IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE JOHNSON JOHN
TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946
CRL.A NO. 2043 OF 2006

AGAINST THE JUDGMENT DATED 11.10.2006 IN SC NO.491 OF 2001 OF ADDITIONAL SESSIONS COURT, (ADHOC)-III, THALASSERY
CP NO.24 OF 2001 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,THALASSERY

APPELLANTS/ACCUSED NOS. 1 & 2:

1 CHANDANAPURATH RAJEEVAN
S/O.ACHUTHAN, PERUMKALAM,, ANIYARAM.

2 ARAYAKANDI CHANDRAN
S/O.ACHUTHAN, MUKKILAPEEDIKA,, PULLOOKKARA.

BY ADV SRI.S.RAJEEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,,
(CRIME NO.155 OF 1998 OF CHOKLI POLICE STATION).

SRI. VIPIN NARAYAN - SR. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME BEEN FINALLY HEARD ON 27.05.2024,

THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

'C.R'

JOHNSON JOHN, J.

Crl. Appeal No. 2043 of 2006

Dated this the 4th day of June, 2024.

JUDGMENT

The appellants are accused Nos. 1 and 2 in S.C. No. 491 of 2001 on the file of the Additional Sessions Judge, Adhoc-III, Thalassery and they are challenging the conviction and sentence imposed on them for the offences under Sections 450, 324 and 307 IPC.

2. The prosecution case is that the accused persons, 9 in number, because of political enmity and in furtherance of their common object to commit the murder of PW2, formed themselves into an unlawful assembly armed with deadly weapons on 25.10.1998, at about 10 p.m. and trespassed into the veranda of the house of PW2 bearing No. 3/377 of Peringathur Panchayat, and when PW2 came to the veranda on hearing the calling bell, the first accused caught on the shirt collar of PW2 and assaulted him with sword aiming the right side of his neck and the second accused inflicted a cut injury near the left side knee of PW2 with sword and the third accused beat PW2 with iron rod on his right hand and accused Nos. 4 to 9 also beat PW2 on various parts of his body

with iron rods and sticks and they are thereby alleged to have committed the offences as aforesaid.

3. On the basis of Exhibit P1 First Information Statement of PW1, Exhibit P8 FIR was registered on 26.10.1998 and after completing the investigation, PW12, Circle Inspector, filed the final report and after committal, when the accused were produced before the trial court, charge was framed for the offences punishable under Sections 143, 147, 148, 448, 450, 324, and 307 r/w 149 IPC and when the charge was read over and explained, the accused persons pleaded not guilty.

4. Thereafter, the prosecution examined PWs 1 to 14 and marked Exhibits P1 to P11 and MOs 1 to 7. Since it is found that the accused are not entitled for an acquittal under Section 232 Cr.P.C., they were called upon to enter on their defence; but, no evidence was adduced from the side of the accused.

5. After hearing both sides and considering the oral and documentary evidence on record, the learned Additional Sessions Judge, as per the impugned judgment dated 11.10.2006, acquitted accused Nos. 3 to 9 on the finding that they are entitled for the benefit of doubt and convicted and sentenced accused Nos. 1 and 2 for the offences under Sections 450, 324 and 307 IPC. The trial court also found accused Nos. 1 and 2 not guilty of offences under Sections 143, 147, 148 and

448 IPC. For the offences under Sections 450 and 324 IPC, accused Nos. 1 and 2 are sentenced to undergo rigorous imprisonment for one year each and for the offence under Section 307 IPC, they are sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 10,000/- each and in default of payment of fine, to undergo simple imprisonment for six months each.

6. Heard Sri. V. Vinay, learned counsel representing the learned counsel for the appellants on record, Sri. S. Rajeev, and Sri. Vipin Narayan, the learned Senior Public Prosecutor and perused the records.

7. The point that arises for consideration in this appeal is whether the conviction and the sentence passed against the accused/appellants are legally sustainable.

8. The learned counsel for the appellants argued that there is unexplained delay in registering the FIR and that there is no proper identification of the accused persons by the material witnesses and that the trial court failed to appreciate the evidence in proper perspective and also failed to consider the plea of false implication raised by the accused persons. It is also argued that the material witnesses who supported the prosecution are highly interested witnesses and their exaggerated testimonies cannot be relied upon.

9. But, the learned Public Prosecutor argued that PW1 is the mother of the injured and PW2 is the injured victim and their evidence regarding the occurrence is supported by the evidence of PWs 3 and 4 neighbours and there is also clear medical evidence and that the prosecution has established the charge against the appellants beyond reasonable doubt.

10. The evidence of PW1, the mother of the injured, shows that the occurrence was on 25.10.1998, and that while she was sleeping after 9.15 p.m., her son Dasan was valuing answer papers in the office room and she heard somebody calling her son Dasan and then her son opened the front door and went out. According to PW1, she heard her son and the persons who came there talking and when she reached there to see what is happening, she saw Chandanapurath Rajeevan (A1) cutting at the neck of her son with a 'kathival' by saying 'നീ വലിയ നേതാവല്ലേടാ'. According to PW1, immediately, the second accused, Arayakandy Chandran, inflicted a cut injury on the left knee of her son by saying 'നീ മാർക്സിസ്റ്റിനെ വളർത്തണ്ട'. PW1 deposed that the other accused persons beat her son with iron rod on his chest and all over the body. PW1 identified the first accused, Rajeevan, and the second accused, Chandran, by pointing out them to the court.

11. Even though PW1 deposed that all the other accused persons were also there at the time of occurrence to assault her son, she does not know their names. PW1 stated that when they raised hue and cry, her elder brother's son Balan and his wife Vasantha came running and then the accused persons ran away and escaped. PW1 stated that on seeing her son lying on the ground with bleeding injuries, she fainted and subsequently, she came to know that her son was taken to the hospital. According to PW1, her son is a member of the Marxist party and the accused persons are workers of BJP. The evidence of PW1 shows that she has given Exhibit P1 statement to the police on the next day, when the police came to her house and she identified her signature in Exhibit P1, First Information Statement, and she also identified MOs 1 and 2, 'kathival' used by accused Nos. 1 and 2 to assault her son.

12. The injured, when examined as PW2, deposed that the incident occurred at about 10 p.m. on 25.10.1998. According to PW2, his mother was sleeping and he was valuing answer papers in the office room and then he heard the calling bell ringing and somebody calling his name. When PW1 opened the door, after switching on the light, he saw the accused persons standing on the veranda of his house. According to PW2, Rajeevan, Vijesh, Thankarajan, Chandran, Manoj, Surendran, Pavithran, Sasi and Erthkandi Rajeevan were there and according to PW2, the first accused, Rajeevan, caught on his shirt collar and swung

the 'kathival' by saying 'നീ വലിയ നേതാവല്ലേടാ നിന്നെ വച്ചേക്കില്ല' and when he flinched, the second accused, Chandran, cut on his knee with a 'kathival'.

13. PW2 deposed that the third and fourth accused also beat him with iron rod. According to PW1, when the first accused, Rajeevan, swung the 'kathival', and when he flinched the weapon caused to hit on his neck and he sustained injuries and then he fell on the coir mat. PW2 further deposed that when he fell down, accused persons–Vijesh, Thankaraj, Ravi, and Erthkandi Rajeevan, assaulted him with iron rods and then his mother, brother and others came there and on seeing them, the accused persons ran away. PW2 also identified all the accused persons before the court. He also identified the 'kathivals' and iron rod used by the accused persons as Mos 1 to 3 and the blood-stained clothes worn by him at the time of occurrence are identified as MOs 4 and 5. He would say that he is a CPM worker and the accused persons are BJP workers and political enmity is the motive for the incident.

14. PWs 3 and 4 are neighbours of PW2. According to PW3, on the date of occurrence, at about 10 p.m., he heard a hue and cry from the house of PW2 and while he was running towards the house of PW2, he saw the accused persons running away from that house and he identified

the first accused–-Rajeevan, the second accused–Chandran, the fourth accused–Sasi and the 8th accused–Thankaraj before the court.

15. According to PW3, he also saw weapons like 'kathival' in the hands of the first and second accused and iron rods and sticks in the hands of the other accused persons. PW3 would say that when he reached the house of PW2, PW2 was lying with bleeding injuries in the veranda of his house. PW4 deposed that her house is very near to the house of PW2 and at about 10 p.m., on 25.10.1998 she heard the hue and cry of PW1 and along with her husband, she proceeded to the house of PW2 and when they reached near the house of PW2, they saw 8 or 9 persons running from the courtyard of the house of PW2 and among them, she could identify the 2nd accused--Chandran, 9th accused--Manoj, 8th accused--Thankaraj and the 3rd accused--Surendran.

16. According to PW4, the second accused, Chandran, was holding a 'kathival' in his hand and others were holding sticks and iron rods in their hands. PW4 deposed that when she reached the house of PW2, he was lying there with bleeding injuries.

17. PW6 was the Assistant Surgeon at General Hospital, Thalassery who examined PW2 at 11.15 p.m. on 25.10.1998 and issued Exhibit P3, wound certificate, noting the following injuries:

1. Incised wound on right shoulder 16 cm. long 4 cms. deep 3 cm. wide in the middle.
2. Incised wound 3 cm. long near injury No.1.
3. Incised wound 1 cm long near wound No.2
4. Incised wound on the front part of left knee 4 cm. long and 2 cm. wide in the middle.

PW6 also deposed that the injuries noted in Exhibit P3 can be caused with MOs 1 and 2 weapons shown to him.

18. PW7 was the duty Medical Officer at Medical College Hospital, Calicut who issued Exhibit P4, discharge certificate of PW2. According to PW7, as per Exhibit P4, the injured was admitted on 26.10.1998 and discharged on 19.11.1998 and that he treated the patient during that period.

19. The Sub Inspector of Chokli Police Station, who recorded Exhibit P1 First Information Statement of PW1 and registered Exhibit P8 FIR, was examined as PW11, and PW13 was the Circle Inspector of Panoor, who conducted the investigation of this case from 26.10.1998 onwards. According to PW13, after inspecting the place of occurrence, he prepared Exhibit P2, scene mahazar, and seized two Hawai chappals, broken pieces of the pillar of the building and blood found at the place of incident. He also seized the blood-stained clothes of the injured on

29.10.1998 by preparing Exhibit P5 mahazar and he also identified MOs 4 and 5, the blood-stained clothes recovered as per Exhibit P5 mahazar. Exhibit P9 is a report filed by PW13 regarding the name and address of the accused persons.

20. PW14 was the Circle Inspector of Panoor Police Station, who took charge of the investigation of this case on 21.11.1998. According to PW14, he obtained custody of the first accused on 27.01.1999 and on the basis of the disclosure statement of the first accused that he has washed and cleaned the 'kathivals' and iron pipe piece and put them in a plastic bag and kept it under the culvert near Kadamkuni school and if he is taken there, he will take it and give it and as led by the first accused, they reached that place and from there, the accused took out 2 'kathivals' and iron pipe and the same were seized by preparing Exhibit P6 mahazar in the presence of witnesses.

21. PW9 is a witness to Exhibit P6 seizure mahazar. PW9 deposed that he saw the accused Rajeevan handing over the 'kathival' to the police. His evidence shows that the police called him and when he went there, he saw the accused, Rajeevan, taking a plastic bag from the pipe under the canal and the said bag contained two 'kathivals' and one iron rod. The witness identified the said items as MOs 1 to 3. He also identified the plastic bag as MO7.

22. PW10 was the Village Assistant, who prepared Exhibit P7, site plan and PW8 is an attestor to Exhibit P5 mahazar prepared for the seizure of MOs 3 and 4 blood-stained clothes. PW12 was the Circle Inspector of Panoor Police Station, who took charge of the investigation of this case from 23.04.1999 and filed the final report after completing the investigation.

23. The learned counsel for the appellants argued that there is unexplained delay in registering Exhibit P8 FIR. It is pointed out that the alleged occurrence was at 10 p.m. on 25.10.1998 and that Exhibit P1, First Information Statement of PW1 was recorded by PW11, Sub Inspector, only at 11 a.m. on 26.10.1998 and there occurred a delay of more than 12 hours in recording the First Information Statement. It is argued that this is a case involving political rivalry between two parties and therefore, the chances of the informant being tutored for the false implication of the accused persons cannot be ruled out.

24. It is true that a First Information Report is the most immediate and the first version of the incident and has great value in ascertaining the truth and that a prompt FIR diminishes the chances of an informant being tutored and the false implication of the accused.

25. The learned Public Prosecutor pointed out that the evidence of PW1 would show that on seeing the attack on her son, and her son lying

on the ground with bleeding injuries, she fainted and that she categorically deposed before the court that she regained consciousness only after 1 a.m. It is in evidence that immediately after the occurrence PW2 was taken to Government Hospital, Thalassery and from there, he was taken to Medical College Hospital, Kozhikode. In cross examination, PW2 stated that after the incident, he became unconscious and that he regained consciousness only after undergoing the operation. PW2 also stated that he was not conscious, when he reached Thalassery Hospital.

26. The learned counsel for the appellants pointed out that the evidence of PW11, Sub Inspector, in cross examination would show that he reached the house where the incident occurred, on the night of 25.10.1998 when he received a telephone message that PW2 is injured and that the explanation of PW11, Sub Inspector, for not registering a crime on the night of 25.10.1998 is not at all satisfactory. In cross examination, PW11 stated that he reached the house after 10.30 p.m. and even though PW1 was there at that time, she was not in a position to give a statement regarding the incident and he was unable to find anybody else who could give correct information about the incident and therefore, he continued his law and order patrol duty. According to PW11, he was the Station House Officer and he sent a Head Constable to Thalassery Hospital to record the statement of the injured on that night itself and even though HC 2252 went to the hospital, he came back

without recording the statement of the injured. PW11 denied the suggestion that a story of unconsciousness of PW1 is introduced in this case only to explain the delay in recording the First Information Statement.

27. The evidence of PW13, Investigating Officer, in cross examination shows that in his investigation, it is revealed that when the Sub Inspector reached the house, the mother of the injured was unconscious and she was not able to give any statement. According to PW13, the Sub Inspector could not locate anybody else who know about the incident and even though a Head Constable was sent to the hospital to record the statement of the injured, he could not record the statement as the injured was unconscious and since the bystanders were also not able to give a correct version of the incident, the Head Constable came back without recording the statement.

28. It is well settled that the delay in lodging an FIR by itself cannot be regarded as sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of the prosecution, as the court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case, and in a case where the causes are not attributable to any effort to concoct a

version, mere delay by itself would not be sufficient to disbelieve the prosecution case.

29. In ***Tara Singh v. State of Punjab*** [1991 Supp (1) SCC 536], the Honourable Supreme Court held thus:

> "It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report."

30. In this case, the evidence of PW1, the mother of the injured, shows that on witnessing the occurrence and on seeing her son lying there with bleeding injuries she became unconscious and she regained consciousness only after 1 a.m. and the evidence of PW2, the injured, shows that after the incident he became unconscious and he regained consciousness only after undergoing an operation. Further, the evidence of PW11, Sub Inspector who reached the house after 10.30 p.m. on the date of occurrence, also shows that the mother of the injured was not in a position to give a statement regarding the incident at that time and there was nobody else who could give a statement regarding the

incident and the evidence of PW11 shows that he deputed a Head Constable to the hospital to record the statement of the injured and the said Head Constable was unable to record the statement of the injured. I find no reason to disagree with the observation of the trial court that there is every likelihood of a mother fainting and becoming unconscious on seeing her son being cut with a billhook and seeing the bleeding injuries of her son. As noticed earlier, the incident occurred at 10 p.m. on 25.10.1998 and Exhibit P8 FIR was registered on the basis of Exhibit P1 statement of PW1 at 12.15 hours on 26.10.1998. The First Information Report under Section 154 Cr.P.C., as such could not be treated as a substantive piece of evidence and it can only be used to corroborate or contradict the informant's evidence in the court, as held by the Honourable Supreme Court in ***Thulia Kali v. The State of Tamil Nadu*** [1972 (3) SCC 393]. Considering the nature of the injury sustained by PW2 and the facts and circumstances of the case, I find that there is no undue and unreasonable delay in lodging the FIR and therefore, the contention of the appellants in this regard is not sustainable.

31. The learned counsel for the appellants cited the decisions of this Court in ***Vayalali Gireeshan and others v. State of Keala*** [2016 KHC 204] and ***Manu G. Rajan and another v. State of kerala*** [2021 (5) KHC 767] and argued that the identification of the first and second

accused by PWs 1 and 2 is not satisfactory, in as much as they have not specifically pointed out accused Nos. 1 and 2 by their name or specific feature and even in a case where the accused persons were directly known to the witnesses, the requirement of proper identification in the dock is a must and while recording the deposition, the court has a duty to specifically record that the accused standing in the dock is identified by the witness and in case of any failure in this regard the accused are entitled for the benefit of doubt.

32. In this case, PW1, the mother of the injured, has stated the full name of the first accused Chandanapurath Rajeevan and also the full name of the second accused Arayakandy Chandran and also identified the said accused persons by pointing out them to the court and the said fact is specifically recorded in the deposition of PW1. PW2 also deposed the name of the first accused Rajeevan and the second accused Chandran and also the words uttered by them at the time of attacking him and the deposition of PW2 shows that he identified the accused persons before the court. Apart from PWs 1 and 2, PW3 also identified accused Nos. 1 and 2 by mentioning their name and pointing out them to the court and the said fact is recorded in the deposition of PW3.

33. It is true that PW4 has not identified the first accused before the court. But she identified the second accused Chandran as one among

the persons whom she saw running from the courtyard of the house of PW2 and therefore, on a careful perusal of the deposition of PWs 1 to 4, recorded by the trial court, I cannot accept the argument of the learned counsel for the appellant that there is no proper identification of the accused persons.

34. On the basis of the alleged cause of injury recorded by the doctor in Exhibit P3 wound certificate, the learned counsel for the appellants argued that the evidence of PW2 regarding the identification of accused Nos. 1 and 2 before the court cannot be relied upon. In Exhibit P3, the history and alleged cause of injury is recorded as follows:

"പുറമെ നിന്നും ആരോ വിളിച്ചു വരുത്തി വെട്ടിയത് '

35. The learned counsel for the appellants also pointed out that PW6 doctor has deposed in cross examination that the patient was conscious at the time of examination and he himself gave the history of the case.

36. But, the learned Public Prosecutor pointed out that PW2 has categorically deposed before the court that he was unconscious when he reached the hospital and merely because PW6, doctor, has stated in cross examination that the alleged cause of injury recorded in Exhibit P3 was given by the patient, the possibility of recording the alleged cause of injury from the person who brought the patient before the hospital

cannot be ruled out, especially in view of the fact that it is not stated in column No. 9 of Exhibit P3 as to who made the statement regarding the alleged cause of injury.

37. It is well settled that the primary duty of a doctor is to treat the patient and not to investigate the cause of the injury. Therefore, the impact of the non-disclosure of the names of the assailants to the doctor depends on the specific facts and circumstances of each case.

38. On a careful consideration of the alleged cause of injury stated in Exhibit P3, I also find force in the argument of the learned Public Prosecutor that it cannot be held that the same is inconsistent or at variance with the evidence of PW2 before the court to amount to contradiction. Therefore, considering the facts and circumstances of the case and the condition of the injured, when he was taken to the hospital at Thalassery, I find that the non-disclosure of the names of the assailants to the doctor will, in no way, undermine the credibility of the evidence of PW2 before the court regarding the identity and involvement of accused Nos. 1 and 2.

39. The learned counsel for the appellants argued that the evidence of PW14 regarding the recovery of weapons on the basis of the alleged confession statement of the first accused as per Exhibit P6 mahazar does not satisfy the conditions necessary for the applicability of

Section 27 of the Indian Evidence Act. The learned counsel for the appellants pointed out that there was no attempt on the part of the prosecution to identify the material objects recovered as per Exhibit P6 mahazar through PW14 and in as much as PW14 has not identified MOs 1 to 3 as the weapons recovered as per Exhibit P6 mahazar, it cannot be held that the information which he deposed to have received from the accused relates distinctly to the fact discovered. The decisions of the Honourable Supreme Court in ***Earabhadrappa v. State of Karnataka*** [AIR 1983 SC 446] and ***Mohmed Inayatullah Appellant v. The State of Maharashtra*** [AIR 1976 SC 483] show that the following conditions are required to be satisfied for the applicability of Section 27 of the Indian Evidence Act.

> (1) Discovery of fact in consequence of an information received from accused;
>
> (2) Discovery of such fact to be deposed to;
>
> (3) The accused must be in police custody when he gave information; and
>
> (4) So much of information as relates distinctly to the fact thereby discovered is admissible

40. In ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh*** (2022 KHC 7083), the Honourable Supreme Court held as follows:

> "53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he

would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of S.27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under S.27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."

41. As noticed earlier, there was no attempt on the part of the prosecution to identify the weapons recovered as per Exhibit P6, seizure mahazar, through PW14 and on a careful perusal of the entire evidence of PW14 regarding the recovery of the weapons as per Exhibit P6 mahazar, I find force in the argument of the learned counsel for the appellant that the evidence of PW14 does not satisfy the conditions necessary for the applicability of Section 27 of the Indian Evidence Act.

42. The learned counsel for the appellants argued that there are serious omissions and contradictions in the evidence of PWs 1 to 4 regarding the occurrence and since the trial court has given the benefit of reasonable doubt to accused Nos. 3 to 9, it can be seen that the evidence of PWs 1 to 4 are not wholly reliable and in view of the serious contradictions and omissions in their evidence proved through the cross examination of PWs 13 and 14, the appellants herein are also entitled for the benefit of reasonable doubt.

43. In cross examination, PW13 denied the suggestion that it is on the basis of a list furnished by Marxist party that he gave Exhibit P9 report regarding the name and address of the accused persons. According to PW13, PW1 has not told him that her son told her that he is going to value the answer papers. PW1 has also not stated to PW13 that her son was hit 2 -3 times. In cross examination, PW13 stated that PW2

Dasan has not stated that due to the marriage fixation in the neighbouring house, he did not go for party work and as the current went off, he came back. But, PW2 told PW13 that on that day evening, he had gone to Balandy peedika and from there he had gone to some houses to collect signature for Agricultural Workers' Pension and thereafter by 9 p.m., he came to his house along with Kunhikannan Master and tailor Sreedharan.

44. In cross examination, PW14 stated that he took charge of the investigation of this case on 15.11.2006 and he questioned PWs 1, 3 and 4 only regarding the identity of the accused persons as his predecessor-in-office had questioned the witnesses regarding the other aspects. The learned counsel for the appellants argued that there is delay in questioning the material witnesses and that Exhibit P9 report regarding the name and address of the accused persons is dated 05.11.1998. But, it is pertinent to note that Exhibit P9 report is regarding the name and address of accused Nos. 3 to 9 and that in Exhibit P1 First Information Statement itself, the full name of the first accused Chandanapurath Rajeevan and the second accused Arayakandy Chandran are specifically stated. It is also pertinent to note that in Exhibit P1, it is stated that the said accused persons are known to the informant.

45. It is well settled that when eye-witnesses are examined at length, it is quite possible for them to make some discrepancies and only when the discrepancies in the evidence of witnesses are so incompatible with the credibility of their version, the court will be justified in disbelieving their evidence.

46. It is well settled that normal discrepancies in evidence are those which are due to normal errors of observations and normal errors of memory due to lapse of time and such discrepancies and errors will always be there, however honest and truthful a witness may be. It cannot be disputed that material discrepancies are those which are not normal, and not expected of a normal person.

47. In ***State of Uttar Pradesh vs. M.K. Anthony*** [AIR 1983 SC 48], the Honourable Supreme Court held that minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole.

48. Ordinarily a witness cannot be expected to recall accurately the sequence of events which took place in rapid succession or in a short span of time. A former statement, though seemingly inconsistent with

the evidence, need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the latter statement is at variance with the former to some extent, it would not be helpful to contradict that witness.

49. It is well settled that if it is intended to contradict a witness by his previous statement in writing, the attention of the witness must be drawn to those parts of it, before the writing is proved. The Honourable Supreme Court in ***Tahsildar Sing and another v. State of UP*** [AIR 1959 SC 1012] has observed that sometimes a positive statement may have a negative aspect and a negative one a positive aspect. In the said decision, the Honourable Supreme Court held that the procedure prescribed for contradicting a witness by his previous statement is that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it, which are to be used for the purpose of contradicting him. Paragraphs 13 and 19 of the above decision in ***Tahsildar Sing's*** case is extracted below for convenient reference:

> "13. The learned Counsel's first argument is based upon the words "in the manner provided by S. 145 of the Indian Evidence . Act, 1872" found in S. 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. In support of this contention reliance is place upon the judgment of

this Court in Bhagwan Singh v. State of Punjab (1), 1952 SCR 812 : (AIR 1952 SC 214). Bose J. describes the procedure to be followed to contradict a witness under S. 145 of the Evidence Act thus at p. 819 (of SCR) : (at p. 217 of AIR) :

"Resort to section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then S. 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under S. 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under S. 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in two parts : the first part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross-examination; the first part with cross examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to S. 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by S. 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the

purpose of cross-examining a witness within the meaning of the first part of S. 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of S. 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of S. 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate : A says in the witness-box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness-box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generallly followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned Counsel may be illustrated thus: If the witness is asked "did you say before the police-officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies : one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police-officer. If a police-officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police-officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of S. 162 of the Code. The second fallacy is that by the illustration given by the learned Counsel for the appellants there is no self- contradiction of the primary statement made in the witness-box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police-officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned Counsel based

> upon S. 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of S.162 of the Code of Criminal Procedure.
>
> …
>
> 19. "Contradict" according to the Oxford Dictionary means to affirm to the contrary. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining Counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that. there is something in writing which can be set against another statement made in evidence. If the statement before the police-officer - in the sense we have indicated - and the statement in the evidence before the Court are so inconsistent or irreconcilable with each other that both of them cannot co-exist, it may be said that one contradicts the other."

50. The proviso to Section 162 of Cr.P.C only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Indian Evidence Act. In this case, no portion of the previous statement was specifically brought to the attention of PWs 1 to 4 while cross examining them and no portion of their previous statement is proved legally to contradict them. In that circumstance, I find no material contradiction or omission amounting to contradiction in the evidence of PWs 1 to 4. Further, the evidence of PWs 1 to 4 regarding the occurrence is also supported by clear medical evidence.

51. It is also well settled that the evidence of the injured witness has greater evidential value and unless compelling reasons exist, their

statements are not to be discarded lightly. In ***Balu Sudam Khalde and another v. State of Maharashtra*** [2023 Livelaw (SC) 279], the Honourable Supreme Court held that the following legal principles are required to be kept in mind, while appreciating the evidence of an injured witness:

> "(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
>
> (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
>
> (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
>
> (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
>
> (e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.
>
> (f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

52. On a careful re-appreciation of the entire evidence, I find no reason to disagree with the finding of the trial court that the evidence of

PWs 1 to 4 regarding the occurrence and identity of the accused persons is reliable and trustworthy. It is pertinent to note that the trial court has given the benefit of doubt to accused Nos. 3 to 9 on the ground that the medical evidence does not tally with the overt acts alleged against them. The evidence of PWs 6 and 7 doctors and the injuries noted in Exhibit P3 wound certificate tallies with the evidence of PWs 1 and 2 regarding the overt acts alleged against accused Nos. 1 and 2 and therefore, the contention of the appellants that accused Nos. 1 and 2 are also entitled for the benefit of doubt is not sustainable

53. Therefore, I find that the trial court rightly convicted accused Nos. 1 and 2 for the offences under Sections 450, 324 and 307 IPC and in view of the fact that the trial court has already taken a lenient view while imposing sentence, there is also no reason to interfere with the sentence imposed by the trial court.

In the result, this appeal is dismissed confirming the conviction entered and the sentence passed by the learned Additional Sessions Judge in S. C. No. 491 of 2001. Interlocutory applications, if any pending, shall stand closed.

sd/-
JOHNSON JOHN,
JUDGE.

Rv