



2025:KER:25828

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 27TH DAY OF MARCH 2025 / 6TH CHAITHRA, 1947

CRL.A NO. 355 OF 2020

AGAINST THE JUDGMENT DATED 10.04.2017 IN SC NO.604

OF 2015 OF ADDITIONAL DISTRICT COURT-III, THRISSUR

APPELLANT/COMPLAINANT:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA.

BY ADV.SRI.S.U.NAZAR, SR.PUBLIC PROSECUTOR

RESPONDENTS/ACCUSED:

- 1 RISHIKESH,
S/O SURESH, MAROTTIKKAL HOUSE, THANNYAM VILLAGE,
PERINGOTTUKARA DESAM.
- 2 NIJIN @ KUNJAPPU,
S/O. UDAYAN, KOOTTLA HOUSE, PADIYAM VILLAGE,
MUTTICHUR DESOM.
- 3 PRASANTH @ KOCHU,
S/O. PRABHAKARAN, KOCHATH HOUSE, KARAMUKKU
VILLAGE, THANPADAM, THEKKEKKARA DESAM.
- 4 RASANTH,
24/15, S/O. RAVI, PLAKKIL HOUSE, POOKOD VILLAGE,
KOTTAPPADI, PILLKAD DESOM.



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- 5 BRASHNEV,
S/O. PEETHAMBARAN, VALAPARAMBIL HOUSE, THANNYAM
VILLAGE, PERINGOTTUKARA, KARAVAMKULAM DESOM.
- 6 SIVADAS @ SIVADASAN @ SIVAN,
S/O. SUBRAMANADAS, THARAYIL HOUSE, THANNYAM
VILLAGE, PERINGOTTUKARA MOOTHEDATHARA DESOM.
- 7 RAGESH @ MANNADI,
S/O. RAMACHANDRAN, MAMBULLY HOUSE PADIYAM,
PADIYAM VILLAGE, MUTTICHOOR DESOM.
- 8 BAIJU,
S/O. SUNNY, KURUTHUKULANGARA KOOLA HOUSE,
CHAZHOOR VILLAGE, CHAZHOOR S.N. ROAD DESOM.
- 9 SANANDH,
S/O. PRADEEP, KARAYIL HOUSE, THANNYAM VILLAGE,
PERINGOTTUKARA SHIPAYIMUKKU DESOM.
- 10 SARASAN,
S/O. BALAN, VIYYATH HOUSE, KATTOOR VILLAGE,
KARANCHIRA, MANAYAM DESOM.

BY ADVS.

SRI.RAFIQ P.M.

SRI.S.RAJEEV

SRI.P.S.SREEDHARAN PILLAI

SRI.T.K.SANDEEP

SRI.ARJUN SREEDHAR

SRI.ARUN KRISHNA DHAN

SRI.ALEX ABRAHAM

SRI.P.VIJAYA BHANU (SR.) (K/421/1984)

SRI.M.REVIKRISHNAN (K/1268/2004)

SRI.AJEESH K.SASI (K/166/2006)

SMT.SRUTHY N. BHAT (K/000579/2017)

SRI.RAHUL SUNIL (K/000608/2017)

SMT.SRUTHY K.K (K/117/2015)

SRI.SOHAIL AHAMMED HARRIS P.P. (K/1395/2020)

SMT.NANDITHA S. (K/000498/2024)

SRI.AARON ZACHARIAS BENNY (K/001533/2023)

SRI.V.VINAY (K/355/2009)



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-: 3 :-

SRI.M.S.ANEER (K/644/2013)
SRI.SARATH K.P. (K/001467/2021)
SRI.ANILKUMAR C.R. (K/001190/2020)
SRI.K.S.KIRAN KRISHNAN (K/3514/2022)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
10.03.2025, ALONG WITH CRA(V).631/2017, THE COURT ON
27.03.2025 DELIVERED THE FOLLOWING:



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-: 4 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 27TH DAY OF MARCH 2025 / 6TH CHAITHRA, 1947

CRA (V) NO. 631 OF 2017

AGAINST THE JUDGMENT DATED 10.04.2017 IN SC NO.604

OF 2015 OF ADDITIONAL DISTRICT COURT-III, THRISSUR

APPELLANT/WIFE OF THE VICTIM:

VARSHA DEEPAK,
AGED 34 YEARS, W/O LATE DEEPAK, POTTEKKATTU
HOUSE, PERINGOTTUKARA, THRISSUR DISTRICT.

BY ADV SRI.NIREESH MATHEW

RESPONDENTS/ACCUSED & STATE:

- 1 RISHIKESH
AGED 26 YEARS, S/O.SURESH, MAROTTICKAL
HOUSE, PERINGOTTUKARA, THRISSUR DISTRICT, PIN-
680001.
- 2 NIJIN @ KUNJAPPU
AGED 21 YEARS, S/O UDAYAN, KOOTTLA HOUSE,
MUTTICHUR DESOM, PADIYAM VILLAGE, THRISSUR
DISTRICT, PIN-680001.
- 3 PRASANTH @ KOCHU
AGED 27 YEARS, S/O.PRABHAKARAN, KOCHATH
HOUSE, THEKKEKARA DESOM, KARAMUKKU



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VILLAGE, THRISSUR DISTRICT, PIN-680001.

- 4 RASANTH
AGED 25 YEARS, S/O. RAVI, PLAKKIL
HOUSE, KOTTAPPADI, POOKOD VILLAGE, THRISSUR
DISTRICT, PIN-680001.
- 5 BRASHNEV
AGED 25 YEARS, S/O. PEETHAMBARAN, VALAPARAMBIL
HOUSE, PERINGOTTUKARA KARAVAMKULAM
DESOM, THANNIYAM VILLAGE, THRISSUR DISTRICT, PIN-
680001.
- 6 SIVADAS @ SIVADASAN @ SIVAN
AGED 45 YEARS, S/O. SUBRAMANADAS, THARAYIL
HOUSE, PERINGOTTUKARA, MOOTHEDATHARA DESOM, THANNYAM
VILLAGE, THRISSUR DISTRICT, PIN-680001.
- 7 RAGESH @ MANNADI
AGED 38 YEARS, S/O. RAMACHANDRAN, MAMBULLY
HOUSE, MUTTICHOOR DESOM, PADIYAM VILLAGE, THRISSUR
DISTRICT, PIN-680001.
- 8 BAIJU
AGED 24 YEARS, S/O SUNNY, KURUTHUKULANGARA KOOLA
HOUSE, CHAZHOOR, S. N. ROAD, CHAZHOOR
VILLAGE, THRISSUR DISTRICT, PIN-680001.
- 9 SANANDH
AGED 27 YEARS, S/O. PRADEEP, KARAYIL
HOUSE, PERINGOTTUKARA, SHIPAYIMUKKU DESOM, THRISSUR
DISTRICT, PIN-680001.
- 10 SARASAN
AGED 46 YEARS, S/O. BALAN, VIYYATH
HOUSE, KARANCHIRA, MANAYAM DESOM, KATTOOR
VILLAGE, THRISSUR DISTRICT, PIN-680001.
- 11 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM, PIN-682031.



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-: 6 :-

BY ADVS.
SRI.RAFIQ P.M.
SRI.T.K.SANDEEP
SRI.S.RAJEEV
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN
SRI.P.VIJAYA BHANU (SR.) (K/421/1984)
SRI.M.REVIKRISHNAN (K/1268/2004)
SRI.AJEEESH K.SASI (K/166/2006)
SMT.SRUTHY N. BHAT (K/000579/2017)
SRI.RAHUL SUNIL (K/000608/2017)
SMT.SRUTHY K.K (K/117/2015)
SRI.SOHAIL AHAMMED HARRIS P.P. (K/1395/2020)
SMT.NANDITHA S. (K/000498/2024)
SRI.AARON ZACHARIAS BENNY (K/001533/2023)
SRI.V.VINAY (K/355/2009)
SRI.M.S.ANEER (K/644/2013)
SRI.SARATH K.P. (K/001467/2021)
SRI.ANILKUMAR C.R. (K/001190/2020)
SRI.K.S.KIRAN KRISHNAN (K/3514/2022)
SMT.DIPA V. (K/003785/2024)

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN
FINALLY HEARD ON 10.03.2025, ALONG WITH CRL.A.355/2020,
THE COURT ON 27.03.2025 DELIVERED THE FOLLOWING:



P.B.SURESH KUMAR & JOBIN SEBASTIAN, JJ.

Crl.Appeal No.355 of 2020

&

Crl.Appeal (V) No.631 of 2017

Dated this the 27th day of March, 2025.

JUDGMENT

P.B.Suresh Kumar, J.

These appeals arise from S.C.No.604 of 2015 on the files of the Court of the Additional Sessions Judge-III, Thrissur. There were 10 accused in the case and the Court of Session acquitted all. Crl.Appeal.No.355 of 2020 is preferred by the State and Crl.Appeal (V) No.631 of 2017 is preferred by one of the victims, challenging the acquittal of the accused.

2. Deepak, who succumbed to the injuries sustained in an occurrence that took place on 24.03.2015 was an office bearer of the political party, Janatha Dal United (JDU). He was running a ration shop at a place called Pazhuvil Centre. At about 8.30 p.m. on the relevant day, while Deepak was standing in front of the ration shop, four persons armed with



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deadly weapons appeared unexpectedly to that place and two among them attacked Deepak with the weapons carried by them. Although a few persons standing on the opposite side of the road rushed to the said spot and attempted to prevent further attack on Deepak, one of the assailants created a scene of terror and others attacked even the said persons and then fled from that place in a Maruti Omni Van. Even though Deepak and others viz, Sajeev, Stalin and Sunil who suffered injuries were taken to Elite Mission Hospital, Koorkenchery, Deepak died on the same day itself.

3. A statement was recorded by the Sub-Inspector of Police, Cherpu from Sajeev at 10.30 p.m. on the same day while he was undergoing treatment in the hospital and a case was registered at 11.30 p.m. on the basis of the information furnished by Sajeev under Sections 324, 307 and 302 read with Section 34 of the Indian Penal Code (IPC) and under Section 27 of the Arms Act. The case was in fact against four recognizable persons. The investigation in the case revealed that a few activists of the political party, Socialist Janatha Dal (SJD) attempted to murder the sixth accused namely, Sivadas on an



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earlier occasion and the sixth accused believed that Deepak was behind the attempt made on his life. It was also revealed that on account of the said reason, accused 1 to 10 hatched a conspiracy to commit the murder of Deepak, and it is in pursuance of that conspiracy, accused 1 to 5 came to the scene on the relevant day in a Maruti Omni Van bearing registration No.KL-08-N-7252 and accused 1 to 4 among them attacked Deepak and others, while fifth accused was remaining in the van and thereafter fled from the scene in the same van. The investigation also revealed that among accused 1 to 4, the second accused stabbed Deepak, with the knife carried by him, on the right side of his neck and also on his left hand and the third accused hacked Deepak with the sword carried by him, on his left hand. The investigation further revealed that three persons namely, Sajeev, Stalin and Sunil were then standing near the scene and it was they who attempted to prevent the attack on Deepak. The investigation further revealed that the second accused is the person who attacked Sajeev also by stabbing him on his back and the fourth accused is the person who hacked Stalin with the sword carried by him. The final



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report was accordingly filed against the accused alleging commission of offences punishable under Sections 120B, 109, 201, 324, 326, 307 and 302 read with Section 34 IPC and Section 27 of the Arms Act. It is alleged in the final report that the Maruti Omni Van in which accused 1 to 5 came to the scene of occurrence was one that was purchased by the sixth accused with the help of the seventh accused and the accused abandoned the said Van after the occurrence and proceeded further in a Santro Car bearing registration No.No.KL-14-G-4060. The allegation against accused 8 to 10 in the final report is that they collected from accused 1, 3 and 4 the swords used by them while they were switching vehicles near Kottangode Bridge and entrusted the same to the tenth accused. It was also alleged in the final report that the tenth accused, in turn, concealed the same in a river.

4. On the accused being committed to trial, the Court of Session framed separate charges against them. Charges were framed against accused 1 and 5 under Sections 120B and 302 read with Section 34 IPC and also under Section 27 of the Arms Act. Charges were framed against accused 2 to



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4 under Sections 120B, 324, 326, 307 and 302 IPC and also under Section 27 of the Arms Act. Charges were framed against the sixth accused under Sections 120B, 109, and 302 read with Section 34 IPC. Charges were framed against the seventh accused under Sections 120B and 302 read with Section 34 IPC. Charges were framed against accused 8 to 10 under Sections 120B, 302 read with Section 34 IPC and 201 IPC. The accused denied the charges. The prosecution thereupon examined 77 witnesses as PWs 1 to 77 and proved through them 161 documents as Exts.P1 to P161. One of the documents relied on by the prosecution was the report of the test identification parades conducted as part of the investigation and the same was marked in the proceedings as Ext.X1. Two statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure (the Code) were marked in the proceedings as Exts.C1 and C2. MOs 1 to 11 are the material objects in the case. On the closure of the evidence of the prosecution, when the accused were questioned under Section 313 of the Code, they denied the incriminating circumstances brought out in the evidence of the prosecution



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against them and pleaded that they are innocent. In the joint statement filed by the accused at that stage, the stand taken by them was that Deepak was murdered by persons who had previous enmity to him. As the Court of Session did not find the case to be one fit for acquittal under Section 232 of the Code, the accused were called upon to enter on their defence. Three witnesses were examined by the accused at that stage as DWs 1 to 3. Exts.D1 to D35 were the documents proved by the defence through the witnesses. Thereupon, on a consideration of the evidence on record, the Court of Session found the accused not guilty of the charges and acquitted them. The State and the wife of Deepak are deeply aggrieved by the decision of the Court of Session and hence these appeals.

5. Heard Sri.S.U.Nazer, the learned Public Prosecutor and Adv.Athul Poulose for the appellant in the victim appeal. Senior Counsel Sri.P.Vijayabhanu addressed arguments on behalf of accused 1, 2 and 6, Adv.S.Rajeev addressed arguments on behalf of accused 5, 7 and 8 and Adv.Arjun Sreedhar addressed arguments on behalf of accused 3, 4, 9 and 10.



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6. The essence of the elaborate arguments made by the learned Public Prosecutor as also the learned counsel for the appellant in the victim appeal is that there is gross perversity in the appreciation of evidence, and the findings rendered on the various factual issues involved in the case are vitiated by patent illegality. *Per contra*, the learned counsel for the accused contended that inasmuch as the impugned judgment cannot be said to be one vitiated on account of misreading or omission to consider the material evidence and also inasmuch as it cannot be contended that the view taken by the Court of Session on the issues involved are not possible views or at least plausible views, no interference in the impugned judgment is called for in the appeals. They relied on the decisions of the Apex Court in **Babu Sahebagouda Rudragoundar v. State of Karnataka**, 2024 KHC 6222, **Ballu @ Balram @ Balmukund v. State of Madhya Pradesh**, 2024 KHC 6174, **Bhupatbhai Bachubhai Chavda v. State of Gujarat**, 2024 KHC 6206, **Ramesh v. State of Karnataka**, 2024 KHC 8377, **Zwinglee Ariel v. State of M.P.**, 1954 KHC 403, **Thakore Umedsing Nathusing v. State of Gujarat**, 2024 KHC 6133,



Mallappa v. State of Karnataka, 2024 KHC 6072, in support of his argument.

7. The points that fall for consideration are (i) whether the impugned decision acquitting the accused in the case is sustainable in law; (ii) if not, the offences, if any, committed by the accused or any of them and the sentences to be passed against the accused who are found guilty.

8. Points (i) & (ii): The prosecution attempted to prove the occurrence through the oral evidence of Sajeev and Stalin who sustained injuries in the occurrence. For the purpose of corroborating their evidence, the prosecution relies on the oral evidence of other witnesses, medical evidence, scientific evidence, recovery evidence etc. As the impugned decision is attacked on the ground that the findings rendered on the factual issues are vitiated by patent illegality on account of erroneous appreciation of evidence, the evidence let in by the witnesses needs to be scrutinised meticulously.

9. The witness examined as PW1 in the case is Sajeev. PW1 was the driver of a goods vehicle operating from Pazhuvil Centre. The version of PW1 as regards the occurrence



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was that on 24.03.2015 while he was engaged in conversation with Stalin and Sunil in front of the shop situated on the opposite side of the ration shop of Deepak, PW1 saw four persons proceeding to the ration shop at about 8.30 p.m., after crossing the road from the east; that one among them was then carrying a knife and others were carrying swords; that the person who was carrying the knife suddenly ran towards Deepak who was standing in front of his shop and stabbed on his neck forcefully and that thereupon, even though the said person stabbed Deepak again aiming at his chest, the stab fell only on his left hand. PW1 identified the second accused as the person who stabbed Deepak. According to PW1, he then rushed towards Deepak to help him and when he did so, the second accused turned towards him and stabbed him also aiming at his neck and that the said stab fell on the back side of his neck. It was the version of PW1 that he then moved back a little and at that time, he saw another person hacking on the left hand of Deepak with a sword. PW1 identified the third accused as the person who hacked Deepak then. It was also the version of PW1 that in the meanwhile, Stalin made an



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attempt to save Deepak and another person then hacked Stalin also on his neck with the sword carried by him and the said hack, when warded off by Stalin with his left hand, caused a serious injury on his left hand. PW1 identified the fourth accused as the person who hacked Stalin. It was also the version of PW1 that one among the four persons then brandished a sword carried by him uttering that if anyone approaches Deepak, he would also be done away with. PW1 identified the first accused as the person who brandished the sword. It was deposed by PW1 that the above four persons thereupon, ran towards east and even though PW1 and Sunil followed them, they got into a green coloured Maruti Omni Van parked nearby and fled therefrom. It was deposed by PW1 that they then rushed back to Deepak and took him to Elite Mission Hospital, Thrissur in the car of Deepak. It was explained by PW1 in his evidence that he entered into the back seat of the car along with one Noushad, a staff of Deepak and held Deepak on his lap; that Stalin sat in the front seat of the car and Sunil drove the car to the hospital. PW1 affirmed that it was he who gave Ext.P1 First Information Statement on the



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basis of which the case was registered. It was clarified by PW1 in his evidence that there were two street lights and lights from the nearby shops at the relevant time. It was also deposed by PW1 that test identification parades were conducted later, on 31.03.2015 and 01.04.2015 at Viyyur Jail and he identified the second accused who stabbed Deepak and him, the third accused who hacked Deepak, the fourth accused who hacked Stalin, the first accused who brandished the sword and the fifth accused who drove accused 1 to 4 away from the scene of occurrence, each from among a group of about ten persons, in more than one instance. PW1 identified MO1 as the sword brandished by the first accused, MO2 as the sword used by the third accused to hack Deepak and MO3 as the sword used by the fourth accused to hack Stalin.

10. Even though it was admitted by PW1 in cross-examination that it was he who furnished the history of assault to the doctor who examined him and Deepak at the hospital, he denied the suggestion made to him that he stated before the doctor that he was attacked by four persons wearing masks and clarified that two among the assailants had covered



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their faces below the nose using towels at the relevant time. PW1 also denied the suggestion put to him that he was shown the accused at the police station after their arrest. Similarly, PW1 denied the suggestion put to him that he was shown photographs of the accused before the test identification parades. At the time of chief examination, the knife seized by the police during investigation as the one used by the second accused to stab Deepak was not before the Court. However, the same was secured after the chief examination and PW1 identified MO4 as the said knife during re-examination.

11. The witness examined as PW2 was Stalin. As regards the occurrence, PW2 gave evidence more or less on similar lines as the evidence given by PW1. It was specifically stated by PW2 that the person who stabbed Deepak was a dark lean person. PW2 identified the second accused as the said person and deposed that it was he who stabbed PW1 also. PW2 also identified the third accused as the person who hacked Deepak on his left hand. It was deposed by PW2 that thereupon, one among the assailants hacked him also aiming at his neck and the same fell on his left hand when warded off.



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PW2 identified the fourth accused as the person who hacked him. PW2 also identified the first accused as the person who brandished the sword to frighten them. It was clarified by PW2 also that there was light at the scene from two street lights as also from the nearby shops. As deposed by PW1, PW2 also deposed that they went to the hospital in the car of Deepak, driven by Sunil and that PW2 was sitting in the front seat of the car. It was deposed by PW2 that he was admitted and treated in the hospital for three days. As in the case of PW1, PW2 also deposed that he identified, correctly, the second accused who stabbed Deepak and PW1, the third accused who hacked Deepak, the fourth accused, who hacked him and the first accused who brandished the sword, in the test identification parades, each from among a group of about ten persons in more than one instance. As in the case of PW1, PW2 also identified MO4 as the knife used by the second accused to stab Deepak and MO1 as the sword brandished by the first accused. Similarly, PW2 identified MO2 as the sword used by the third accused to hack Deepak and MO3 as the sword used by the fourth accused to hack him. In cross-examination, PW2 also



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denied the suggestion put to him that the assailants were wearing masks.

12. PW3 was not a witness who saw the occurrence. According to PW3, at about 8.30 p.m., he and his friend, Yadu Krishnan, arrived at the scene on a motorcycle immediately after the occurrence while they were on their way to a workshop after procuring few auto spare parts. What was deposed by PW3 was that while he was about to reach Pazhuvil Centre, he saw a Maruti Omni Van parked on the right side of the road where it takes a turn and that the fifth accused with whom he had previous acquaintance, was in the driver's seat of the said van at the relevant time. It was his version that when he proceeded crossing the parked van, he saw a gathering in front of the shop of Deepak and when he stopped the motorcycle there, he saw four persons proceeding hastily towards the van, entering it and driving away towards Thrissur direction. It was deposed by PW3 that even though two other persons ran behind the said van, they returned after sometime. It was also deposed by PW3 that he informed the police the events that he witnessed, on 26.03.2015 itself. In



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cross-examination, it was admitted by PW3 that he did not have any prior acquaintance with any of the accused except the fifth accused. When it was put to PW3 in cross-examination that he does not appear to have stated to the police that the fifth accused was driving the Maruti Omni Van, PW3 clarified that what was stated by him to the police was that the fifth accused was seen in the driver's seat of the said vehicle. In cross-examination, even though PW3 conceded that the shortest route through which he could return to his house from Thrissur is Alappad - Manakodi - Olari route, it was clarified by him in re-examination that he went through Pazhuvil Centre as the spare parts purchased by him had to be entrusted to a workshop at Thriprayar which is close to Pazhuvil Centre.

13. PW4 is a person who had previous acquaintance with Deepak. Like PW3, PW4 was also not a person who witnessed the occurrence. The evidence of PW4, however, was that on 24.03.2015, he along with his friend Jishnu went in a motorcycle to a river near Kottangode Bridge for baiting; that while they were proceeding towards south after crossing the said bridge, they saw a Santro Car as also a



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motorcycle parked on the eastern side of the road and that when they returned after baiting, they saw a green Maruti Omni Van halted behind the said vehicles. It was deposed by PW4 that five persons got out of the van, out of which the fifth accused, with whom he had previous acquaintance for more than three years, was seen getting out from the driver's seat of the van with a PVC pipe and he handed over the same to the eighth accused who was standing by the side of the van and that thereupon, the fifth accused along with others who came in the Maruti Omni Van got into the Santro car and drove away. It was clarified by PW4 in his evidence that even the eighth accused was a person with whom he had previous acquaintance for more than three years. It was deposed by PW4 that the eighth accused thereupon rode pillion on the motorcycle with the PVC pipe and that it was the ninth accused who rode away the motorcycle. According to PW4, it was at about 9.00 p.m. that he saw the sequence of events aforesaid. As in the case of PW3, PW4 also affirmed in his evidence that he was questioned by the police on 26.03.2015 and he narrated the sequence of events that he witnessed to the



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police on that day. PW4 identified correctly the fifth, eighth as also the ninth accused in court. In cross-examination, PW4 clarified that he saw the sequence of events spoken by him not only in the background of the street light available there, but also in the background of the headlight of his motorcycle.

14. PW5 is a person who was running a shop at Pazhuvil Centre dealing with Ayurvedic Medicines. The shop of PW5 was located on the immediate south of the ration shop of Deepak. According to PW5, at about 8.30 p.m. on the relevant day, while he was preparing to close the shop, he heard a sound and when he came out of the shop, he saw Deepak lying on the lap of Noushad. It was also deposed by PW5 that at the relevant time, a person was found standing there with a knife and a few others were standing with swords in their hands and all of them fled in a green Omni Van. PW5 also deposed that PWs 1, 2 and Sunil were among those who took Deepak to the hospital. Even though PW5 stated in his evidence that he had earlier identified those persons who were standing in front of the shop of Deepak with the weapons in their hands in the police station, he was unable to identify them in court. In cross-



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examination, when it was suggested to PW5 that the assailants of Deepak were wearing masks at the relevant time, he denied that suggestion. In re-examination, it was clarified by PW5 also that he saw the assailants in the background of the street light as also the lights from the nearby shops.

15. PW6 is the person who was running the shop on the opposite side of the ration shop of Deepak namely, "Gujarat Fabrics" at Pazhuvil Centre in front of which PW1, PW2 and Sunil were chatting at the time when the assailants came to the scene, as deposed by PWs 1 and 2. As in the case of PWs 3 to 5, PW6 also did not see the occurrence. PW6, however, affirmed that PWs 1, 2 and Sunil were standing in front of his shop at the relevant time and that PW6 saw them proceeding towards the shop of Deepak. What was seen by PW6 as deposed by him was that a few persons were creating a scene of terror by brandishing a sword and then rushed towards Thrissur direction. It was also deposed by PW6 that he noticed then that PWs 1 and 2 also sustained injuries, although he pleaded that he does not know as to how they sustained injuries.



16. PW7 is a witness examined by the prosecution to prove one of the criminal conspiracies alleged against the accused. According to the prosecution, this conspiracy is one that took place a few days prior to the occurrence. PW7 is a person who was working in a shop at Coimbatore during the relevant time. According to PW7, he came to his native place, namely Pazhuvil West in March, 2015 and a few days prior to the occurrence, while he was proceeding with his friend Nijith to a club located at a place called Asaanmoola at about 5 p.m., he saw a gathering of about ten persons in front of the house of the sixth accused and he overheard a statement made by them that “ദീപക്കിനെ എത്രയും പെട്ടെന്ന് പണിയണം അതിന് പൈസ എങ്ങുവേണമെങ്കിലും ചെലവു ചെയ്യാം”. PW7 deposed that he saw all the ten accused there on that day. In cross-examination, when it was put to PW7 that the conspiracy that he witnessed was one that took place on 06.03.2015, PW7 readily admitted the same. Even though PW7 admitted in cross-examination that he had prior acquaintance with five of the accused and that he knew their names, when it was put to PW7 that he does not appear to have stated to the police in his first statement, the names of anyone other than



the sixth accused, he asserted that he stated to the police the names of the other accused also. Similarly, it was clarified by PW7 in cross-examination that he saw the accused not exactly in front of the house of the sixth accused and that he saw the gathering in the road abutting the house of the sixth accused. In cross-examination, when PW7 was asked as to whether he over heard from the gathering the expression “കൊല്ലൂരത്”, he admitted that he heard that expression.

17. PW9 is a witness examined by the prosecution to prove the criminal conspiracy that allegedly took place in the afternoon of the date of occurrence. The evidence of PW9 was that at about 1.30 p.m. on 24.03.2015, when he was proceeding to the nearby junction through Saafali road, he saw a gathering of about ten persons. According to PW9, he paid attention to their conversation when he understood that they were talking about Deepak who is known to him. It was deposed by PW9 that the persons assembled there then were talking about committing the murder of Deepak and accused 1, 5, 6 and 9 who were known to him were also among that gathering. It was deposed by PW9 that he overheard them



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saying “റേഷൻ പീടിക പൂട്ടി വരുമ്പോൾ കൊച്ചു കുഞ്ഞാപ്പുവും പഴുവിൽ സെന്ററിൽ റേഷൻ കടയുടെയവിടെ നിൽക്കണം, ജൂഷിയെ ഫോണിൽ വിളിക്കണം, കാര്യം കഴിഞ്ഞാൽ നന്ദിപ്പാലത്തിന്റെയവിടേക്കു പോണം അവിടെ ബൈജുവും സനത്തും നിൽക്കും, ടൂൾസ് സരസനെ ഏൽപ്പിക്കണം". When PW9 was asked as to whether the persons other than the persons mentioned by him are present in court, his answer was that he knows only four among them. In cross-examination, it was clarified by PW9 that he noticed the gathering in the compound of one Sarala Bose. When it was suggested to PW9 in cross-examination that he does not appear to have stated to the police that the persons who gathered at the junction were discussing about committing the murder of Deepak, his reply was that he remembered the same having been said to the police.

18. PW10 is the person who was holding a Santro Car bearing registration number KL-14-G-4060 involved in the crime. PW10 deposed that he used to lease out the said car to his friends, and that on 23.03.2015, he leased out the same to the first accused for a period of one month after receiving a sum of Rs.6,500/- towards advance rent. It was stated by PW10 that it was a dark blue car, which he later clarified that, it



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would appear to be black during night. It was deposed that one Anwar Sajith was the registered owner of that car and he bought the same from another person who was holding possession of the same. PW16 is Anwar Sajith referred to by PW10 in his evidence. He deposed that he had sold the Santro car to one Shafi. PW17 is Shafi referred to by PW16 in his evidence and he affirmed that he purchased the above Santro car from PW16 as per Ext.P11 agreement and later sold the same to one Ibrahim. PW18 is Ibrahim referred to by PW17 in his evidence. He deposed that he purchased the said Santro car for one Shafeek, the Manager of the firm where he was working, from PW17 and the vehicle was thereafter being used by Shafeek. PW19 is Shafeek referred to by PW17 in his evidence. He deposed that it was he who sold the Santro Car to PW10.

19. PW11 was the owner of the Maruti Omni Van bearing registration number KL-8-N-7252 involved in the crime. PW11 deposed that it was a green coloured vehicle and he sold the same to the sixth accused about two weeks prior to the occurrence through one Majesh. It was also deposed by PW11



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that when the sixth accused came to purchase the Omni Van, accused 1, 5 and 7 were also with him. PW11 identified all the four accused in court. PW14 is Majesh referred to by PW11 in his evidence. He deposed that the seventh accused contacted him over telephone and sought his assistance to purchase a vehicle and it was he who arranged the Maruti Omni Van held by PW11 to be sold to the sixth accused. PW14 also deposed that accused 1, 5, 6 and 7 arrived together to pick up the vehicle.

20. PW29 was the doctor who conducted the post-mortem examination on the body of Deepak on 25.03.2015 and issued Ext.P25 post-mortem certificate. The ante-mortem injuries noted by PW29 at the time of post-mortem examination as deposed by him are the following:

1. Sutured incised wound 12cm long (surgically modified), oblique, on front and right side of neck, lower front end 1.5 cm outer to midline and 3.5cm above collar bone with a feeding tube seen coiled and emerging out from the wound. A cotton gauze soaked with blood was seen tightly packed underneath. The sternocleidomastoid muscle seen obliquely cut and separated underneath. The right internal jugular vein was seen transected and a feeding tube seen inserted to its lower segment and fixed in position with sutures. The right ventricle of heart contained blood mixed with air. The wound had a depth of 1.5-3cm.
2. Abrasion 0.8x0.2cm, oblique, on front of right forearm, 0.8cm below elbow.



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3. Abrasion 1x0.6cm, on back of right wrist.
4. Multiple small abrasions over an area 1x0.8m, on back of right index finger 4.5cm above its tip.
5. Multiple small abrasions over an area 0.8x0.5cm, on back of right middle finger 4cm above its tip.
6. Abrasion 0.3x0.2cm on back of right hand, just outer to knuckle of little finger.
7. Multiple small abrasions over an area 2x1.5cm on front of right knee and leg.
8. Multiple small abrasions over an area 5x1.5cm on top of right 2nd , 3rd and 4th toes just behind their nail beds.
9. Incised wound 7x1to3x3to5cm, vertical on outer aspect of left arm, 10cm below tip of shoulder with tailing of 1cm at its upper end. Underneath, deltoid and triceps muscles were seen cut. The obliquely cut shaft of humerus (through and through) was seen protruding through the wound.
10. Incised wound 1.5x1x1.5cm oblique on front of left arm, 7cm above elbow.
11. Abraded contusion 1x0.5x0.5cm oblique on front of left arm, 6cm above elbow.
12. Abrasion 0.8x0.3cm on knuckle of left middle finger.
13. Multiple small abrasions over an area 13x1-2.5cm, vertical on front of left knee and leg.
14. Abrasion 0.5x0.3cm on top of left foot 6.5cm behind tip of 3rd toe.

It was opined by PW29 that the death of Deepak was due to the injuries sustained on his neck and left arm namely, injuries 1, 9 and 10. It was clarified by PW29 that injuries 1, 9 and 10 are incised wounds and among them, injuries 1 and 9 are sufficient in the ordinary course of nature to cause death.



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PW29 also opined that all the three incised wounds referred to by him could be produced with MO4 knife. When PW29 was asked whether it was possible to cause injury 10 using MOs 1 to 3, the answer was that injury 10 is possible, if contacted forcibly with the tip of all these weapons. It was also added by PW29 thereafter that the tip of MO4 could also produce an injury in the nature of injury 10.

21. PW30 was a doctor attached to Elite Mission Hospital, Koorkencherry during March, 2015. PW30 deposed that at about 9.10 p.m. on 24.03.2015, he examined one Deepak and issued Ext.P26 treatment-cum-wound certificate and the history was reported to him as "Assault by unknown persons. Pazhuvil Centre. When he was closing his ration shop at 8.30 p.m. Assault by some sharp instrument." It was clarified by PW30 in his evidence that the bystander of Deepak was one Sajeev and it was he who reported the history of assault. It was also deposed by PW30 that despite aggressive efforts, the patient went into sudden bradycardia and cardiac arrest and he was declared dead at 09.35 p.m.

22. PW31 was another doctor attached to Elite



Mission Hospital during the relevant time. PW31 deposed that at 9.20 p.m. on the same day, he examined PW2 and issued Ext.P27 treatment-cum-wound certificate and the history of PW2 was reported to him as "Assault by unknown persons 24.3.2015 ദീപകിന്റെ റേഷൻ കടയിൽ വെച്ച് ഏകദേശം 9 മണി രാത്രിയിൽ വെച്ച് വാൾ കൊണ്ട് ആക്രമിക്കുകയായിരുന്നു". It was deposed by PW31 that on examination, it was found that the patient sustained an incised wound of 6 x 3 x 1 cms on the lateral aspect of left forearm extending to dorsal part and the x-ray showed that he suffered chip fracture in the right ulna. It was deposed by PW31 that PW2 was admitted in the hospital on 24.03.2015 and he was discharged only on 26.03.2015. PW31 opined in his evidence that the injury sustained by PW2 could be caused as alleged. It was deposed by PW31 that on the same day at 9.10 p.m., he also examined one Sunil and issued Ext.P28 treatment-cum-wound certificate. It was deposed by PW31 that Sunil was also brought to the hospital with the history of assault by unknown person at Pazhuvil and the history was reported to him as "ഏകദേശം 8.15 p.m. പി.ജി ദീപകിന്റെ റേഷൻ കടത്തടുക്കുകൊണ്ടിരിക്കുമ്പോൾ പച്ച നിറത്തിലുള്ള ഓമ്നി വാനിൽ മുഖംമൂടി ധരിച്ച് 4 പേർ ചേർന്ന് ഷോപ്പിന്റെ മുൻവശംവെച്ച് ദീപകിനെ പുറകിൽ നിന്ന്



കുത്തുകയും, തടയാൻ ശ്രമിച്ച സ്റ്റാലിനെ വെട്ടുകയും തടയാൻ ശ്രമിച്ച സജീവനെ പുറത്തു കത്താൻ ശ്രമിക്കുകയും ചെയ്തു. പരിക്ഷപ്തീയ സ്റ്റാലിനെയും സജീവനെയും തള്ളി മാറ്റി ദീപകിനെ വെട്ടുകയും ചെയ്തു.” It was deposed by PW31 that on the same day at 9.10 p.m. he examined PW1 also and issued Ext.P29 treatment-cum-wound certificate. It was deposed by PW31 that PW1 was also brought there with the history of assault and the same was reported to him as “ദീപകിന്റെ റേഷൻ കടയിൽ വച്ച് മുഖമുടി ധരിച്ച് 4 പേർ ചേർന്ന് വാൾ ഉപയോഗിച്ച് ആക്രമിക്കുകയായിരുന്നു”.

23. PW52 was the doctor who collected the hair and blood samples of accused 1 to 7. PW52 deposed that for each of the said accused, he first collected the blood sample in a vial and after enclosing the same in a cover, he sealed the cover using wax; that thereafter, he collected the hair samples in a plain paper and after placing the same in a cover, he sealed that cover also using wax and that thereafter, both the covers were put in a single cover and the same was tied and sealed. It was deposed by PW52 that it was those sealed packets that were handed over to the police personnel who brought the accused to him for taking the samples.

24. PW53 was the Judicial Magistrate who



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conducted the test identification parades. Among others, it was deposed by PW53 that he conducted the test identification parades in respect of five suspects namely, accused 1 to 5 for PWs 1 and 2 and submitted Ext.X1 report. PW53 narrated in detail the manner in which the test identification parades were conducted. Among others, it was deposed by PW53 that three opportunities each were given to each of the witnesses to identify the accused from among twelve non-suspects selected from the inmates of the jail for every round of identification. It was deposed by PW53 that PW2 identified accused 1 to 4 in all the three attempts and PW1 identified the second accused in two attempts and the fourth accused in all the three attempts. As far as the fifth accused is concerned, even though PW2 did not identify him, PW1 identified him in one attempt.

25. PW54 was the Sub-Inspector of Police who recorded the First Information Statement, and he deposed the said fact in his evidence. PW55 was the police officer who conducted the investigation in Crime No.441 of 2013 of Anthikadu police station and submitted the final report in that case. It was deposed by him that the injured person in that



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case is the sixth accused and that the accused in that case were activists of the organisation, SJD. In cross-examination, it was clarified by PW55 that Deepak was not an accused in that case.

26. PW57 was the Assistant Director of the Serology Division of the Forensic Science Laboratory, Thiruvananthapuram. It was PW57 who collected various objects for forensic examination from the Maruti Omni Van involved in the crime. PW57 affirmed the said fact in her evidence. It was PW57 who later issued Ext.P64 report. Item 8 in Ext.P64 report is the blood sample of the deceased collected in a cotton gauze at the time of post-mortem examination and item 12 therein is MO4 knife. It is recited in Ext.P64 that the blood stains in items 8 and 12 belonged to the same group 'O'. PW74 was the Assistant Director of the DNA Division of the Forensic Science Laboratory, Thiruvananthapuram, who issued Ext.P123 report. Item 7 in Ext.P123 report is the hair samples collected from the Maruti Omni Van involved in the crime and item 31(a1) is the blood sample of the second accused. It was deposed by PW74 among others, that DNA was extracted from



item Nos.7 and 31(a1) and on a comparison of the same, it was found that the DNA of the hairs in item No.7 are identical to the DNA of the blood sample in item No.31(a1).

27. PW75 was the Assistant Director of the Biology Division of the Forensic Science Laboratory, who issued Ext.P124 report. Item 7 in Ext.P124 report is the hair samples collected from the Maruti Omni Van involved in the case, item 31(a2) therein are the hair samples of the second accused and item 34(a2) are the hair samples of the fourth accused. It was deposed among others by PW75 that five out of twenty six hairs in item 7 are human scalp hairs which are similar to sample scalp hairs in item 31(a)2 and four out of the remaining hairs in item 7 are human scalp hairs in item 34(a2).

28. PW71 was a Finger Print Expert attached to Single Digit Finger Print Bureau, Thrissur during March, 2015. It was deposed by PW71 that he examined the Maruti Omni van involved in the crime on 25.03.2015 and lifted ten chance prints from the said van and the Finger Print Expert namely, K.S. Dineshan who accompanied him lifted nine other chance fingerprints. It was deposed by PW71 that he thereupon



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received specimen fingerprints of the accused from Cherpu Police Station. Ext.P97 is the report submitted by PW71 after comparing the chance fingerprints lifted from the Maruti Omni Van and the specimen finger prints received from Cherpu Police Station. It was deposed by PW71 that the chance fingerprint marked as C9 tallied with the specimen fingerprint of the second accused marked as S1, the chance fingerprint marked as C15 tallied with the specimen fingerprint of the fourth accused marked as S2, the chance fingerprint marked as C2 tallied with the specimen fingerprint of the fifth accused marked as S3 and the chance fingerprint marked as C18 tallied with specimen fingerprint of the seventh accused marked as S4.

29. PW77 was the police officer who conducted the investigation in the case. PW77 deposed, *inter alia*, that in the course of investigation, on 25.03.2015, he found the Maruti Omni Van involved in the case near Kottangode bridge in an abandoned state and he caused the van to be examined by the Finger Print and Scientific Experts. It was deposed by PW77 that he intercepted the Santro car in which accused 1 to 5



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were travelling at Mannuthy on 27.03.2015 and arrested them and in the interrogation pursuant to their arrests, the second accused disclosed to PW77 that he has kept a knife in his bag and that he will hand over the same to him. It was deposed by PW77 that thereupon, the second accused opened the dicky of the car in which they were travelling and took out a knife from a bag kept in it and handed over the same to him and it was seized by him as per Ext.P19 mahazar. The knife handed over to PW77 by the second accused was identified by PW77 as MO4. PW77 deposed that during the interrogation of the eighth accused after his arrest, the eighth accused disclosed to him that he along with the ninth accused entrusted a PVC pipe to the tenth accused and when the tenth accused was thereupon arrested and questioned, the tenth accused disclosed to him that he has concealed the PVC pipe entrusted to him by accused 8 and 9 at a place called Karanchira Munayam, and when the tenth accused was taken to that place, he took out a PVC pipe containing three swords from a river adjacent to a ghat and the same was seized by him as per Ext.P20 mahazar. PW77 identified the swords seized by him as MOs 1 to 3 and



PVC pipe as MO5. Similarly, PW77 identified the knife seized by him based on the information allegedly furnished by the second accused as MO4.

30. In cross-examination, PW77 denied the suggestion made to him that he was informed immediately on reaching the scene after the occurrence that the assailants were wearing masks. PW77 clarified in cross-examination that PW2 had stated to him that the person who stabbed the deceased was a dark lean person. Similarly, it was clarified by PW77 in cross-examination that PW4 has not stated the names of accused 1 and 8 in the statement given by him on 26.03.2015. Similarly, it was clarified by PW77 in cross-examination that PW5 had stated to him that he saw the assailants leaving the scene in a green coloured Maruti Omni Van. As regards the evidence tendered by PW7, it was clarified by PW77 that what was stated by PW7 in his previous statement was that he witnessed the gathering on the relevant day in the road abutting the house of the sixth accused and not in front of his house. It was also clarified by PW77 in cross-examination that PW7 has not mentioned the name of anyone



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other than the sixth accused in the statement given to him on 26.03.2015. Similarly, PW77 clarified that PW9 had not stated to him that he heard anyone speaking about committing the murder of Deepak and what was stated to him by PW9 was that he inferred from the conversation he overheard that they were speaking about committing the murder of Deepak.

31. It is on an appreciation of the evidence discussed in the preceding paragraphs that the Court of Session came to the conclusion that the prosecution has failed to establish the charges against the accused. There cannot be any doubt that the appellate court has the power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded and reverse such an order of acquittal in appropriate cases. But, once the trial court acquits the accused, the presumption of innocence in his favour is strengthened and reinforced. As such, it is settled that the appellate court may overrule or otherwise disturb the order of acquittal only if the appellate court has substantial and compelling reasons for doing so. It is also settled that if two reasonable or at least plausible views can be reached on the



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facts and evidence, one that leads to acquittal and the other that leads to conviction, the appellate court shall rule in favour of the accused [See **Dhanapal v. State**, (2009) 10 SCC 401]. It is also settled that the appellate court ought not interfere in the orders of acquittal, unless there is gross perversity in the appreciation of evidence, or patent illegalities. At the same time, it has to be kept in mind that miscarriage of justice may arise from the acquittal of guilty persons and it is obligatory, therefore, for the appellate court to ensure that such miscarriage does not occur. Non-consideration of material facts and consideration of irrelevant facts are factors which would invite an interference with an order of acquittal. Let us now consider the point formulated for decision, keeping in mind the said principles.

32. As noticed, the Court of Session framed separate charges for each of the accused and the charges include charges under Sections 120B, 109, 324, 326, 307, 201 and 302 read with 34 IPC. Even though charge was framed against some of the accused under Section 27 of the Arms Act as well, the learned Public Prosecutor and the learned counsel



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for the appellant in the victim appeal did not pursue the appeals insofar as it relates to the acquittal of the accused on the said charge. As such, it is suffice to examine the correctness of the impugned decision insofar as it relates to the charges under Sections 120B, 109, 324, 326, 307, 201 and 302 read with 34 IPC. Having regard to the peculiar facts of this case, we consider it appropriate to examine the points, charge-wise.

33. Charge under Section 120B IPC: The essence of the offence of criminal conspiracy lies in forming a scheme or agreement between parties. The offence of criminal conspiracy being one committed ordinarily in secrecy, it may be difficult to adduce direct evidence for the same. The law does not enjoin a duty on the prosecution, therefore, to lead evidence of such character, which is impossible to be led, or at any rate, extremely difficult to be led. The duty of the prosecution is only to lead such evidence which it is capable of leading. It is not necessary to prove an express agreement. On the other hand, the evidence as to transmission of thoughts sharing the unlawful design is sufficient. In other words, when the



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circumstances in a given case are taken together, it must be possible for the court to infer the meeting of minds between the conspirators for the intended object of committing the offence. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. Let us now consider the facts of this case keeping in mind these principles.

34. As noted, all the accused are charged under Section 120B IPC and the charge against them is that on several occasions, at several places and in particular, at 1.30 p.m. on 24.03.2015, the accused met in the compound of Sarala Bose and mutually agreed to commit the murder of Deepak. Going by the case of the prosecution, accused 1 to 4 are the persons who caused the death of Deepak, the fifth accused is the person who drove the van in which accused 1 to 4 came to the scene of occurrence to commit the murder of Deepak and took accused 1 to 4 away from the scene after committing the murder in the same van, the sixth accused is the person who instigated accused 1 to 5 to commit the said offence, the seventh accused is the person who helped the



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sixth accused to purchase the Maruti Omni Van used by accused 1 to 5 to come to the scene of occurrence, accused 8 and 9 are the persons who collected the swords from accused 1 to 5 used by them after the commission of the crime and the tenth accused is the person who, in turn, collected the swords from accused 8 and 9 and concealed the same. If one assumes that the prosecution established beyond reasonable doubt, the roles attributed to each of the accused, no doubt, it would certainly appear that the accused are known to each other and that there was some sort of understanding between them. But, the question is whether it is possible, from the roles attributed to the accused, to infer that there was an agreement among all of them to commit the murder of Deepak. In order to infer that there was an agreement among all the accused to commit the murder of Deepak, there should be some motive, common to all to commit his murder. True, if the assailants are hired individuals, there need not be any personal motive to commit the offence of murder. But, as far as other accused persons are concerned, there certainly ought to be some motive. Of course, it is alleged that the sixth accused maintained enmity towards



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Deepak as the former believed that the latter was behind the attempt made on the life of the sixth accused in an earlier occasion. Even though it is established in the case that there was an attempt to commit the murder of the sixth accused in an earlier occasion, the materials on record are not sufficient to hold conclusively that Deepak was behind that attack, especially when Deepak was not arrayed as an accused in that case. It appears that it is for the purpose of overcoming this difficulty that the prosecution examined PW7 and PW9 to prove that there was an agreement among all the ten accused to commit the murder of Deepak. Let us now see whether the prosecution has succeeded in conclusively establishing the existence of an agreement among all the ten accused to commit the murder of Deepak, through the evidence of PWs 7 and 9.

35. Even though the specific case of PW7 in chief-examination was that he saw all the accused together in front of the house of the sixth accused two days prior to the date of occurrence, in cross-examination, it was admitted by PW7 that he witnessed the gathering on 06.03.2015 and not two days



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prior to the date of occurrence. Similarly, even though PW7 stated in chief-examination that he overheard someone saying from the gathering that “ദീപക്കിനെ എത്രയും പെട്ടെന്ന് പണിയണം അതിന് പൈസ എന്തുവേണമെങ്കിലും ചെലവു ചെയ്യാം”, it was clarified by him in cross-examination that he also overheard someone saying from the same gathering that “കൊല്ലൂരത്”. The admission made by PW7 in his cross-examination that he witnessed the gathering on 06.03.2015 contrary to what was deposed by him in chief-examination, creates some suspicion as to the genuineness of the very case of the prosecution that all the accused gathered in front of the house of the sixth accused two days prior to the date of occurrence and that they agreed on the said day to commit the murder of Deepak. Even assuming that the accused gathered in front of the house of the sixth accused two days prior to the date of occurrence as alleged by the prosecution, it is doubtful as to whether there was any mutual agreement among the accused on that day to commit the murder of Deepak in the light of the evidence of PW7 that he also overheard someone saying “കൊല്ലൂരത്”. That apart, even though PW7 admitted in cross-examination that he had prior



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acquaintance with five of the accused whom he found in the gathering on the relevant day and that he knew their names, it has come out from the evidence of PW77, the investigating officer that PW7 had not mentioned to him the names of anyone other than the sixth accused in the statement given by PW7 on 26.03.2015. Inasmuch as PW7 has not disclosed the names of anyone in the gathering other than the sixth accused in the statement given to PW77 on 26.03.2015, the evidence tendered by PW7 that he knew five of the accused in the gathering other than the sixth accused, also becomes doubtful. There is yet another reason also which creates further doubt as to the genuineness of the evidence tendered by PW7. The version of PW7 as regards the place where he witnessed the gathering was the place in front of the house of the sixth accused, but it has come out in evidence that the stand taken by PW7 in his previous statement recorded under Section 161 of the Code is that he witnessed the gathering in the road leading to the house of the sixth accused. This may be a minor discrepancy, but in the nature of the evidence let in by PW7 as discussed above, the same cannot be ignored as a minor one,



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especially when the evidence is re-appreciated in an appeal against an order of acquittal.

36. Coming to the evidence tendered by PW9, even though it was stated by him in his evidence that he witnessed a gathering in the compound of Sarala Bose at about 1.30 p.m. on 24.03.2015 and accused 1, 5, 6 and 9 were among the gathering, PW9 could not affirm in court that the remaining six persons seen by him in the said gathering were the persons who were before the court along with accused 1, 5, 6 and 9. That apart, it has come out from the evidence of PW77 that PW9 did not mention in his previous statement recorded under Section 161 of the Code that he heard anyone speaking about committing the murder of Deepak and what was stated by PW9 to PW77 was that he inferred from the conversation he overheard that they were speaking about committing the murder of Deepak. Again, it was clarified by PW9 in his cross-examination that he witnessed the gathering at about 20 to 25 feet away from the place where he was standing. It is doubtful as to whether one can hear the conversation of others from such a distance, especially when



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such conversations are ordinarily held in secrecy. Criminal conspiracy to commit an offence is a serious crime, and it carries the same punishment as the intended offence. There should, therefore, be convincing evidence to hold a person guilty of criminal conspiracy. The evidence tendered by PWs 7 and 9 does not inspire confidence of the Court. *De hors* the evidence of the said witnesses, there is no satisfactory evidence to connect accused 6 to 10 with the crime to hold that they were also parties to the criminal conspiracy to commit the murder of Deepak. We say so, as the only remaining evidence as against the seventh accused is that he was present with the sixth accused to purchase the Maruti Omni Van from PW11. Likewise, the only remaining evidence as against the tenth accused is that he collected from accused 8 and 9 MOs 1 to 3 swords and concealed the same. Of course, PW4 deposed that he saw accused 8 and 9 while accused 1 to 5 were switching vehicles near Kottangode Bridge after the occurrence. But it has come out from the evidence of PW77 that what was stated by PW4 to the police on 26.03.2015 is only that he saw the fifth accused in the Maruti Omni Van and



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that PW4 has not mentioned the name of the eighth accused in the said statement. In other words, the evidence tendered by PW4 that he saw accused 8 and 9 near the Kottangode Bridge on the relevant day cannot be taken as reliable. Of course, there are some materials against the sixth accused to connect him with the crime. But, as already noticed, he is charged under Section 109 IPC for having instigated accused 1 to 5 to commit the murder of Deepak. Even assuming that the sixth accused instigated accused 1 to 5 to commit the murder of Deepak, merely on account of the same, it cannot be held that accused 1 to 10 hatched a criminal conspiracy to commit the murder of Deepak. In the said circumstances, we do not find any infirmity in the finding rendered by the Court of Session that the prosecution has failed to establish beyond reasonable doubt the charge against the accused under Section 120B of IPC.

37. Charges under Section 302 and Section 302 read with Section 34 IPC: Accused 2 to 4 were charged under Section 302 IPC and accused 1 and 5 to 10 were charged under Section 302 read with Section 34 IPC. Going by the case of the



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prosecution, the allegation against the sixth accused is only that he instigated accused 1 to 4 with the aid of other accused to commit the murder of Deepak, the allegation against the seventh accused is that he helped the sixth accused in purchasing the Maruti Omni Van, the allegation against accused 8 and 9 is that they collected the swords used by accused 1 to 4 for commission of the crime from accused 1 to 5 and the allegation against the tenth accused is that he, in turn, collected the swords from accused 8 and 9 and then concealed the same. In the light of the allegations aforesaid, we do not think that the Court of Session was even justified in framing a charge against accused 6 to 10 for the offence punishable under Section 302 read with Section 34 IPC. The issue relating to sustainability of the charge under Section 302 read with Section 34 IPC, needs to be considered, therefore, only in the context of accused 1 to 5.

38. The case of the prosecution as against accused 1 to 5 is that accused 1 to 4 among them went to the scene of occurrence on the relevant day at about 8.30 p.m. in the Maruti Omni Van driven by the fifth accused and that the



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second accused stabbed Deepak with the knife carried by him, on the right side of his neck and also on his left hand; the third accused hacked Deepak on his left hand and that when PW1, PW2 and Sunil attempted to prevent the attack on Deepak, the second accused stabbed PW1 on his back and the fourth accused hacked PW2 on his left hand. It is also the case of the prosecution that the first accused created a scene of terror at the relevant time by brandishing the sword carried by him. The accused do not dispute the fact that PWs 1 and 2 sustained injuries in the occurrence and to prove the same, the prosecution examined PWs 1 and 2. Both PWs 1 and 2 gave evidence consistent with the case of the prosecution as regards the occurrence and the said witnesses identified accused 1 to 4 as also the weapons used by them in Court. Even though PWs 1 and 2 were cross-examined at length, nothing was brought out to discredit their evidence. Admittedly, a few discrepancies were present in the evidence of the said witnesses, and the accused also brought on record a few contradictions. But, the said discrepancies and contradictions were not on the core aspect of the evidence



tendered by the accused as regards the occurrence and would not, therefore, be an impediment for this court in accepting the evidence tendered by PWs 1 and 2. The fact that the witnesses sustained injuries would show that they were present at the place of occurrence and saw the same by themselves and convincing evidence is, therefore, required to discredit injured witnesses. It was held by the Apex Court in **Brahm Swaroop v. State of U.P.**, (2011) 6 SCC 288 that where a witness to the occurrence has himself been injured in the occurrence, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailants in order to falsely implicate someone. In the light of the said principle, we do not find any reason to reject the evidence tendered by PW1 and PW2.

39. It is seen that despite the convincing evidence of the ocular witnesses, namely PWs 1 and 2 as discussed above and the other evidence let in by the prosecution to corroborate the evidence tendered by the ocular witnesses, the



Court of Session refused to accept the evidence tendered by PW1 and PW2 holding that the assailants were wearing masks at the time of occurrence and the evidence of the ocular witnesses cannot, therefore, be believed. On a close scrutiny of the evidence in this case, we find that the finding aforesaid of the Court of Session is not supported by any evidence. We shall elucidate the rationale behind the said conclusion.

40. As noted, the occurrence took place at about 8.30 p.m. and the injured persons namely PW1 and PW2 were taken to the hospital in the car of Deepak by Sunil who was also an injured person. Among them, Deepak was examined at the hospital by PW30 at 9.10 p.m. Ext.P26 is the treatment-cum-wound certificate issued in respect of Deepak by PW30. The history of the case reported as recorded in Ext.P26 is *"Assault by unknown persons. Pazhuvil Centre. When he was closing his ration shop at 8.30 p.m. Assault by some sharp instrument"*. The injured persons were examined almost at the same time by another doctor namely PW31. Ext.P27 is the treatment-cum-wound certificate issued in respect of PW2 by PW31. The history of the case reported as recorded in Ext.P27



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is“ *Assault by unknown persons 24.03.2015* ദീപകിന്റെ റേഷൻ കടയിൽ വെച്ച് ഏകദേശം 9 മണി രാത്രിയിൽ വെച്ച് വാൾ കൊണ്ട് ആക്രമിക്കുകയായിരുന്നു”. Ext.P28 is the treatment-cum-wound issued in respect of Sunil by PW31. The history of the case reported as recorded in Ext.P28 is “ഏകദേശം 8.15 p.m. P.G ദീപകിന്റെ റേഷൻ കട അടച്ചു കൊണ്ടിരിക്കുമ്പോൾ പച്ച നിറത്തിലുള്ള ഓർനി വാനിൽ മുഖം മൂടി ധരിച്ച 4 പേർ ചേർന്ന് ഷോപ്പിന്റെ മുൻവശം വെച്ച് ദീപകിനെ പുറകിൽ നിന്ന് കത്തുകയും തടയാൻ ശ്രമിച്ച സ്റ്റാലിനെ വെട്ടുകയും, തടയാൻ ശ്രമിച്ച സജീവനെ പുറത്ത് കത്തുകയും ചെയ്തു. പരിക്ക് പറ്റിയ സ്റ്റാലിനെയും സജീവനെയും തള്ളി മാറ്റി ദീപകിനെ വെട്ടുകയും ചെയ്തു”. Ext.P29 is the treatment-cum-wound issued in respect of PW1 by PW31. The history of the case reported as recorded in Ext.P29 is “ദീപകിന്റെ റേഷൻ കടയിൽ വെച്ച് മുഖം മൂടി ധരിച്ച വന്ന 4 പേർ ചേർന്ന് വാൾ ഉപയോഗിച്ചു ആക്രമിക്കുകയായിരുന്നു “. As noted, in Exts.P28 treatment-cum-wound certificate of Sunil and P29 treatment-cum-wound certificate of PW1 there is a reference that the assailants were wearing masks. It is based on the recitals in the said certificates and based on the evidence that some newspapers have reported on the following day that the assailants were wearing masks, that the Court of Session came to such a conclusion. It was also held by the Court of Session that the registration of the First Information Report and its forwarding to



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the jurisdictional Magistrate, were delayed to suppress the fact that the assailants were wearing masks.

41. Newspaper reports are only hearsay and inadmissible in evidence. Therefore, in the absence of the maker of the statement appearing in court and deposing as to how he perceived the fact reported, newspaper reports cannot be relied on for any purpose whatsoever [See **Laxmi Raj Shetty v. State of Tamil Nadu**, 1988 KHC 651]. As such, we have no doubt in our minds that the Court of Session acted erroneously in placing reliance on the newspaper reports to reinforce the finding rendered based on Exts.P28 and P29 treatment-cum-wound certificates that the assailants were wearing masks at the relevant time.

42. Similarly, the view taken by the Court of Session that the registration of the First Information Report and its forwarding to the jurisdictional Magistrate were delayed deliberately for the purpose of suppressing the fact that the assailants were wearing masks, is equally erroneous. As noted, it has come out in evidence that the occurrence took place at about 8.30 p.m. and that the injured persons were immediately



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taken to the hospital. PW77, the investigating officer, deposed that he received information about the occurrence at about 8:45 p.m. and he immediately proceeded to the place of occurrence from where he went to the hospital where the injured persons were taken. In the meanwhile, PW1 was examined at about 9:10 p.m. by PW31, the doctor. It was clarified by PW77 in his cross-examination that he probably reached the scene of occurrence by about 9.10 p.m. and that he subsequently reached the hospital in about 20-25 minutes. It has come out in the evidence of PW77 that PW54, the Sub-Inspector of Police who recorded the First Information Statement of PW1, also reached the hospital almost at the same time. The First Information Statement of PW1 was recorded at the hospital by PW54 at 10.30 p.m. The delay of one hour in recording the First Information Statement cannot be said to be fatal in the peculiar facts of this case as the person from whom the First Information was recorded namely, PW1 was a person who suffered injuries and his conditions had to be stabilised before recording a statement from him. The evidence revealed that after recording the First Information



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Statement, PW54 went back to the police station and registered the First Information Report at 11.30 p.m. It is seen observed by the Court of Session that PW77 should have straight away gone to the police station on receipt of information regarding the occurrence and registered the First Information Report. Similarly, the view of the Court of Session was that even PW54 could have registered the case before recording the statement of PW1. The view is wholly unsustainable. Having regard to the facts of the present case, according to us, the course adopted by the police in recording the First Information Statement from an injured eye witness was perfectly in order and the said course was necessary to protect the interests of both the prosecution as also the accused. Similarly, it is not disputed that the First Information Report was received in the office of the jurisdictional Magistrate on the morning of the following day at 10 a.m. We do not, therefore, find any unjustifiable delay in forwarding the First Information Report to the jurisdictional Magistrate also. It is seen that it was observed by the Court of Session that the First Information Report in a case of this nature should have



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been forwarded to the residence of the jurisdictional Magistrate on the night of the same day itself. This view is equally erroneous and unacceptable. No doubt, the requirement under Section 157 of the Code is that First Information Reports shall be forwarded forthwith to Magistrates and not to the court. The object of the provision is to keep the Magistrate informed of the investigation so as to enable him to control the investigation and if necessary to give appropriate directions as well. No doubt, it is also one of the external checks against ante-dating or ante-timing of First Information Reports. But merely for the reason that a copy of the First Information Report registered during the odd hours is not forwarded to the residence of the Magistrate then and there, but only forwarded to the court on the morning of the following day, it cannot be said that there is non-compliance of Section 157 of the Code. It is all the more so since the delay in compliance of the statutory provision is explainable. Of course, if the day following the night is a holiday, having regard to the scheme of the Code, the copies of the First Information Reports need to be forwarded to the concerned Magistrates, and it is to



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take care of such situations that the Statute provides that the copies of the First Information Reports need to be forwarded to the concerned Magistrate and not to the Court. Inasmuch as it is held that there was no delay in registering the First Information Report and forwarding the same to the jurisdictional Magistrate, the view taken by the Court of Session on that basis that the police wanted to suppress the fact that the assailants were wearing masks, is erroneous.

43. Let us now see whether there is any justification at all, for the Court of Session to hold that the assailants were wearing masks. First of all, it must be noted that if the assailants were wearing masks, there is no reason why the said fact was not reported to PW31, the same doctor who examined PW2 and also to PW30, the doctor who examined Deepak almost at the same time at which PW31 examined PW1 and Sunil. As noticed, the stand taken by PW30 in his evidence was that the history was reported to him by the bystander, Sajeev whose name is recorded in Ext.P26. The specific case of the prosecution is that the bystander who is referred to in Ext.P26 treatment-cum-wound certificate issued



in respect of Deepak was none other than PW1 for, it was PW1 who took Deepak to the hospital. The said fact is not disputed by the accused. In fact, the same was suggested to PW1 during cross-examination by the counsel for the accused and PW1 admitted the same. Similarly, PW1 also admitted that it was he who reported the history to PW31, though the former asserted that what is recorded in Ext.P29 is incorrect. The relevant evidence of PW1 reads thus:

"ഡോക്ടറോട് വിവരങ്ങൾ പറഞ്ഞു കൊടുത്തത് താങ്കളല്ലേ ? അതെ. താങ്കളെ ചികിത്സിച്ച ഡോക്ടറോടും താങ്കളാണ് കാര്യങ്ങൾ പറഞ്ഞത്? അതെ. താങ്കൾ 24.3.2015 ൽ പഴുവിൽ 8.30 pm നു ദീപക്കിന്റെ റേഷൻ കടയിൽ വച്ച് മുഖംമുടി ധരിച്ചു വന്ന 4 പേർ ചേർന്ന് വാൾ ഉപയോഗിച്ച് ആക്രമിച്ചു എന്ന് ഡോക്ടറോട് പറഞ്ഞതായി ഡോക്ടർ രേഖപ്പെടുത്തി കാണുന്നു. അതു തെറ്റാണ്."

If as a matter of fact, PW1 was the person who reported the history to the doctor who examined Deepak namely, PW30, it can certainly be held that it was not PW1 who reported the history to the doctor who examined him, namely, PW31. If that be so, PW1 cannot be discredited based on the history recorded in Ext.P29 treatment-cum-wound certificate. It is common knowledge that when injured persons are taken to a hospital, the history is recorded in a very casual manner for,



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the priority of the doctor at that point of time would always be to treat the patient. No doubt, such statements cannot be disregarded, but at the same time, the correctness of the same always has to be examined in the light of the surrounding facts [See **B. Bhadriah v. State of A.P.**, 1995 Supp (1) SCC 262].

44. In this context, it is necessary to point out that within about an hour after PW1 was taken to the hospital, PW54 went to the hospital and recorded the First Information Statement from PW1. Even though PW1 gave a complete description of the sequence of events in Ext.P1 First Information Statement, there is no whisper about masks therein and the categorical assertion made by PW1 in Ext.P1 is that he saw the assailants in the background of the street light as also the lights from the nearby shops and that he can identify the assailants. As already noticed, both PW1 and PW2 identified the assailants in the test identification parades more than once, that too, from among others who have similar features. If as a matter of fact, the assailants were wearing masks, PWs 1 and 2 would not have been in a position to identify the accused in the test identification parades. It has



come out in the evidence of PWs 1 and 2 that the faces of two among the four assailants were covered below their noses when they reached the scene of occurrence. Even though PW1 had not stated so in the First Information Statement, he said so in the chief-examination. In cross-examination also he clarified the same when it was put to him that he was attacked by persons in masks. Even if two among them had covered their faces below their noses with towels, the towels must have slipped down as it has come out in the evidence of PW5 that they were not wearing masks at the time when he saw them. The relevant portion of the deposition of PW5 reads thus:

"മുഖം മൂടി ധരിച്ച് മുഖം കാണാൻ വയ്യാത്ത അക്രമികളാണ് സംഭവത്തിൽ ഉണ്ടായത് എന്നു പറഞ്ഞാൽ ശരിയല്ലേ ? (Q) അല്ല, ആരും മുഖം മൂടി ധരിച്ചിരുന്നില്ല (A)"

It is relevant to note in this connection that even though PW5 had not identified the assailants of Deepak and others in court, it has come out in evidence that PW5 identified accused 1 to 4 correctly when he was summoned to the police station to do so. As such, on a totality of the facts and circumstances of the case, we are of the view that the conduct of two among the assailants in covering their faces below their noses when they



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arrived at the scene has contributed to the casual statements recorded in Exts.P28 and P29 treatment-cum-wound certificates and the same should not be allowed to decide the fate of the criminal adjudication.

45. Let us now examine the question whether there is sufficient corroboration for the evidence tendered by PWs 1 and 2. The evidence tendered by PWs 1 and 2 is consistent with Ext.P1 First Information Statement recorded within an hour after PW1 was taken to the hospital and Ext. P1 First Information Statement, therefore, lends corroboration to their ocular account. True, accused 1 to 4 are not persons with whom PWs 1 and 2 had previous acquaintance. But, PW2 identified accused 1 to 4 correctly in all the three chances given to him in the test identification parades, that too, from among persons having similar features. Similarly, PW1 also identified the fourth accused in all the three attempts. Of course, PW1 identified the second accused only in two attempts and he has not identified the third accused in any attempt. That apart, PW1, who according to the prosecution, chased accused 1 to 4 up to the van, identified the fifth



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accused correctly once in the test identification parade. Nothing was brought out in the evidence by the accused to show that PWs 1 and 2 had occasion to see the accused persons before the test identification parades, except the various suggestions made to them by the counsel for the accused during cross-examination. The identification of accused 1 to 5 by PWs 1 and 2 in the test identification parades also, therefore, lends corroboration to their identification of the accused in court.

46. That apart, the evidence tendered by PW3 that when he reached Pazhuvil Centre at about 8.30 p.m. on the relevant day, he saw a Maruti Omni Van parked on the right side of the road and that the fifth accused with whom he had previous acquaintance was then found in the drivers seat of the said van and his evidence that when he proceeded further crossing the parked van, he saw a gathering in front of the shop of Deepak and when he stopped the motorcycle there, he saw four persons proceeding hastily towards the van, entering it and driving away towards Thrissur direction, also lends corroboration to the evidence tendered by PWs 1 and 2. It is



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necessary to mention in this regard that the statement of PW3 was recorded by PW77, the investigating officer under Section 161 of the Code on 26.03.2015 itself, before the arrest of the accused and his evidence aforesaid was consistent with his previous statement recorded on 26.03.2015. The evidence tendered by PW3 is not seen accepted by the Court of Session since the assailants were found to be wearing masks. Inasmuch as it is found that the finding rendered by the Court of Session that the assailants were in masks is erroneous in law, there is absolutely no impediment in placing reliance on the evidence tendered by PW3. Similarly, the evidence tendered by PW4 that he saw five persons getting out of the Maruti Omni Van immediately after the occurrence near Kottangode Bridge and that the fifth accused with whom he had previous acquaintance for more than three years was in the driver's seat of the van at the relevant time, also lends corroboration to the oral evidence tendered by PWs 1 and 2. Even though the Court of Session did not accept the entire evidence let in by PW4, it was found that his evidence to the extent referred to above can certainly be accepted.



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47. The learned counsel for accused 5, 7 and 8 contended that if as a matter of fact, PW3 had seen the fifth accused in the driver's seat of the Maruti Omni Van when he was reaching Pazhuvil Centre as claimed by him, the fact would have certainly been reported by him to the police on the night of the same day itself and not two days later namely, 26.03.2015 as the person who was murdered was a prominent person in the locality. It was pointed out by the learned counsel that the police had absolutely no clue even at the time of holding the inquest on the following day as to who were the assailants. According to the learned counsel, no reliance could therefore be placed on the oral evidence tendered by PW3. We do not find any merit in the above argument. Merely for the reason that PW3 had not reported to the police on the night of the same day namely, 24.03.2015 that he saw the fifth accused in the driver's seat of the van, it cannot be said that what was deposed by him in court was incorrect. PW3 might have various reasons for not reporting the fact aforesaid to the police on the same day itself. It is all the more so, since there is a general reluctance in our society for people to volunteer to



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become witnesses of occurrences of this nature as it is apprehended that they would be harassed at the instance of the police and would also invite the wrath of accused. Inasmuch as PW3 has categorically stated in his evidence that the fifth accused is a person with whom he had previous acquaintance for three years, there is absolutely no reason to disbelieve the evidence of PW3 as regards the involvement of the fifth accused in the crime.

48. That apart, the evidence tendered by PW5, the person who was running a shop on the immediate south of the ration shop of Deepak, that he heard a sound at about 8.30 p.m. on the relevant day and when he came out of the shop on hearing the same, he saw Deepak lying on the lap of his staff Noushad and a person was found standing there with a knife and few others standing there with swords in their hands and all of them fled immediately thereafter in a green Omni Van after making a commotion, would also lend corroboration to the evidence tendered by PW1 and PW2 as regards the occurrence. Likewise, the evidence tendered by PW6, the person who was running the textiles shop "Gujarat Fabrics" on



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the opposite side of the ration shop of Deepak at Pazhuvil Centre, that he saw PW1, PW2 and Sunil chatting in front of his shop at the relevant time rushing towards the ration shop of Deepak; that he saw a few persons creating a terror and that one among them was brandishing a sword there then, would also lend corroboration to the evidence tendered by PWs 1 and 2.

49. As noted, PW71, the Finger Print Expert attached to Single Digit Finger Print Bureau, Thrissur opined in his evidence that some of the chance finger prints lifted from the Maruti Omni Van tallied with the specimen fingerprints of accused 2, 4 and 5. The evidence tendered by PW71 lends corroboration not only to the evidence tendered by PWs 1 and 2, but also to the evidence tendered by PWs 3, 4 and 5. It is seen that the Court of Session did not accept the evidence tendered by PW71 on the ground that even though the accused cannot insist that their specimen fingerprints should be collected after obtaining orders from the jurisdictional Magistrate, they can certainly insist sufficient proof to show that the specimen fingerprints were collected from them and it



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is those specimen fingerprints that were used for comparison with the chance fingerprints and that there is no proof regarding those aspects in the case. It is seen that PW77 has categorically stated in his evidence that he made arrangements to obtain the specimen fingerprints of the accused; that a police officer named, Saleesh took the specimen fingerprints of the accused and it was the same that were forwarded to the Finger Print Bureau for comparison with the counter signature of PW77. The accused have no case that their specimen fingerprints were not taken on their arrest nor do they have a case that it is not those specimen fingerprints that were compared with the chance fingerprints. No suggestion was made to any of the witnesses on these aspects. The stand taken by the accused during cross-examination of PW71 was only as regards the correctness of the comparison made and that the Court of session did not accept the stand that the process of comparison was improper. In the circumstances, according to us, the Court of Session acted erroneously in rejecting the evidence tendered by PW71 on the ground aforesaid.



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50. As noted, it was deposed by PW77 that he intercepted the Santro car in which accused 1 to 5 were travelling at Mannuthy on 27.03.2015 and arrested them and in the interrogation pursuant to their arrests, the second accused disclosed to PW77 that he has kept a knife in his bag and that he will hand over the same to him. It was deposed by PW77 that thereupon, the second accused opened the dicky of the car in which they were travelling and took out a knife from a bag kept in it and handed over the same to him and it was seized by him as per Ext.P19 mahazar. The knife handed over to PW77 by the second accused was identified by PW77 as MO4. The evidence tendered by PW10 that the Santro Car in which accused 1 to 5 were travelling at the time of their arrest is one that was leased out by him to the first accused corroborates the evidence tendered by PW77 as regards the arrest of accused 1 to 5. As noted, PW29, the doctor who conducted the post-mortem examination opined that the fatal injuries sustained by the deceased are injuries that could be produced with MO4 knife and in Ext.P64 report, PW57 opined that the blood group found on MO4 knife and the blood group



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of Deepak are one and the same. In the light of the evidence tendered by PW29 and PW57, the evidence of PW77 as discussed above would corroborate the oral evidence tendered by PWs 1 and 2, more particularly that it was the second accused who caused the fatal injury on the deceased.

51. True, other than the evidence tendered by PWs 1 and 2, there is no evidence in the case to prove that MO1 to MO3 are the swords that were used by accused 1, 3 and 4 for inflicting injuries to Deepak, Sunil and PWs 1 and 2. This aspect has been highlighted by the Court of Session in the impugned judgment. In the light of the overwhelming evidence as discussed in the preceding paragraphs, even assuming that the evidence tendered by PWs 1 and 2 in this regard cannot be accepted, we do not think that the same is an impediment for this Court to hold that accused 1 to 3 are the persons who inflicted injuries on Deepak, Sunil and Pws 1 and 2.

52. As noted, in Ext.P123, it was reported by PW74 that some of the hairs found in the Maruti Omni Van involved in the crime are that of the second accused. Similarly, in Ext.P124 report, it was reported by PW75 that five out of the hairs



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collected from the Maruti Omni Van involved in the crime are human scalp hairs similar to the hairs of the second accused and four out of the remaining hairs collected from the Maruti Omni Van are human scalp hairs similar to the hairs of the fourth accused. The evidence tendered by the said witnesses in terms of Exts.P123 and 124 reports would also lend corroboration not only to the evidence tendered by PWs 1 and 2. The Court of Session did not accept Exts.P123 and 124 reports on the ground that PW52 who collected the hair and blood samples of the accused and handed over the same to the investigating officer, did not enclose along with the samples packed under his office seal, the specimen impression of his office seal so as to enable the DNA Analyst to ensure that the blood and hair samples collected from the accused were the blood and hair samples received at the laboratory. As noted, PW52 has categorically stated in his evidence that it was he who collected the blood and hair samples of the accused. It was categorically deposed by PW52 in his evidence that for each of the said accused, he first collected the blood sample in a vial and after enclosing the same in a cover, he



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sealed the cover using wax; that thereafter, he collected the hair samples in a plain paper and after placing the same in a cover, he sealed that cover also using wax and that thereafter, both the covers were put in a single cover and the same was tied and sealed. It was deposed by PW52 that it was those sealed packets that were handed over to the police personnel who brought the accused to him for taking the samples. There is no requirement under law that the doctors who take hair and blood samples from accused persons have to enclose the specimen seal of their office along with the said samples, since the doctors are not forwarding the samples directly to the laboratory. Instead, they forward the samples only to the investigating officer, who in turn produces the same before the jurisdictional Magistrate. The jurisdictional Magistrate then forwards the same to the Forensic Science Laboratory for examination along with the forwarding note prepared by the investigating officer. This multi-step process removes the need for the doctors in enclosing the specimen seals of their office along with the said samples. The learned counsel for accused 5, 7 and 8 pointed out that such a requirement is prevalent in



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the Kerala Chemicco-Legal Examination Rules, 1959 and that the Court of Session cannot, therefore, be found at fault with for having rejected the forensic evidence on the said ground. No doubt, Rule 27 of the Kerala Chemicco-Legal Examination Rules provides that when a medical officer forwards an article to the chemical examiner for examination on receipt of a requisition from a Magistrate or police officer, he shall address at the same time a letter to the chemical examiner advising him of its dispatch. Rule 27 also provides that this letter shall contain an impression of the seal used in closing the bottles. The said requirement, according to us, does not apply to the case on hand and the same would apply only when a medical officer forwards an article directly to the chemical examiner for examination. Needless to say, the decision of the Court of Session rejecting the evidence tendered by PW74 and PW75 as regards Exts.P123 and 124 reports, is unsustainable in law.

53. Placing reliance on the decision of this Court in **Mohammed Iqbal @ Ikku v. State of Kerala**, 2025 KHC OnLine 174, the learned Senior Counsel for accused 1, 2 and 6 contended that even though the Maruti Omni Van involved in



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the crime has been seized by the police, the same was not produced before the court so as to enable the prosecution witnesses to identify the same. According to the learned Senior Counsel, the said omission is fatal to the case of the prosecution, especially when the prosecution is connecting the sixth accused with the crime through the conduct of the sixth accused in purchasing the van. A close reading of the above judgment would indicate that it was a case on circumstantial evidence and the non-production and non-identification of the vehicle involved in the crime in that case snapped the link in the chain of circumstances. It was in that context it was held that it was necessary for the prosecution to produce the vehicle and to cause the same to be identified by the witnesses. The said judgment may not have any application to the present case as the witnesses have specifically mentioned in their evidence, the registration particulars of the vehicle [See **Kashmiri Lal v. State of Haryana**, (2013) 6 SCC 595].

54. The facts proved by the prosecution, as we have found and referred to in the preceding paragraphs, would certainly make out a case against accused 2 and 3 under



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Section 302 IPC and a case against accused 1, 4 and 5 under Section 302 read with Section 34 IPC. Needless to say, the prosecution has succeeded in establishing, beyond reasonable doubt, the guilt of accused 2 and 3 under Section 302 and accused 1, 4 and 5 under Section 302 read with Section 34 IPC.

55. Charges under Sections 324, 326 and 307 IPC:

Accused 2 to 4 are charged also under Sections 324, 326 and 307 IPC in the context of the injuries caused by them to PWs 1 and 2 as also Deepak. Inasmuch as accused 2 to 4 have been found guilty for having committed the murder of Deepak, in the light of Section 71 IPC, they cannot be convicted under Sections 324, 326 and 307 IPC for having caused injuries to Deepak. But, they can certainly be convicted for having caused injuries to PWs 1 and 2. The allegation against the second accused in this regard is that it was he who stabbed PW1. The allegation against the fourth accused in this regard is that he hacked PW2. It is seen that there are no allegations against the third accused vis-a-vis PWs 1 and 2. Inasmuch as it is found that the prosecution has succeeded in proving the occurrence, the only question that arises, concerns the offences committed



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by accused 2 and 4 against PWs 1 and 2. Ext.P29 treatment-cum-wound certificate would indicate that PW1 sustained an incised wound on his back. Likewise, Ext.P27 wound certificate would indicate that PW2 sustained an incised wound 6 x 3 x 1 cms on the lateral aspect of left forearm extending to dorsal part. PW31 deposed that the x-ray revealed that PW2 suffered chip fracture in the right ulna. PW1 gave evidence to the effect that the second accused attempted to stab on his neck and it was that stab which fell on his back. Likewise, PW2 also gave evidence to the effect the fourth accused hacked him aiming at his neck and the same fell on his left hand when warded off. Inasmuch as the specific case of the prosecution is that PWs 1 and 2 suffered injuries when they attempted to prevent the attack on Deepak, we are of the view that it would be inappropriate to hold accused 2 and 4 guilty of the offence punishable under Section 307 IPC especially when, going by the case of the prosecution, the assailants would not have intended to cause the death of anyone other than Deepak and would not have intended to cause any bodily injuries to PWs 1 and 2 which are sufficient in the ordinary course of nature to



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cause death. Having regard to the nature of the occurrence, it is not possible to infer conclusively that the accused caused injuries to PWs 1 and 2 with the knowledge that they are likely by such act to cause death. At the same time, inasmuch as it is established that accused 2 and 4 caused injuries to PWs 1 and 2 with dangerous weapons and inasmuch as PW2 suffered a fracture, we are of the view that the second accused is guilty of the offence punishable under Section 324 IPC and the fourth accused is guilty of the offence punishable under Section 326 IPC.

56. **Charge under Section 109 IPC:** The sixth accused is charged under Section 109 IPC. The allegation against the sixth accused in this regard is that he instigated accused 1 to 4 to commit the murder of Deepak and that Deepak was murdered as abetted by the sixth accused. The scope of the word “instigation” has been explained by the Apex Court in the context of an allegation that one has instigated another to commit suicide, in **Chitresh Kumar Chopra v. State (NCT of Delhi)**, (2009) 16 SCC 605. Paragraphs 16 and 17 of the said judgment read thus:



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“16. Speaking for the three-Judge Bench in *Ramesh Kumar v. State of Chhattisgarh* [*Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088], R.C. Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of “instigation”, though it is not necessary that actual words must be used to that effect or what constitutes “instigation” must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an “instigation” may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute “instigation”, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goad” or “urging forward”. The dictionary meaning of the word “goad” is “a thing that stimulates someone into action; provoke to action or reaction” (see *Concise Oxford English Dictionary*); “to keep irritating or annoying somebody until he reacts” (see *Oxford Advanced Learner's Dictionary*, 7th Edn.)”

As evident from the extracted decision, in order to constitute instigation, the person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by goading or urging forward. The only material on which reliance has been placed by the prosecution before us to establish the guilt of the sixth accused under Section 109 IPC is that the crime was committed making use of the Maruti Omni Van bearing registration No.KL-08-N-7252 which was purchased by the sixth accused from PW11 two weeks prior to the date of



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occurrence. No doubt, there is satisfactory evidence to show that the Maruti Omni Van referred to above was one purchased by the sixth accused from PW11 about two weeks prior to the date of occurrence. But, the same, according to us, is not sufficient to infer, beyond reasonable doubt, that it was at the instigation of the sixth accused that accused 1 to 5 committed the crime. As noted, it has come out from the evidence of PW11 that accused 1 and 5 were also present with the sixth accused when the Maruti Omni Van involved in the crime was picked up by the sixth accused from PW11. In other words, the evidence tendered by the prosecution itself would show that accused 1 and 5 are persons who are known to the sixth accused prior to the occurrence. In other words, the possibility of accused 1 and 5 using the van purchased by the sixth accused with or without his consent and also without his knowledge that the car is being used for committing a crime, cannot be ruled out. At any rate, inasmuch as the Court of Session chose to acquit the sixth accused on the charge under Section 109 IPC, we are of the view that it is inappropriate to interfere with the said decision in these appeals.



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57. **Charge under Section 201 IPC:** Accused 8, 9 and 10 are charged with the offence punishable under Section 201 IPC. In order to attract the offence punishable under Section 201 IPC, it has to be established that the accused, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false. The allegation against accused 8 to 10 is that with the knowledge that accused 1 to 4 have committed the offences alleged against them, they caused disappearance of the weapons used by accused 1 to 4 for commission of the crimes. The only evidence to connect accused 8 and 9 with the crime is the evidence tendered by PW4. Even though PW4 deposed in his evidence that he witnessed the fifth accused handing over a PVC pipe to the eighth accused with whom he had previous acquaintance for a period more than two years near Kottangode Bridge and that the eighth accused thereupon rode pillion on the motorcycle with the PVC pipe and that it



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was the ninth accused who rode away the motorcycle, a doubt is cast as to the genuineness of the evidence tendered by PW4 in this regard. It has come out in the evidence of PW77 that even though a statement of PW4 was recorded on 26.03.2015, the latter had not implicated in that statement the name of the eighth accused. If as a matter of fact, PW4 was a person who was known to the eighth accused for more than two years as stated by him in his evidence, there is no reason why he omitted to mention the name of the eighth accused in the statement given to the police on 26.03.2015 when he has admittedly indicated the name of the fifth accused therein. That apart, he has no case that the ninth accused is a person with whom he had previous acquaintance. It has come out in evidence that PW4 identified other accused in the course of the investigation at the police station. But there is nothing on record to indicate that PW4 identified the ninth accused during investigation. In other words, no credence could be attributed to the evidence tendered by PW4 as regards his evidence that he saw the ninth accused, with whom he had no previous acquaintance, on the night of the date of occurrence and that



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it was the ninth accused who rode away with the eighth accused from the place near Kottangode Bridge. Coming to the case of the tenth accused, except the fact that he concealed a PVC pipe containing three swords, there is nothing to connect him with the crime. In the circumstances, we are inclined to hold that the prosecution failed to prove the charge under Section 201 IPC.

58. In the light of the discussion aforesaid, we are of the opinion that the impugned judgment acquitting all the accused of the charges levelled against them, is vitiated by non-consideration of material evidence and consideration of irrelevant facts. In this context, it is necessary to state that acquittal of guilty persons in serious crimes on technical or flimsy grounds would erode the very foundation of the criminal justice delivery system, which strives to balance individual rights with the preservation of social order. Such outcomes not only shake the faith of the public in the courts as guardians of justice but also deprive society of the protection it seeks from the courts. Such acquittals would also send a dangerous misleading message, suggesting that those responsible for



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grave offences can evade justice, thereby encouraging an environment of lawlessness. Needless to say, the acquittal of accused 1 to 5 is liable to be interfered with.

In the light of the discussion aforesaid, the criminal appeals are allowed in part. The acquittal of accused 1 to 5 is set aside. Accused 1 to 5 are found guilty of the offence punishable under Section 302 read with Section 34 IPC. Among them, the second accused is also found guilty for the offence punishable under Section 324 IPC and the fourth accused is found guilty of the offence punishable under Section 326 IPC. Registry is directed to issue non-bailable warrants for the immediate arrest and production of accused 1 to 5 before the Court of Session. On such production, the court shall commit them to prison with a direction to the Superintendent of the prison to produce them before this Court at 10.15 a.m. on 8.4.2025 for hearing on sentence.

List on 8.4.2025.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Sd/-
JOBIN SEBASTIAN, JUDGE.