IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 6TH DAY OF AUGUST 2024/15TH SRAVANA, 1946

D.S.R.NO.2 OF 2017

CRIME NO.96/2006 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM
AGAINST THE JUDGMENT DATED 17.05.2016 IN S.C.NO.1121 OF 2008 OF
THE ADDITIONAL SESSIONS JUDGE – I, THIRUVANANTHAPURAM ARISING OUT
OF C.P.NO.12/2009 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,
THIRUVANANTHAPURAM

COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE POLICE ASST. COMMISSIONER,
CRIME DETACHMENT, THIRUVANANTHAPURAM CITY.

BY SRI.S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR

RESPONDENTS:

1 ANILKUMAR @ JACKY
S/O.SIVATHANU PILLAI, ATTUKAL KUNJU VEEDU,
T.C.22/994, BACK SIDE OF ATTUKAL TEMPLE,
ATTUKAL WARD, MANACAUD VILLAGE.

2 AJITHKUMAR @ AMMAKKORU MAKAN @ SOJU
AGED 44 YEARS, S/O.SIVANANDAN, T.C.57/12,
CHIRAPPALAM, KALADY WARD, MANACAUD VILLAGE.

BY ADV.SRI.P.VIJAYA BHANU (SR.)
BY ADV.SMT.MITHA SUDHINDRAN
BY ADV.SRI.V.C.SARATH
BY ADV.SRI.M.B.RAMAN PILLAI (SR.)
BY ADV.SRI.R.ANIL
BY ADV.SRI.M.SUNILKUMAR

THIS D.S.R. HAVING BEEN FINALLY HEARD ON 30.07.2024 ALONG WITH CRL.A.NO.497 OF 2016 AND CONNECTED CASES, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 6TH DAY OF AUGUST 2024/15TH SRAVANA, 1946

CRL.A.NO.497 OF 2016

CRIME NO.96/2006 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM
AGAINST THE JUDGMENT DATED 17.05.2016 IN S.C.NO.1121 OF 2008 OF
THE ADDITIONAL SESSIONS JUDGE – I, THIRUVANANTHAPURAM ARISING OUT
OF C.P.NO.12/2009 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,
THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO.1:

ANILKUMAR @ JACKY
AGED 36 YEARS, S/O.SIVATHANU PILLAI, ATTUKAL KUNJU
VEEDU, T.C.NO.22/994, BACK SIDE OF ATTUKAL TEMPLE,
ATTUKAL WARD, MANACAUD VILLAGE.

BY ADV.SRI.P.VIJAYA BHANU (SR.)
BY ADV.SMT.MITHA SUDHINDRAN
BY ADV.SRI.V.C.SARATH
BY ADV.SMT.SRUTHY K K
BY ADV.SRI.P.M.RAFIQ(K/45/2001)
BY ADV.SRI.M.REVIKRISHNAN(K/1268/2004)
BY ADV.SRI.AJEESH K.SASI(K/166/2006)
BY ADV.SMT.SRUTHY N. BHAT(K/000579/2017)
BY ADV.SRI.RAHUL SUNIL(K/000608/2017)
BY ADV.SMT.NIKITA J. MENDEZ(K/2364/2022)

RESPONDENT/COMPLAINANT:

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

BY SRI.S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.07.2024, ALONG WITH D.S.R.NO.2 OF 2017 AND CONNECTED CASES, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 6TH DAY OF AUGUST 2024/15TH SRAVANA, 1946

CRL.A.NO.552 OF 2016

CRIME NO.96/2006 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM
AGAINST THE JUDGMENT DATED 17.05.2016 IN S.C.NO.1121 OF 2008 OF
THE ADDITIONAL SESSIONS JUDGE – I, THIRUVANANTHAPURAM ARISING OUT
OF C.P.NO.32 OF 2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,
THIRUVANANTHAPURAM

APPELLANT/7TH ACCUSED:

AJITHKUMAR @ AMMAKKORU MAKAN @ SOJU
AGED 44 YEARS, S/O.SIVANANDAN, TC 57/12,
CHIRAPPALAM, KALADY WARD, MANACAUD VILLAGE,
THIRUVANANTHAPURAM-695 009.

BY ADV.SRI.M.B.RAMAN PILLAI (SR.)
BY ADV.SRI.R.ANIL
BY ADV.SRI.M.SUNILKUMAR
BY ADV.SRI.SUJESH MENON V.B.
BY ADV.SRI.T.ANIL KUMAR
BY ADV.SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
BY ADV.SRI.THOMAS SABU VADAKEKUT
BY ADV.SRI.MAHESH BHANU S.
BY ADV.SMT.S.LAKSHMI SANKAR
BY ADV.SRI.RESSIL LONAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY SRI.S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.07.2024, ALONG WITH D.S.R.NO.2 OF 2017 AND CONNECTED CASES, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 6TH DAY OF AUGUST 2024/15TH SRAVANA, 1946

CRL.A.NO.645 OF 2016

CRIME NO.96/2006 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM AGAINST THE JUDGMENT DATED 17.05.2016 IN S.C.NO.1121 OF 2008 OF THE ADDITIONAL SESSIONS JUDGE - I, THIRUVANANTHAPURAM ARISING OUT OF C.P.NO.12 OF 2009 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, THIRUVANANTHAPURAM

APPELLANT/10TH ACCUSED:

C.L. KISHORE
AGED 32 YEARS, S/O.CHANDRASEKHARAN NAIR,
PULLIYIL VEEDU, TC 21/531, NEAR KOTHALAM JUNCTION,
SREEVARAHAM WARD, MUTTATHARA, THIRUVANANTHAPURAM.

BY ADV.SRI.S.RAJEEV
BY ADV.SRI.K.K.DHEERENDRAKRISHNAN
BY ADV.SRI.V.VINAY
BY ADV.SRI.D.FEROZE

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY SRI.S.U.NAZAR, SPL. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.07.2024, ALONG WITH D.S.R.NO.2 OF 2017 AND CONNECTED CASES, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 6TH DAY OF AUGUST 2024/15TH SRAVANA, 1946

CRL.A.NO.676 OF 2016

CRIME NO.96/2006 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM AGAINST THE JUDGMENT DATED 17.05.2016 IN S.C.NO.1121 OF 2008 OF THE ADDITIONAL SESSIONS JUDGE - I, THIRUVANANTHAPURAM ARISING OUT OF C.P.NO.32 OF 2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO.5:

SURESHKUMAR @ SURA
AGED 48 YEARS, S/O.SIVANANDAN, RESIDE ON RENT AT THENNIVILAKAM VEEDU, T.C.50/290, ATTUPURAM, SOUTH KALADY, ATTUKAL WARD, MANACAUD VILLAGE, FROM ATTUVARAMBU VEEDU, T.C.50/7, CHIRAPPALAM, ATTUKAL WARD, MANACAUD VILLAGE, NOW RESIDING AT T.C.21/1359, CHULLAKADAVIL PUTHENVEEDU, NEDUMKADU, KARAMANA P.O., THIRUVANANTHAPURAM.

BY ADV.SRI.C.P.UDAYABHANU
BY ADV.SRI.NAVANEETH N. NATH
BY ADV.SRI.RASSAL JANARDHANAN A.
BY ADV.SRI.ABHISHEK M. KUNNATHU
BY ADV.SRI.BOBAN PALAT
BY ADV.SRI.P.U.PRATHEESH KUMAR
BY ADV.SRI.P.R.AJAY
BY ADV.SRI.K.U.SWAPNIL
BY ADV.SRI.PRANAV USHAKAR

RESPONDENT/COMPLAINANT:

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

BY SRI.S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.07.2024 ALONG WITH D.S.R.NO.2 OF 2017 AND CONNECTED CASES, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 6TH DAY OF AUGUST 2024/15TH SRAVANA, 1946

CRL.A NO.693 OF 2016

CRIME NO.96/2006 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM AGAINST THE JUDGMENT DATED 17.05.2016 IN S.C.NO.1121 OF 2008 OF THE ADDITIONAL SESSIONS JUDGE – I, THIRUVANANTHAPURAM ARISING OUT OF C.P.NO.32 OF 2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, THIRUVANANTHAPURAM

APPELLANT/2ND ACCUSED:

BINUKUMAR @ PRAVU BINU
S/O.DAMODHARAN, THENGUVILA PUTHEN VEEDU,
T.C.22/980, BACK SIDE OF ATTUKAL TEMPLE,
ATTUKAL WARD, MANACAUD VILLAGE.

BY ADV.SRI.RENJITH B. MARAR
BY ADV.SMT.RESHMI JACOB
BY ADV.SRI.P.S.SYAMKUTTAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE ASSISTANT COMMISSIONER OF POLICE,
CRIME. DETACHMENT, THIRUVANANTHAPURAM CITY,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

BY SRI.S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.07.2024 ALONG WITH D.S.R.NO.2 OF 2017 AND CONNECTED CASES, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 6TH DAY OF AUGUST 2024/15TH SRAVANA, 1946

CRL.A NO.796 OF 2016

CRIME NO.96/2006 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM
AGAINST THE JUDGMENT DATED 17.05.2016 IN S.C.NO.1121 OF 2008 OF
THE ADDITIONAL SESSIONS JUDGE - I, THIRUVANANTHAPURAM

APPELLANT/9TH ACCUSED:

BIJU @ BIJUKUTTAN
S/O. PAPPAN @ THANKI, BINDHU BHAVAN, ALATHARAKONAM
HARIJAN COLONY, NEAR POLARAM MARKET, PANGODE WARD,
VILAVOORKAL VILLAGE, THIRUVANANTHAPURAM.

BY ADV.SRI.G.SUDHEER (KARAKONAM)

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY SRI.S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.07.2024, ALONG WITH D.S.R.NO.2 OF 2017 AND CONNECTED CASES, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 6TH DAY OF AUGUST 2024/15TH SRAVANA, 1946

CRL.A.NO.1307 OF 2024

CRIME NO.96/2006 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM
AGAINST THE JUDGMENT DATED 17.05.2016 IN S.C.NO.1121 OF 2008 OF
THE ADDITIONAL SESSIONS JUDGE – I, THIRUVANANTHAPURAM

APPELLANT(S)/8TH ACCUSED:

SHAJI @ KOCHU SHAJI
AGED 45 YEARS, S/O.THANKAPPAN @ THANKAYYAN,
V.P 3/348, ALANTHARAKONAM HARIJAN COLONY,
VILAVOORKAL DESOM, VILAVOORKAL VILLAGE,
THIRUVANANTHAPURAM, PIN – 695571

BY ADV.SRI.A.CHANDRA BABU

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN – 682031

BY SRI.S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.07.2024 ALONG WITH D.S.R.NO.2 OF 2017 AND CONNECTED CASES, THE COURT ON 06.08.2024 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

These Criminal Appeals and DSR arise from the judgment of the Additional Sessions Judge - I, Thiruvananthapuram in Sessions Case No.1121 of 2008. The trial court found A3 and A12 not guilty of the charges alleged against them, but found A1, A2, A5, A7, A8, A9 and A10 guilty of the offences punishable under Sections 120B, 143, 147, 148, 449, 323, 302, 294(b), 201, 364 read with Section 149 of the Indian Penal Code [hereinafter referred to as to 'IPC']. In connection with the offences punishable under Section 120B read with 302 IPC, A1 and A7 were sentenced to death, whereas A2, A5, A8, A9 and A10 were sentenced to life imprisonment. Separate sentences of imprisonment and fine were also imposed on all the above accused for the other offences they were convicted for. A4 turned approver, A6 died during the investigation of the case and A11 absconded.

The Prosecution Case:

2. Angered by the news that Santhosh Kumar @ Jet Santhosh was having an adulterous relationship with his wife A3 Usha, A5 Suresh Kumar @ Sura along with A3 Usha and A1 Anilkumar @ Jacky, who was

also on inimical terms with Santhosh Kumar, entered into a criminal conspiracy to murder him. In implementation of the said conspiracy, A5 Suresh Kumar and his brother A6 Anil Kumar @ Motta Ani invited the deceased to their house on 22.11.2004, using the help of A3 Usha, and he reached there by around 4 pm. After a brief conversation, A5 Suresh Kumar took the deceased in his autorickshaw bearing Registration No.KL 01 T 7795 to the Prince Hair Dressing Salon belonging to PW2 Sudhakaran for a haircut. Thereafter, A5 Suresh Kumar and A6 Anil Kumar went to Thaliyal and waited near the statue of Smt. Indira Gandhi for the other conspirators whom A6 Anil Kumar had informed of their arrival there.

3. On getting the said information, A1 Anilkumar, A2 Binukumar, A7 Ajithkumar @ Soju, A8 Shaji @ Kochi Shaji, A9 Biju @ Bijukuttan, A10 C.L.Kishore, A11 Shaju and A12 Boby reached Thaliyal in a Tata Sumo vehicle bearing Registration No.KL 01 AD 6143, arranged by A11 Shaju and A12 Boby and driven by A4 Nazarudeen. They then formed an unlawful assembly armed with weapons and proceeded towards the Prince Hair Dressing Salon and on reaching there, A7 Ajithkumar entered the salon and on seeing the deceased there, he confirmed the latter's presence to the others in the vehicle. Immediately thereafter, all of the accused except A4 Nazarudeen committed rioting and stormed into the Salon where the deceased was getting his haircut. After assaulting PW2

Sudhakaran the owner of the Salon, they manhandled and forcefully took the deceased into the vehicle by threatening onlookers with a chopper. They then kidnapped the deceased and drove away from the place after pulling away A4 Nazarudeen from the driver seat of the vehicle and getting A10 Kishore to drive the vehicle as per the directions of A6 Anil Kumar. A12 Boby rode a motorcycle bearing Registration No.KL 01 AC 4921 in front of the Tata Sumo vehicle and they sped away to Alantharakkonam Harijan Colony where A8 Shaji and A9 Biju were staying. On the way to the Colony, the victim was tortured by those in the vehicle except A4 Nazarudeen and A10 Kishore. He was then pushed out of the vehicle near the house of A8 Shaji and was again tortured in the compound. A2 Binukumar also inflicted a severe wound on the victim's head. When A8 Shaji's mother intervened, the accused pushed the victim into the car and drove away towards Valiyottukonam cemetery where they again pushed the victim out of the car and laid him on the ground. All the accused except A4 Nazarudeen continued to torture the victim there. Thereafter, A1 Anilkumar obtained a chopper from A7 Ajithkumar, through A9 Biju, and on A6 Anil Kumar holding the left leg of the deceased, and A7 Ajithkumar holding his left hand, A1 Anilkumar hacked the right leg of the deceased above the knee and his right hand above the elbow joint and gave the severed portions of the leg and hand to A8 Shaji and A2 Binukumar for disposal. A8 Shaji placed the severed leg on the

pavement and A2 Binukumar threw the severed hand into the neighbouring compound.

4. Thereafter, and in furtherance of the conspiracy to destroy the evidence, A7 Ajithkumar to A9 Biju rushed to the road, stopped an autorickshaw by threatening its driver PW3 Sajikumar and brought the autorickshaw to the cemetery where they placed the dead body of the victim in the autorickshaw and forced PW3 Sajikumar to drive towards the General Hospital. A7 Ajithkumar to A9 Biju who had boarded the autorickshaw along with PW3 Sajikumar, got out of the vehicle *en route* after directing PW3 Sajikumar to take the corpse to the General Hospital.

The investigation:

5. The investigation in this case began with the recording of Ext.P2 FI Statement given by PW2 Sudhakaran, who was the owner of the Salon from where the deceased was kidnapped, and based on the said FI Statement, Ext.P53 FIR was prepared by PW34 Sri. A.Jalaludeen, the then ASI of Fort Police Station, @ 1900 hrs on 22.11.2004. Crime No.686/2004 of Fort Police Station was accordingly registered under Sections 143, 147, 451, 323, 341 and 365 read with Section 149 IPC. Later that evening, however, PW34 Jalaludeen came across information regarding the discovery of a corpse at Valiyottukonam within the territorial limits of the Malayinkeezh Police Station. He therefore

proceeded to the Mortuary of the Medical College Hospital, Thiruvananthapuram, along with PW2 Sudhakaran, on 23.11.2004, where PW2 Sudhakaran identified the corpse as being that of the man who had come to his salon for the haircut the previous day. PW34 Jalaludeen thereupon filed Ext.P56 report before the Judicial First Class Magistrate - I on 23.11.2004, altering the charges in Ext.P53 FIR from Sections 451 and 365 IPC to Sections 449 and 364 IPC.

6. In the meanwhile, PW38 Sri. Jnanadas, the then SI of Malayinkeezh Police Station, had recorded Ext.P7 FI Statement of PW3 Sajikumar, who was the driver of the autorickshaw in which the body of the deceased was found, and based on the said statement Ext.P59 FIR was prepared and Crime No.524/2004 of Malayinkeezh Police Station registered under Sections 302, 341, 506 (ii) and 294 (b) read with Section 34 IPC. The case was then clubbed with Crime No.686/2004 of Fort Police Station, on 26.11.2004, and the investigation was carried on by PW45 Sri. T.F.Xavier, the then CI of Police, Fort Police Station.

7. In 2006, consequent to the establishment of the Karamana Police Station, the place of occurrence of the crime fell within the territorial limits of the Karamana Police Station. PW44 K.E.Baiju, the CI of Police, Thampanoor was then instructed by the Commissioner of Police, Thiruvananthapuram City to issue directions to the SHO, Karamana to

re-register the case as one of the Karamana Police Station. Accordingly, Ext.P54 FIR came to be prepared by PW42 K.Saseendran Nair, the then SI of Police, Karamana Police Station, who re-registered the case as Crime No.96/2006 under Sections 120B, 143, 147, 148, 449, 323, 506 (ii), 364, 302, 294 (b), 201 read with Section 149 IPC. The investigation was thereafter taken up by PW49 M.Sekharan, the then ACP, Crime Detachment, Thiruvananthapuram City, who filed the final report before the Judicial First Class Magistrate Court - I, Thiruvananthapuram. During the investigation of the case, the ranks of the accused were re-arranged consequent to the death of A6 Anil Kumar during investigation, A4 Nazarudeen having turned into an approver under Section 306 Cr.PC, and Jayan and Prasanth having been deleted from the array of the accused.

Proceedings before the Trial Court:

8. The case was committed by the Judicial First Class Magistrate Court - I to the Court of Sessions, Thiruvananthapuram under Section 209 Cr.PC after complying with the provisions of Section 207 Cr.PC. On receipt of the records, the case was numbered as S.C.No.1121/2008 before the Principal Court of Sessions, Thiruvananthapuram and made over to the Court of Additional Sessions Judge - I, Thiruvananthapuram for trial and disposal.

9. On appearance of the accused before it, the charges were read over to them by the trial court. The accused pleaded not guilty and therefore proceeded to trial. On the side of prosecution, PW1 to PW49 were examined and Exts.P1 to P112 were marked. MO1 to MO18 were identified. No witnesses were cited, or any document marked, on behalf of the defence. At the conclusion of the trial, the parties were heard through their counsel, including on the aspect of sentencing, and the impugned judgment was passed by the trial court. The conviction and sentence imposed on the various accused, in the impugned judgment, reads as follows:

> Accused No.1 is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for 2 years for the offence punishable under Section 120(B) I.P.C. He is sentenced to rigorous imprisonment for 6 months for the offence punishable under Section 143 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 3 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for 6 months for the offence punishable under Section 148 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 5 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 10 years and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 364 read with Section 149 of IPC. He is sentenced to rigorous imprisonment for one

year for the offence punishable under Section 323 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 506(ii) read with Section 149 of I.P.C. For the offence punishable under Section 302/120(B) read with Section 149 of I.P.C., I sentence A-1 Anilkumar to be hanged by neck till he is dead. He is also sentenced to pay a fine of ₹ 2,00,000 (Rupees two lakhs only), in default to undergo rigorous imprisonment for 5 years.

Accused No.2 is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for 2 years for the offence punishable under Section 120(B) I.P.C. He is sentenced to rigorous imprisonment for 6 months for the offence punishable under Section 143 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year and to pay a fine of ₹ 25,000 (Rupees twenty five thousand only) in default to undergo rigorous imprisonment for 3 months for the offence punishable under Section 147 read with Section 149 of IPC. He is sentenced to rigorous imprisonment for 5 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 10 years and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 364 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 323 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 506(ii) read with Section 149 of I.P.C. For the offence punishable under Section 302/120(B) read with Section 149 of I.P.C., he is sentenced to rigorous

imprisonment for life and to pay a fine of ₹ 2,00,000 (Rupees two lakhs only), in default to undergo rigorous imprisonment for 5 years.

Accused No.5 is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for 2 years for the offence punishable under Section 120(B) I.P.C. He is sentenced to rigorous imprisonment for 6 months for the offence punishable under Section 143 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year and to pay a fine of ₹ 25,000 (Rupees twenty five thousand only) in default to undergo rigorous imprisonment for 3 months for the offence punishable under Section 147 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 5 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 149 I.P.C. He is sentenced to rigorous imprisonment for 10 years and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 364 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 323 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 506(ii) read with Section 149 of IP.C. For the offence punishable under Section 302/120(B) read with Section 149 of I.P.C., he is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 2,00,000 (Rupees two lakhs only), in default to undergo rigorous imprisonment for 5 years.

Accused No.7 is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for 2 years for the offence punishable

under Section 120(B) I.P.C. He is sentenced to rigorous imprisonment for 6 months for the offence punishable under Section 143 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 3 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for 6 months for the offence punishable under Section 148 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 5 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 10 years and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 364 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 323 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 506(ii) read with Section 149 of I.P.C. For the offence punishable under Section 302/120(B) read with Section 149 of I.P.C I sentence A-7 Ajithkumar @ Soju to be hanged by neck till he is dead. He is also sentenced to pay a fine of ₹ 2,00,000 (Rupees two lakhs only), in default to undergo rigorous imprisonment for 5 years.

Accused No.8 is sentenced to rigorous imprisonment for life and to a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for 2 years for the offence punishable under Section 120(B) I.P.C. He is sentenced to rigorous imprisonment for 6 months for the offence punishable under Section 143 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year and to pay a fine of ₹ 25,000 (Rupees twenty five thousand only) in default to undergo rigorous imprisonment for 3 months for the offence punishable under Section 147 read with Section 149 of

I.P.C. He is sentenced to rigorous imprisonment for 5 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 10 years and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 364 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 323 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 506(ii) read with Section 149 of I.P.C. For the offence punishable under Section 302/120(B) read with Section 149 of I.P.C., he is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 2,00,000 (Rupees two lakhs only), in default to undergo rigorous imprisonment for 5 years.

Accused No.9 is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for 2 years for the offence punishable under Section 120(B) I.P.C. He is sentenced to rigorous imprisonment for 6 months for the offence punishable under Section 143 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year and to pay a fine of ₹ 25,000 (Rupees twenty five thousand only) in default to undergo rigorous imprisonment for 3 months for the offence punishable under Section 147 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 5 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 10 years and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous

imprisonment for one year for the offence punishable under Section 364 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 323 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 506(ii) read with Section 149 of I.P.C. For the offence punishable under Section 302/120(B) read with Section 149 of I.P.C., he is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 2,00,000 (Rupees two lakhs only), in default to undergo rigorous imprisonment for 5 years.

Accused No.10 is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for 2 years for the offence punishable under Section 120(B) I.P.C. He is sentenced to rigorous imprisonment for 6 months for the offence punishable under Section 143 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year and to pay a fine of ₹ 25,000 (Rupees twenty five thousand only) in default to undergo rigorous imprisonment for 3 months for the offence punishable under Section 147 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 5 years and to pay a fine of ₹ 50,000 (Rupees fifty thousand only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for 10 years and to pay a fine of ₹ 1,00,000 (Rupees one lakh only) in default to undergo rigorous imprisonment for one year for the offence punishable under Section 364 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 323 read with Section 149 of I.P.C. He is sentenced to rigorous imprisonment for one year for the offence punishable under Section 506(ii) read with Section 149 of I.P.C. For the offence punishable

under Section 302/120(B) read with Section 149 of I.P.C., he is sentenced to rigorous imprisonment for life and to pay a fine of ₹ 2,00,000 (Rupees two lakhs only), in default to undergo rigorous imprisonment for 5 years. Out of the fine amount if realised or remitted, a sum of ₹ 10,00,000 (Rupees ten lakhs only) will be paid to P.W.21, Smt. Yasodha, the mother of the deceased.

All the material objects will be retained for trial in the case pending against the co-indictee No.11.

The substantive sentence of imprisonment imposed on all the accused shall run concurrently.

The trial court also referred the death sentence imposed on A1 and A7 to this court for its approval.

<u>The arguments before us:</u>

10. We have heard the learned Senior Counsel Sri. M.B.Raman Pillai, Sri. P. Vijayabhanu, and Advocates Sri.C.P.Udayabhanu, Sri.Ranjith Marar, Sri.S.Rajeev, Sri.G.Sudheer and Sri.A.Chandra Babu for the appellants - accused before us and Sri. S.U.Nazar, the learned Special Public Prosecutor on behalf of the State. The contentions put forward by the learned counsel for the appellants - accused, briefly stated are as follows:

- While it is settled law that the evidence of an approver can be the basis of a conviction subject to it satisfying the double test of reliability and corroboration in material particulars, the evidence of PW1 Nazarudeen is wholly unreliable since it is riddled with inconsistencies and contradictions. A comparison of Ext.P1

statement given by him before PW41 Magistrate and his deposition in court as PW1 would clearly reveal the inconsistencies with regard to the persons who hacked and severed the limbs of the deceased as also the persons who were present in the vehicle that was allegedly used to transport the accused and the deceased to the place of occurrence. PW1's deposition in cross-examination also suggests that he was coached, coerced and tortured by the Police into turning an approver. The decisions in **R v. Baskerville – [(1916) 2 KB 658]; Bhuboni Sahu v. The King – [AIR 1949 PC 257]; Rameshwar v. State of Rajasthan – [1952 KHC 299]; Sarwan Singh v. State of Punjab – [1957 KHC 403]; Jnanendra Nath Ghose v. State of West Bengal – [1959 KHC 603]; Major E. G. Barsay v. State of Bombay & Anr – [1961 KHC 766]; Haroom Haji Abdulla v. State of Maharashtra – [1968 KHC 617]; Sheshanna Bhumanna Yadav v. State of Maharashtra – [(1970) 2 SCC 122]; Balwant Kaur v. Union Territory of Chandigarh – [(1988) 1 SCC 1]; M.O. Shamsudhin v. Sate of Kerala – [(1995) 3 SCC 351]; Narayan Chetanram Chaudhary & Anr v. State of Maharashtra – [(2000) 8 SCC 457]; K. Hashim v. State of Tamil Nadu – [(2005) 1 SCC 237] and Somasundaram @ Somu v. State Represented by the Deputy Commissioner of Police – [(2020) 7 SCC 722]** are relied upon in support of the above submissions.

- Other than the uncorroborated testimony of PW1 Nazarudeen, there is no other reliable oral testimony to support the prosecution case as almost all the eye witnesses that they had obtained statements from, turned hostile to their case before the trial court. The citing of contradictions, after obtaining the permission of the trial court to put questions as in cross-examination to the said witnesses, was only with a view to establish the lack of credibility

of the said witnesses. The prosecution cannot therefore rely on the previous statements of the said witnesses as substantial evidence to prove their case against the appellants - accused. While PW2 Sudhakaran and PW3 Sajikumar deposed along the lines of the prosecution case to some extent, they were declared hostile to the case of the prosecution when they failed to identify the assailants in court. The other witnesses viz. PW8 Damodharan, PW12 Dasamma, PW13 Nelson, PW14 Madhavankutty, PW15 Sasidharan Nair, PW16 Ramachandran and PW33 Biju are totally hostile to the prosecution case.

- The reliance placed by the prosecution on Exts.P33, P57 and P58 FSL reports is wholly misplaced as the said reports are wholly unreliable. While in Ext.P33 report it is stated that a tuft of cut black hair found from the Hair Salon is similar to that of the scalp hair taken from the deceased, there is nothing to suggest that the tuft of hair taken from the Salon was actually that of the deceased especially when it is nobody's case that there were no other customers who had visited the Salon that day. Further, the FSL report only states that the hair samples were similar and not identical. Reliance is placed on the decisions in **Fr. George Cherian v. State of Kerala – [1989 KHC 663]; Shahbuddin v. The State (NCT of Delhi) – [ILR (2001) II Delhi 845]; Muhammed Yousuf @ Sajid and Anr v. State of Kerala – [2022 KHC Online 136]; Biju Kumar v. State of Kerala – [2022 (1) KHC 463]**.

- In Ext.P57 FSL report it is stated that the blood stains detected from the personal wear of the deceased showed his blood group to be 'A'. The blood stains alleged recovered from the Tata Sumo Car was also seen to be of group 'A'. The prosecution uses this to prove

the presence of the deceased in the Tata Sumo car on the date of occurrence of the murder. The said findings cannot, however, support the prosecution case since there is inconsistency in the evidence of PW1 Nazarudeen as regards the time and place of his arrest and the recovery of the car. While PW1 Nazarudeen states that the car was seized on 08.12.2004 from Pampa (Sabarimala), according to the prosecution the car was seized as per Ext.P48 Mahazar on 11.12.2004 based on the disclosure statement of PW1 Nazarudeen under Section 27 of the Evidence Act. Further, the prosecution case at one stage was that PW1 Nazarudeen and Prasanth had cleaned the car and they were investigated for the offence under Section 201 IPC, although for reasons that are not entirely clear, Prasanth was later dropped from the list of accused. If as a matter of fact the car was seized only on 11.12.2004, then the possibility of the blood belonging to someone else who had been in the car between 22.11.2004 and 11.12.2004 when the car was plying as a hired vehicle cannot be ruled out. There is also unexplained delay in producing the seized vehicles and other material objects before the court thereby enhancing the possibility of a tampering with the seized objects.

- While there is an absolute lack of evidence to support the charge of conspiracy against any of the appellants-accused, the instant is a clear case of defective and shoddy investigation. The properties were not properly seized, there was inordinate delay in producing the seized material before the court and thereafter in forwarding it to the FSL. There was no attempt to obtain the call data records of the mobile phones used by the accused persons or the deceased. There is also no explanation as to why persons like Prasanth and Jayan were dropped from the list of accused during the course of the investigation, while others like PW1 Nazarudeen whose alleged

complicity in the offence was similar in nature, were retained in the list of accused.

11. Per Contra, the submissions of Sri. S.U.Nazar, the learned Special Public Prosecutor, briefly stated is as under:

- The basis of a tender of pardon to an accused person is not the extent of his culpability in the offence but it is with a view to preventing the escape of the other offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection to the grant of pardon to an accomplice simply because in his confession he does not implicate himself to the same extent as the other accused. All that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence. Reliance is placed on the decision in **Suresh Chandra Bahri v. State of Bihar – [1995 KHC 556]**.

- A4 Nazarudeen was made an approver as per order dated 05.07.2006 of the Chief Judicial Magistrate, Thiruvananthapuram who had examined him as envisaged under Section 306(4)(a) of the Cr.PC. His deposition in court with regard to inflicting injury on the deceased using MO2 chopper is corroborated by his identification of MO2 chopper in court. The said chopper was recovered in terms of Section 27 of the Evidence Act, based on the disclosure statement of A7 Ajithkumar. The blood stains detected on the chopper were found to be of human origin by PW35 Joint Director of the FSL, as certified in Ext.P58 report. Similarly, the blood stains found in the Tata Sumo car were also found to be of the same blood

group – A – as that of the deceased person. PW3 Sajikumar, the autorickshaw driver who gave Ext.P7 FI Statement at the Malayinkeezh Police Station also deposed that certain persons had put the body of the deceased person in his autorickshaw and forced him to drive the vehicle towards the Medical College hospital. Together with the identification of the deceased by PW2 Sudhakaran, as the same person who had come to his Salon the previous day, the above proved facts corroborate the evidence given by PW1 Nazarudeen as regards the commission of the offences of kidnapping and murder of the deceased by the appellants-accused.

Discussion and Findings:

12. On a consideration of the facts and circumstances of the case, the evidence on record, the judgment of the trial court and the submissions made on behalf of the appellants-accused and the prosecution, we find that the entire case of the prosecution hinges on the evidence of the approver PW1 Nazarudeen. This is because almost all the witnesses examined on behalf of the prosecution to prove the material aspects of their case, turned hostile to the case of the prosecution. Save for the recovery of MO2 Chopper, based on the disclosure statement of A7 Ajithkumar, to the extent admissible under Section 27 of the Evidence Act, and Medical/Forensic evidence that points to the said chopper as the weapon that could have caused the death of the deceased, there is not much in the form of material evidence to connect the various accused with the offences with which they stand charged and convicted.

13. PW1 Nazarudeen was initially arrayed as an accused (A4) by the then investigating officer PW45 T.F. Xavier, who suspected his complicity in the matter by taking note of his role as the driver of the Tata Sumo vehicle that had allegedly been hired by the other accused to commit the gruesome offences. However, Ext.P111 report submitted by the later investigating officer before the JFMC I court, clearly suggests that the investigation team did not make much headway in terms of gathering any material or forensic evidence in the initial stages of investigation, and they were quite content with the statements obtained from various witnesses, many of whom claimed to be eye witnesses to different aspects of the crime that was alleged to have been committed by the appellants/accused. In 2016, when PW49 M. Sekharan came to be entrusted with the investigation, he was sceptical about the sufficiency of the evidence collected till then, and of the available witnesses endorsing what had been recorded as their previous statements, and chose to approach the court with Ext.P111 report, seeking to turn A4 Nazarudeen into an approver by recommending him for the tender of pardon under Section 306 of the Cr.PC, prior to the committal of the case to the Sessions Court.

14. It is trite that a pardon is granted under Section 306 of the Cr.PC with a view to obtaining the evidence of any person concerned in or

privy to the offence, on condition that he makes a full and true disclosure of what he knows relative to the offence, before the court at the time of trial. The object behind the grant of pardon to one of the accused is to obtain such evidence through him that would prevent the escape from punishment, of the other offenders in a grave offence, for lack of evidence. Accordingly, the evidence of an approver follows the tender of pardon to him on condition that he makes a full and true disclosure, and the pardon once granted would operate in respect of all offences pertaining to that transaction. Once the approver has accepted a tender of pardon, he stands on the same footing as any other witness, with the exception that he is liable to forfeit his pardon if he does not comply with the conditions on which the tender was made.

15. The law relating to the manner of appreciation of the evidence tendered by an approver is also well settled. It recognises that an approver is very often an accomplice ie. a person who participates in the commission of the actual crime charged against an accused. He is a *participes criminis*. When he agrees to be an approver, and to testify against an accused, he becomes a prosecution witness. The evidence of an accomplice therefore requires to be accepted with a great deal of caution and scrutiny because (i) he has a motive to shift guilt from himself (ii) he is an immoral person likely to commit perjury on occasion;

and (iii) he hopes for pardon or has secured it, and so favours the prosecution **[Lal Chand v. State of Haryana – [(1984) 1 SCC 686]]**.

16. Section 133 of the Indian Evidence Act states that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Section 114 of the Evidence Act states that a court may presume the existence of such facts as it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case. By way of illustration (b), it is clarified that the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together, the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice, the rule of prudence so universally followed as to amount to a rule of law, is that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects, so as to implicate the accused. **[Rameswar v. State of Rajasthan – [AIR 1952 SC 54]; Dagdu v. State of Maharashtra – [(1977) 3 SCC 68]; D.Velayudham v. State - [AIR 2015 SC 2506]]**.

17. Thus, an approver's evidence has to satisfy the double test ie. (i) his evidence must be reliable and (ii) his evidence should be sufficiently corroborated. If the first test of reliability is not satisfied, there is no necessity to look for a satisfaction of the second test. As observed by the Court in **Rampal Pithwa Rahidas & Ors v. State of Maharashtra – [(1994) Supp. 2 SCC 73]**, it is only when the approver's evidence is considered otherwise acceptable that the court applies its mind to the rule that his testimony requires corroboration in material particulars, connecting or tending to connect each of the accused to the crime charged. This, however, is as a matter of prudence. **[Sarwan Singh v. State of Punjab – [AIR 1957 SC 637]; Jnanendra Nath Ghose v. State of West Bengal – [AIR 1959 SC 1199]].**

18. On the aspect of corroboration, firstly, the court has to satisfy itself that the statement of the approver is credible in itself and there is evidence other than the statement of the approver that the approver himself had taken part in the crime. For this, the court must consider the question as to how the approver came to be arrested, how he became a participant in the crime, the role played by him in the crime and the circumstances in which he decided to become an approver. Secondly, the court has to seek corroboration of the approver's evidence with respect to the part of other accused persons in the crime, and this evidence has to be of such a nature as to connect the other accused with the crime. The

corroboration should be sufficient to afford some sort of independent evidence to show that the approver is speaking the truth with regard to the accused person whom he seeks to implicate. **[Rameshwar v. State of Rajasthan - [AIR 1952 SC 54]; Sarwan Singh v. State of Punjab – [AIR 1957 SC 637]; Ranjeet Singh and Anr. v. State of Rajasthan – [(1988) 1 SCC 633]].**

19. To paraphrase Justice Vivian Bose in **Rameshwar (supra)**, the nature and extent of corroboration required of an approver's statement has to be determined by the following principles viz. (i) it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction; all that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it (ii) that independent evidence must not only make it safe to believe that the crime was committed, but must in some way reasonably connect or tend to connect the accused, with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime (iii) that the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another and (iv) that the

corroboration need not be direct evidence that the accused committed the crime - it is sufficient if it is merely circumstantial evidence of his connection with the crime.

20. In these appeals, we are essentially required to examine whether the evidence of PW1 Nazarudeen satisfies the double test required for acceptance of his evidence as the basis for sustaining the conviction and sentence imposed on the appellants-accused by the trial court. For the reasons that are to follow, we do not think so.

21. As already noticed above, the double test for acceptance of the testimony of an approver requires the court to first examine whether the testimony is reliable in itself ie. without any corroboration in material particulars. For this, as noticed in **Rampal Pithwa (supra)**, the court must consider the question as to how the approver came to be arrested, how he became a participant in the crime, the role played by him in the crime and the circumstances in which he decided to become an approver. For ascertaining the answers to the above questions, we need look no further than to Ext.P111 report of PW49 M.Sekharan, the then ACP, Crime Detachment, Thiruvananthapuram City, that was filed before the Chief Judicial Magistrate's Court, Thiruvananthapuram while recommending the grant of pardon to the approver under Section 306 of the Cr.PC. A perusal of the report clearly brings out the following facts:

Firstly, that according to the prosecution, PW1 Nazarudeen was arrested at 11 pm on 10.12.2004 from his house, as stated in Ext.P75 arrest memo. This is as against the deposition of PW1 Nazarudeen in court, that he was brought from Pampa (Sabarimala) directly to the Fort Police Station on 09.12.2004 and was produced before the Magistrate on 11.12.2004.

Secondly, the role played by PW1 Nazarudeen in the crime was allegedly that of an accomplice in that, according to the prosecution, he had driven the Tata Sumo vehicle that carried the accused persons and the deceased to the Valiyottukonam cemetery and therefore was privy to the incidents that took place near the Salon, the Alanthara colony and thereafter at the cemetery. It is also evident that he was involved along with Prasanth in washing the blood stains off the Tata Sumo vehicle before the vehicle was seized. Yet, the investigating officer chose to exclude Prasanth and one Jayan, whose name was also mentioned by PW1 Nazarudeen as a person who was in the vehicle at the time, from the list of accused in the case;

Thirdly, that it was on account of a mere hunch entertained by PW49 M. Sekharan, that the witnesses, including eye-witnesses, cited by the prosecution would not endorse their previous statements and would turn hostile to the case of the prosecution at the trial, that the decision was

taken to tender pardon to PW1 Nazarudeen and turn him into an approver.

22. Many aspects that led to the grant of pardon to the approver in the instant case trouble our conscience. *Firstly,* we do not think it was proper for the Chief Judicial Magistrate to have granted pardon to the approver PW1 Nazarudeen based on nothing more than an apprehension of the investigating officer that prosecution witnesses might turn hostile to the prosecution case at the time of trial. While we do not want to speculate as to why/how the prosecution would/could anticipate a hostile attitude from their witnesses, we also feel that the public interest served through an effective prosecution of a person accused of committing a crime cannot be sacrificed by granting him a pardon merely on the basis of unjustified apprehensions harboured by an investigating officer. We also find from his evidence during trial that it might have been the threat and coercion exerted by the investigating agencies that forced PW1 Nazarudeen to turn into an approver. *Secondly,* the pardon was granted to the approver [PW1] after nearly 18 months since the start of the investigation in 2004, and the statement given by PW1 Nazarudeen before the Judicial First Class Magistrate Court - I under Section 306 (4) (a) of the Cr.PC, is almost exculpatory in nature. No doubt it is trite, as held in **Suresh Chandra Bahri v. State of Bihar – [(1995) Supp. 1 SCC 80]** that there can be no objection against the tender of pardon to

an accomplice simply because in his confession he does not implicate himself to the same extent as the other accused. However, as pointed out in **Rampal Pithwa (supra)**, a statement of an approver that is almost exculpatory in nature can render his evidence unreliable. This is especially so when we consider the inconsistencies in the evidence of PW1 Nazarudeen in court which are many, as discussed hereinafter. *Thirdly*, we also find that the statements recorded from the approver, prior to his being granted pardon and becoming an approver, were not placed before the court along with the final report laid by the Investigating officer and, consequently not furnished to the other accused before commencement of the trial. Once an accused has turned approver, he becomes a prosecution witness and copies of statements obtained from him while he was arrayed as an accused, have to be given to the other accused as contemplated under Section 207 of the Cr.PC. This salutary requirement flows from the need to ensure that no prejudice is caused to the other accused in the trial that follows, where they can test the evidence tendered by the approver, for any contradictions or improvements from the previous statements given by him before the investigating officer.

23. We now proceed to highlight the inconsistencies noticed in the testimony of PW1 Nazarudeen. At the outset, we find that while he portrayed himself as as an accomplice who could testify against the other

accused as regards the commission of the crimes alleged against each of them, his efforts while giving the statement under Section 306 (4)(a) as also while deposing at the trial as PW1, have been largely to portray himself as a person who was forced to drive the Tata Sumo vehicle under the directions of the other accused and who had no active role to play in the sequence of events that led to the commission of the crimes. He is therefore not able to give accurate details of even material aspects of the crime such as the identity of the accused who committed it. For instance, while he deposed to having seen A1 Anilkumar sever the hands and limbs of the deceased, during cross-examination by A7 Ajithkumar, he stated that he came to know about the severing of the limbs only from the newspaper. He was also not able to state material aspects of the crime such as, to whom the severed limbs of the deceased were handed over; Likewise, while in Ext.P1 statement, he states that he did not mention about the incident to anyone, in Ext.P48 seizure mahazar it is recorded that he disclosed the details of the crime to Prasanth.

24. Even if we were to accept the evidence of PW1 Nazarudeen as sufficient to show that the crime in question was in fact committed, there is nothing in the form of corroborative evidence thereto that would point to any of the appellants-accused as the persons who committed the crime. As observed in **Rameshwar (supra)** there must exist independent evidence that not only makes it safe to believe that the crime was

committed, but which must in some way reasonably connect or tend to connect the accused, with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. In the instant case, Exts.P33, P57 and P58 FSL reports on which reliance is placed by the prosecution, do not help connect the appellants-accused with the kidnapping or the murder of the deceased person. In Ext.P33 report, the hair sample taken from the Salon is found to be merely similar to that taken from the scalp of the deceased. While the similarity in hair samples will not suffice to establish the presence of the deceased at the Salon on 22.11.2004, it is also not established by the prosecution that the deceased was the only customer at the Salon on that date, so as to exclude the possibility of the hair sample collected therefrom belonging to someone else. Similarly, in Ext.P57 report, the blood stains on MO2 chopper are found merely to be of human origin. A DNA test that could have pointed to the blood therein being that of the deceased, was never done. The discovery of the chopper and its seizure itself is contested for in Ext.P45 mahazar, PW25 is cited as a witness and on examination he deposed to not having seen the actual seizure of the chopper but to having merely signed on a prepared mahazar. PW46 Rajan who is the scribe of the same mahazar deposed that the place of concealment of the chopper is not mentioned in the mahazar and that it is not recorded therein that it was as led and shown by A7 Ajithkumar that the chopper was discovered. While under ordinary

circumstances, we would not have taken serious note of the contention that the seizure witnesses do not support the version of the prosecution, in the light of the fact that the prosecution has virtually admitted to there being no reliable evidence other than the testimony of the approver in the instant case, we cannot but take note of the said irregularities in the seizure procedures. Further, no finger prints were lifted from the autorickshaw that carried the body of the deceased, when discovered. As regards the offence of conspiracy, there is no evidence in the form of call data records [CDR] or oral testimony that would point to the existence of any conspiracy to kidnap and murder the deceased. There is also no independent eye-witness testimony that either testifies to the commission of any of the alleged offences or to the identity of its perpetrators.

25. While we have independently analysed the evidence on record to ascertain whether the conviction and sentence imposed on the appellants-accused by the trial court is justified, and find ourselves unable to agree with the findings of the trial court in the judgment impugned in these appeals, legal propriety demands that we give specific reasons for our disagreement. We therefore proceed to deal with some of the specific findings entered by the trial court.

26. The trial court after noting that there exists inconsistencies and contradictions in the deposition of PW1 Nazarudeen as also vis-a-vis

Ext.P1 statement given by him before the Magistrate, *in paragraph 31 of its judgment* proceeded to give reasons for such inconsistencies by stating that the said *"somersault was because he was scared of the miscreants"* and since he *"was under great pressure, panic and terror and that he was not inclined to reveal the truth before court."* Accordingly, the trial court proceeded to condone and brush aside the contradictions and inconsistencies in the deposition of PW1 Nazarudeen, and find the accused guilty of the offences with which they were charged. The unsustainability of the reasoning given by the trial court in the impugned judgment need not be overemphasized in the light of the law regarding the evidentiary worth of an approver's evidence, as discussed above. Further, PW1 Nazarudeen being an accused turned approver ought not to have had any reason or cause to be afraid of his own compatriots while deposing, especially since he had by that time obtained his conditional pardon and rendered Ext.P1 statement before the Magistrate. Further, the purported fear stated by him, which swayed the trial court during the appreciation of evidence, is totally misplaced as we note that he had been lodged in Jail for months along with the other accused till they were all released on bail. After having thus chosen to give a detailed statement under Section 306 (4) which was recorded by the Chief Judicial Magistrate and the pardon was tendered, the reasoning of the trial court that the glaring contradictions and variations in his

deposition can be brushed aside as caused due to fear, pressure and panic, is legally unsustainable.

27. We also find that the trial court relied on the uncorroborated statements of PW1 Nazarudeen, vis-a-vis each of the appellants, to base the finding of guilt against them all. The trial court, appears to have sought corroboration to the statements of PW1 Nazarudeen, as recorded vide Ext.P1, in the deposition of PW1 Nazarudeen itself when he was examined as a witness. Such an exercise was faulty and contrary to the settled principles of law. As laid down by precedents discussed above, corroboration to an approver's testimony has to be found not based on his own statement or deposition but with other independent evidence. It is trite that corroboration of an approver's testimony with the testimony of even another approver is illegal, and a conviction based thereon cannot be sustained.

28. Further, the trial court *in paragraph 35 of its judgment* while considering the evidence regarding the culpability of A7 Ajithkumar with respect to the allegation that he had at the Alanthara colony, inflicted a wound on the forehead of the deceased using MO2 chopper, has termed the deposition of PW1 Nazarudeen in that regard as *'accurate'*. The fallacy of the said finding has already been referred to above. Similarly, the trial court has *in paragraph 36 of its judgment* concluded that the

deposition of PW1 Nazarudeen regarding injuries Nos.1 and 2 on the deceased, alleged to have been caused by A7 Ajithkumar, tallies with the incidents narrated by PW1 Nazarudeen in Ext.P1 statement to the Magistrate and is hence reliable and sufficient to establish the guilt of A7 Ajithkumar. The trial court further proceeds to term the said deposition of PW1 Nazarudeen as *“clear and cogent in respect of the entire cruel episode right from its outset till its climax*" overlooking the fact that the said evidence tendered by PW1 Nazarudeen had no independent corroboration whatsoever.

29. As regards the deletion of Jayan from the array of the accused by the Investigating Officer (PW49), about whom PW1 Nazarudeen had specifically mentioned in Ext.P1 statement, the trial court at paragraph 40 of its judgment concluded that such deletion of Jayan *“does not evoke any vital consequence”*. The trial court thus overlooked the fact that PW1 Nazarudeen had in his cross examination specifically contradicted himself from his own statement in Ext.P1 by stating that he does not know whether a person named Jayan was present in the Tata Sumo Taxi driven by him. Such instances in the testimony of PW1 Nazarudeen which clearly pointed to the need to seek corroboration for the statements of PW1 Nazarudeen from independent sources was lost sight of by the court. The trial court also overlooked the fact that PW1 Nazarudeen had mentioned both Jayan and Prasanth in his depositions and their

subsequent deletion from the array of accused for lack of evidence against them, tells upon the unreliability of the deposition of PW1 Nazarudeen.

30. Similarly, the finding arrived at by the trial court in paragraph 42 of its judgment that the narratives of PW1 Nazarudeen have been corroborated by the confession made by A7 Ajithkumar which led to the recovery of MO2 and hence the mandate for corroboration discernible from illustration (b) to Section 114 of the Evidence Act has been satisfactorily met, is unsustainable. As discussed in detail above, the recovery of MO2 based on the purported disclosure statement of A7 Ajithkumar is by itself unreliable and fraught with deficiencies. Recovery of MO2 has not been reliably proved in a manner acceptable to law.

31. The trial court in paragraph 43 of its judgment concluded that PW1 Nazarudeen *"..has no personal interest of his own to avenge the indictees or to mourn for the victim and that he is a total stranger to the criminal plot and he does not thus deserve to be styled as an interested or infamous witness and not even as an accomplice".* The said finding of the trial court not only militates against the basic and fundamental approach of caution to be adopted while relying on an approver's evidence but is also contrary to the facts and circumstances of the case. That PW1 Nazarudeen had an active role to play in the incident and was

present all through the same; that he had attempted to clean the vehicle and destroy the evidence; that he had on the next day of the incident accepted money from the accused for his services rendered the day before, are all facts that are *prima facie* disclosed from the prosecution evidence. Further, that PW1 Nazarudeen who was arrayed as accused No.4 was retained in the said array at the same rank till the fag end of the investigation when it was taken over by PW49 Sekharan is also not in dispute.

32. The finding of the trial court that PW1 Nazarudeen cannot even be termed as an *'accomplice'* militates against the express provisions of Section 133 of the Indian Evidence Act and Section 306 of the Cr.P.C. The finding hence arrived at by the trial court that PW1 Nazarudeen stands *"on a high pedestal and his testimony is more qualified, genuine and sanctified since he expects no gain out of it"* also cannot be countenanced in the light of the settled law concerning the probative value of an approver's evidence.

33. The finding of the trial court in paragraph 44 of its judgment that the evidence tendered by PW1 Nazarudeen narrates the role played by each indictee and the particular pattern of lynching the victim to death by each accused, cannot be sustained in the light of the numerous contradictions noticed in the statement and the deposition of PW1

Nazarudeen. So also the finding that the defence could not raise any valid dispute regarding the identity and consistency of the crime spot where the deceased breathed his last cannot be countenanced in view of the fact that all the eyewitnesses to the incident had turned hostile, and except for the approver's statement as PW1 and his deposition, there was nothing to convincingly prove and corroborate the exact place where the crime was committed. It is relevant to note that even the Chief Judicial Magistrate in Ext.C1 had, based on PW1's statement, recorded that the amputation of the leg and hand of the deceased was done in the Tata Sumo taxi driven by PW1 Nazarudeen [who was A4] during the relevant time.

34. While discussing the incongruity in the evidence tendered by PW1 Nazarudeen and by PW45 T.F. Xavier regarding the recovery of the Tata Sumo car and the arrest of PW1 Nazarudeen, the trial court had duly taken note of the fact that PW1 Nazarudeen had consistently narrated that the vehicle was seized by the police from Sabarimala and that he was also apprehended along with the vehicle from Sabarimala and brought directly to the police station. That this statement of PW1 Nazarudeen contradicts the official version in the deposition by PW45 Xavier as well as by PW49 Sekharan that the Tata Sumo car was recovered from the house of its owner vide P48 seizure mahazar and that PW1 Nazarudeen was arrested from his house, was also noted by the trial court. However,

the court then concluded that *"though there is no supporting evidence to strengthen the version of PW1"*, the said version of PW1 *"had its own spontaneity"*. The contra depositions by PW45 Xavier as well as PW49 Sekharan as regards the Tata Sumo car were disbelieved by the trial court stating that *"The factual niceties enabled me to disbelieve PW45 in this regard."* The trial court thereafter proceeded to conclude that *"All the same, very obviously there is some incongruity in his evidence in respect of seizure of the Tata Sumo vehicle."* The *"anomaly in evidence"* regarding the said aspect *"would not defeat the prosecution case"*. It was also concluded that the contradictions in the statements of PW1 Nazarudeen and that of PW5 Harikumar revealed by Ext.P48 seizure mahazar are *"not of any fatal consequence to the prosecution case and does not affect its credibility"*. The said findings and conclusions arrived at by the trial court are erroneous and unsustainable in the light of the stark contradictions in the statements of PW1 Nazarudeen and the other official witnesses as well as the documents evidencing seizure of Tata Sumo car. The same were clear pointers to the slip shod manner in which the investigation had been carried out and the necessity of handing over of the investigation from PW45 Xavier to PW49 Sekharan. The contradictions also pointed to the unreliability of the deposition of PW1 Nazarudeen, which was the sole fulcrum on which the entire findings of the trial court leading to the conviction of all the accused, had rested.

35. As regards the sustainability of the charge under Section 120B IPC against the accused, the trial court in paragraphs 59 and 60 of its judgment had noted that *"the prosecution had reasonably made out that personal rivalry prevailed between the deceased and some of the accused during the relevant period"* and that *"there was sufficient cause for the indictees to stand together in a common platform to wreck their personal vendetta".* Thereafter, it proceeded to conclude as follows regarding criminal conspiracy: *"To further their unlawful common object and evil motive, they stood together and hatched the criminal conspiracy to eliminate him."* This finding was arrived at notwithstanding that there was no iota of evidence to show the existence of any of the elements essential to constitute a criminal conspiracy or to make out a charge under Section 120B IPC. The further finding of the trial court that *"though motive is not relevant in a case based on direct evidence still motive has its own significance in substantiating and complementing the prosecution case"* is irrelevant on the facts and circumstances of the case since no independent legally reliable evidence had been put forth by the prosecution in the case at hand.

36. The trial court in paragraph 66 of its judgment has, concerning the inability to identify the blood group from MO2 chopper concluded that *"the absence of proof regarding the group of blood on MO2 is insignificant since the eventual recovery of the said MO is in pursuance*

of the information disclosed by A7 negatives the requirement for detecting human blood on the same". This conclusion was arrived at on the reasoning that human blood had been detected on MO2 and that *"what could not be detected is its group alone."* The court then proceeded to brush aside the absence of evidence regarding blood group by reasoning that since recovery of the weapon had been effected based on the disclosure statement of A7 Ajithkumar the absence of proof regarding blood group is *"insignificant"*. The said reasoning is unsustainable more so because MO2 is the only weapon that has been seized with respect to the crime, and the seizure of the same, effected through A7 Ajithkumar vide Ext.P45, is fraught with errors, legal inadequacies and contradictions.

37. As regards the delay occasioned in the production of MO2 weapon before the court, the trial court concluded that the same was not inordinate and that it had been sufficiently explained by the Investigating Officer. The reasoning of the court that "*very lengthy and extensive evidence had to be undertaken by the investigator in the given case and during the course of investigation, they needed the legal weapon to prove its identity*" is not a legally sustainable reason to explain the delay. The further justification that "*the scientific evidence emerged from MO2 weapon renders the duration taken for production of article before court totally inconsequential*" is incongruous and devoid of any substance since

the court had earlier in the judgment stated that the the lack of scientific evidence with respect to blood grouping from MO2 is not consequential. Thus in so far as no reliable scientific evidence had emerged from the scientific examination of MO2 weapon, the reasoning put forth by the trial court is circular and self defeating.

38. As regards other scientific evidence, the trial court concluded that MO9 scalp hair and MO8 tuft of scalp hairs recovered from the saloon had been consistently proved and confirmed to be exactly identical and similar vide Ext.P33 report and so, *"there is no doubt on the fact that the deceased had been kidnapped from the saloon of PW2".* This finding overlooks the fact that Ext.P33 report had only stated that "*the hairs in item No.3 are human scalp hairs which are similar to the sample scalp hairs in item No.4 (C)".* Ext.P33 does not report that MO9 and MO8 belong to the deceased.

39. The finding of the trial court in paragraph 73 of its judgment that *"there are ample evidence on record proving that indictees No.1, 2, 5, A6 (late) to A10 have hatched the criminal conspiracy to eliminate the deceased and they unlawfully assembled together in prosecution of their common objective to implement their evil plan"* is not substantiated by any evidence placed by the prosecution. The finding that "*it is well come out in evidence that he tortured the victim mercilessly and inhumanly*

from the moment he was abducted" also lacks any reliable substantiation. The findings of the trial court in paragraph 73 of its judgment that all the said accused *"joined together in attacking the deceased mercilessly as proved by PW1"* is devoid of any evidence and substantiation. Even though the trial court had in the judgment elaborated on the *"barbarous act"* and the "sadistic impulse" by which the crime was carried out and termed it as one that *"shocks human mind"*, not only was necessary substantiation in the form of legally reliable evidence in that regard lacking in the prosecution evidence, but the evidence tendered by the prosecution was fraught with inconsistencies and contradictions.

40. In paragraph 75 of its judgment, the trial court concluded that the defence contention that the identity of the accused has not been proved by the prosecution since no test identification parade is conducted by the investigator is of no consequence in so far as PW1 Nazarudeen had identified the accused clearly and cogently. It was also justified on the ground that PW1 Nazarudeen who had spent a long duration of time along with the accused in the vehicle had enough time to *"never loose their identity from his sense of perception"*. Further relying on precedents it was reasoned by the trial court that test identification by itself is not necessary for identifying the accused since the deposition of PW1 Nazarudeen and his *"credibility and impartiality and the absence of reasons for false implication of the indictees and the circumstances*

indicating truth of their identification, do enter the judicial mind of the court in the assessment". This finding of the trial court overlooks the fact that the deposition of PW1 Nazarudeen is replete with contradictions and is totally unreliable. Further the fact remains that no other witness had identified any of the accused and it was on the sole uncorroborated testimony of PW1 Nazarudeen that the conviction was based.

41. The trial court has in paragraph 76 of its judgment opined about the severity and brutality of the murder of the victim and has stated that the same is well pictured in the medical evidence and *"the oral narration of the eye witness / approver".* This observation has been made solely relying on the uncorroborated oral testimony of PW1 Nazarudeen. The said reasoning cannot therefore be termed as legal.

42. The trial court in paragraph 77 of its judgment finds that the co-accused *"though they had not actually handled the weapon at the victim they very actively stood, rendering whole support aid and assistance by promoting the crime".* This conclusion was arrived at by justifying it on the principle of *vicarious liability* relying on operation of the Section 149 of the IPC. It is trite that to convict a person under Section 149 IPC prosecution has to establish with the help of evidence that firstly, the accused shared a common object and were part of unlawful assembly and secondly, that they were aware that the offences

likely to be committed were to achieve the said common object **[Naresh @ Nehru and another v. State of Haryana - [(2023) SCC OnLine SC 1274]]**. It has been held by the Supreme Court that the common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behavior of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case. In the instant case, however, the trial court proceeded to find the co-accused liable under Section 149 on the premise that once the members of an unlawful assembly knew beforehand that the offence committed was likely to be committed in prosecution of the common object then all those persons constituting the unlawful assembly are vicariously liable. The court however overlooked the fact that there was a total absence of any independent evidence regarding the existence of a common object or that the individual accused were aware of the same.

43. Though there was absolutely no evidence to conclude that all the accused had a common objective in mind while they boarded PW1's vehicle from the respective places, the trial court concluded that such a plot, putting their minds together, was already in existence. The court then proceeded to conclude that though PW3 Sajikumar [auto driver] could not prove the identity of the accused who had boarded his autorickshaw *'it could be unerringly concluded that the said three*

persons are none other than three of the accused.' The said reasoning apart from defying common logic is unsustainable for want of any evidence.

44. The trial court in paragraph 81 of its judgment concluded that PW1 Nazarudeen had *"given a graphic description of the savage occurrence by detailing the nature of the brutal attack caused on the victim"* and had detailed the nature of the attack on the deceased and the nature of injuries '*with a photogenic description'* and that the same cannot be termed as tainted as contended by the defence. The court went on to state that the minor discrepancies in his version highlighted by the defence prompts it to add that "*photographic picturisation cannot be expected from a witness."* The said observations were made without taking note of the stark contradictions in PW1's deposition which substantially varied from his own statement given before the Magistrate and marked as Ext.P1. Further, the correctness of the said testimony of the approver, so far it remained uncorroborated could not have been relied upon by the court to convict the accused.

45. The above discussion of the manner in which the trial court had appreciated the prosecution evidence leads us to conclude that the trial court had erred from the very threshold in appreciating an approver's evidence. The extent of reliance that could be placed thereon

and the nature of corroboration required before proceeding to find a guilty verdict based on the same were not at all within the contemplation or understanding of the trial court. The sole reliance, based on the deposition of PW1 Nazarudeen and Ext.P1 statement given by him before the Magistrate, by the trial court lacked legal sustainability. The observation of the trial court in paragraph 37 of its judgment that the version of PW1 Nazarudeen in his examination in chief is the verbatim reproduction of what he had narrated before the learned Magistrate and had scrupulously proved the exact identity of each and every assailant and the particular roles played by them in murdering the deceased clearly points to the erroneous understanding of the legal precepts on the point by the trial court. This conclusion arrived at by the trial court overlooks the very basic requirement of law as laid down in a catena of precedents that an approver's statement needs corroboration and sole reliance of his own statement if at all buttressed by his examination as a witness does not by itself stand to prove any fact as reliably proved.

46. The above discussion on the appreciation of evidence by the trial court leaves us with no manner of doubt as regards the absence of any material before the court below on which it could arrive at a finding of conviction against any of the accused on any of the charges leveled against them, much less to sentence two among them to capital punishment and the rest to various terms of punishment including, life

imprisonment. We have therefore no hesitation in concluding that the only substantive evidence that is relied upon by the prosecution in the instant case is the testimony of PW1 Nazarudeen and the same lacks credibility making it not worthy of acceptance. Since the evidence of the approver does not satisfy the reliability test itself, the aspect of corroboration does not arise in the instant case. We are therefore of the view that the conviction and sentence imposed on the appellants-accused by the impugned judgment of the trial court cannot be legally sustained. We therefore set aside the conviction and sentence of the appellants-accused and allow these Criminal Appeals. The DSR is accordingly answered in the negative. The appellants-accused shall be set at liberty forthwith.

The D.S.R. is dismissed and the Crl.Appeals are allowed.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

prp/

APPENDIX OF CRL.A.NO.497/2016

PETITIONER ANNEXURES:

ANNEXURE 1	THE MARRIAGE INVITATION CARD OF THE APPLICANT'S DAUGHTER.

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE