, the Supreme Court reiterated that, even if no overt act is imputed to a particular person, when the charge is under S.149 IPC, the presence of the accused as part of unlawful assembly is sufficient for conviction.

80. In **Krishnappa and Others. v. State of Karnataka by Babaleshwara Police Station**¹¹, the Supreme Court reiterated the principle of vicarious liability. Relevant paragraphs are extracted hereunder:

"20. It is now well settled law that the provisions of S.149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. S.149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object. [Lalji v. State of U.P., 1989 (1)SCC 437; Allauddin Mian v. State of Bihar, 1989 (3)SCC5; Ranbir Yadav v. State of Bihar, 1995 (4) SCC392]. The factum of causing injury or not causing injury would not be relevant, where accused is sought to be roped in with the aid of

¹⁰ 2003(1) SCC 425

¹¹ AIR 2012 SC 2946



S.149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not. [State v. Krishna Chand, 2004 (7)SCC629; Deo Narain v. State of Uttar Pradesh, 2010 (12)SCC298].

21. We have carefully perused the relevant records and statements of the eye witnesses in the case. In our opinion, the prosecution has clearly established with ample evidence that accused - A13 and A14 had murdered the deceased. We are in agreement with the view taken by the Trial Court and High Court. Therefore, the High Court is right in dismissing the appeal against the order of conviction passed by the learned Sessions Judge.

22. We are also of the opinion that accused - A1, A15, A16 and A21 were members of the same assembly which has caused the murder of the deceased, in terms of S.149 IPC, as they had dragged the deceased after first assault and contributed in preventing the deceased from escaping the assault of A13 and A14. Therefore, accused A1, A15, A16, A21 are guilty of murder along with A13 and A14 under S.302 read with S.149 IPC.

23. We are afraid that the decisions relied on by Shri. Doabia, learned Senior Counsel would not come to assist the accused, as in the present case, there is clear evidence of overt act on the part of the accused - A1, A15, A16 and A21 who dragged the deceased and prevented him from escaping the fatal assault to his body."

81. In **Suresh Dattu Bhojane v. State of Maharashtra**¹², the Apex Court held that the presence of the accused as part of unlawful assembly with common object is sufficient for conviction under Section 149, even without active participation in crime or specific role assigned to them.

82. In the case on hand, learned Sessions Judge after a detailed evaluation of evidence has arrived at a conclusion that accused Nos.1 to 6 had formed themselves into an unlawful assembly, shared the common object of that

¹² 2024 KHC 8258



assembly and the offences were committed in furtherance of the object of the unlawful assembly.

83. On reassessment and close scrutiny of the evidence of PWs.1 and 2, it would clearly establish that accused Nos.1 to 6 were came in an Ambassador car and overtook the Hero Honda Passion motorcycle driven by the deceased. The assailants jumped from the car and attacked the deceased Abhilash using swords and sticks. PWs.1 and 2 would categorically depose that accused No.1, Baiju inflicted a cut injury on the back side of the neck of the deceased. Accused No.2 inflicted an injury on the left leg and accused No.3 inflicted an injury on the right leg of the deceased. The available evidence would convincingly establish the participative presence of all the accused in the incident. PWs.1 and 2 witnessed the incident in the headlight of the vehicles passing through the road. PW1 asserted that all the accused are known to him. When he attempted to intervene, the assailants abused him using filthy language. It has also come out in evidence that after the incident all the accused persons proceeded to Paravur side in their Ambassador car.

84. On a careful evaluation of evidence in the light of the principles laid down by the Apex Court referred to above, we do not find any reasons to disagree with the conclusion of the learned Sessions Judge on this point also.

Conclusion

85. We have carefully and meticulously evaluated the evidence on record,



both oral and documentary and considered the rival submissions. On such evaluation, reassessment, weighing and testing of the evidence on record, we do not find any illegality or infirmity in the findings of the learned Sessions Judge as to the guilt, and conviction. The prosecution has succeeded in proving the charge against the appellants beyond reasonable doubt. We are in agreement with the conclusions arrived at by the learned Sessions Judge. The appeals are devoid of any merit and only to be dismissed, in our considered view.

In the result,

- 1) Crl.Appeal Nos.1328 of 2019, 1331 of 2019, 1177 of 2019 & 1086 of 2019 are dismissed.
- 2) The finding of guilt, conviction entered and the sentence passed by the learned Sessions Judge are confirmed.

Sd/-
RAJA VIJAYARAGHAVAN V
JUDGE

Sd/-
K. V. JAYAKUMAR
JUDGE



2025:KER:69364

Crl.A. No. 1086 of 2019 and connected cases

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APPENDIX OF CRL.A 1086/2019

PETITIONER' S ANNEXURES

Annexure A1 TRUE COPY OF THE MEDICAL CERTIFICATE
27.07.2023 ISSUED BY THE CONSULTANT PHYSICIAN
ATTACHED TO TALUK HOSPITAL, NORTH PARAVUR

Annexure A2 TRUE COPY OF THE PHOTOGRAPHS OF THE
PETITIONER' S MOTHER

APPENDIX OF CRL.A 1177/2019

PETITIONER ANNEXURES

Annexure I	CERTIFIED COPY OF THE PETITION IN CRL.M.P.NO.188/2019 IN S.C.NO.412/2012 DATED 16.05.2019 ON THE FILE ADDL. DISTRICT AND SESSIONS JUDGE, NORTH PARAVUR.
Annexure II	CERTIFIED COPY OF THE MEMO IN CRL.M.P. NO. 188/2019 IN S. C. NO.412/2012 DATED 16.05.2019 ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, NORTH PARAVUR.
Annexure III	CERTIFIED COPY OF ORDER PASSED BY LEARNED ADDITIONAL DISTRICT AND SESSIONS JUDGE, NORTH PARAVUR IN CRL.M.P.NO.188/2019 DATED 22.05.2019.
Annexure IV	CERTIFIED COPY OF MEMO FILED BEFORE THE LEARNED ADDL. DISTRICT AND SESSIONS JUDGE, NORTH PARAVUR DATED 22.05.2019 TO PRODUCE FINAL REPORT IN C.C.NO.842/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, NJARACKAL.
ANNEXURE V	CERTIFIED COPY OF THE PROCEEDINGS SHEET IN S.C.NO.412/2012 ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, NORTH PARAVUR.
Annexure VI	CERTIFIED COPY OF THE DEPOSITION OF PW1 MISHA ADDUCED IN C.C.NO.241/2006 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT, NORTH PARAVUR.



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Crl.A. No. 1086 of 2019 and connected cases

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APPENDIX OF CRL.A 1328/2019

PETITIONER ANNEXURES

Annexure-B

TRUE COPY OF THE CERTIFICATE DATED 11-1-2023
ISSUED FROM AVITIS SUPER SPECIALITY HOSPITAL,
NEMMARA, PALAKKAD



APPENDIX OF CRL.A 1331/2019

PETITIONER ANNEXURES

Annexure A1	TRUE PHOTOSTAT COPY OF THE PRESCRIPTION/ CERTIFICATE ISSUED BY DR. TONY FERNANDEZ EYE HOSPITAL DATED 22.07.2021
Annexure A2	TRUE PHOTOSTAT COPY OF THE MEDICAL RECORDS REGARDING THE CHECKUP AND DIAGNOSIS OF THE PETITIONER ISSUED BY THE GOVT. MEDICAL COLLEGE HOSPITAL THRISSUR DATED 22.10.2022
Annexure A3	TRUE PHOTOSTAT COPY OF THE PRESCRIPTION/ CERTIFICATE ISSUED FROM THE GOVT.MEDICAL COLLEGE HOSPITAL THRISSUR DATED 31.10.22