

T A B U L A R F O R M.

1. Serial Number : Sessions Case No.176 of 2018
2. Name of the Police Station and Crime No. of the offence : Mattannur Police Station,
: Crime No.686/2016.

DESCRIPTION OF THE ACCUSED

3. Name and Rank		4.Father's/ Name	5. Occupation	6. Residence	7. Age
Nazar Akkarammal	A1	Ahammed	Gulf	Macheri House, Pattannur amsom, Thumbol, Ayippuzha.	49/16
Basheer Keethadath	A2	Abu	Supervisor	Keethadath House, Pattannur amsom, Thumbol, Ayippuzha.	41/16
Haneefa Valappinakath	A3	Ahammed Kutti	--	C.H. House, Pattannur amsom, Thumbol, Ayippuzha.	47/16

DATE OF

8.	Occurrence	:	22.04.2016
9.	Complaint	:	23.04.2016
10.	Apprehension of the accused	:	A1 & A2 – 24.04.2016 A3 – 25.04.2016
11.	Release on bail	:	A1 – 25.07.2016 A2 – 14.07.2016 A3 – 04.05.2016
12.	Commitment	:	28.12.2017 for A2 and A3 22.03.2018 for A1
13.	Commencement of trial	:	17.10.2023
13A.	Commencement of evidence	:	24.06.2025
14.	Close of trial	:	23.04.2026
15.	Sentence/Order	:	04.05.2026
16.	Service of copy of judgment or finding on Accused	:	04.05.2026
17.	Explanation for delay	:	B Diary extract attached.
18.	Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.P.C.	:	A1 - From 24.04.2016 to 25.07.2016 A2 - From 24.04.2016 to 14.07.2016 A3 - From 25.04.2016 to 04.05.2016

Additional Sessions Court-IV,
Thalassery, Dated:04.05.2026.

ADDITIONAL SESSIONS JUDGE- IV

IN THE COURT OF SESSIONS, THALASSERY
Present:- Sri. Vimal. J, Additional Sessions Judge-IV.
Monday, the 4th day of May, 2026/14th Vaishakaha, 1948.

SESSIONS CASE No.176/2018

[Sri.Induchoodan, Judicial First Class Magistrate, Mattannur.
in C.P. No.91 of 2017 (A2 & A3), 136 of 2017 (A1) – Cr. No.686/2016 of
Mattannur Police Station]

Complainant : State : (SHO, Mattannur Police Station)
Prosecution Conducted by Smt. Reshma. A,
Addl.Public Prosecutor, Thalassery.

Accused:

A1	:	Nazar Akkammal, S/o.Ahammed, aged 49/16, Macheri House, Pattannur amsom, Thumbol, Ayippuzha.
A2	:	Basheer Keethadath, S/o.Abu, aged 41/16, Keethadath House, Pattannur amsom, Thumbol, Ayippuzha.
A3	:	Haneefa Valappinakath, S/o.Ahammed Kutti, aged 47/16, C.H. House, Pattannur amsom, Thumbol, Ayippuzha.

Accused defended by : Adv. K.Viswan for A1, Adv.Muhammed Aneef.P for A2 and Adv.John Sebastian for A3.

Charge : U/ss.341, 326, 302, 307 r/w section 34 of IPC.

Plea of the accused : Not guilty.

Finding of the Judge : A1 And A2 found guilty .
A3 found not guilty.

Sentence/Order	:	<p>1. <i>A1 and A2 are found guilty for the offences under sections 341, 326, 302, and 307 read with Section 34 of the Indian Penal Code and convicted under section 235(2) of Cr.P.C.</i></p> <p>2. <i>A3 is found not guilty of the offences charged, and acquitted under section 235 (1) of Cr.P.C. Bail bond of A3 stands cancelled.</i></p> <p>3. <i>A1 is found guilty for the offence under section 302 IPC read with section 34 IPC, and sentenced to undergo imprisonment for life; and to pay a fine of Rs.2,00,000/- (Rupees two lakh only). In default of</i></p>
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payment of fine he shall undergo rigorous imprisonment for 6 months.

4. A2 is found guilty for the offence under section 302 IPC read with section 34 IPC, and sentenced to undergo imprisonment for life; and to pay a fine of Rs.1,00,000/- (Rupees one lakh only). In default of payment of fine he shall undergo rigorous imprisonment for 6 months.

5. A1 and A2 are sentenced to undergo rigorous imprisonment for 10 years each for the offence punishable under section 307 read with section 34 of IPC and to pay a fine of Rs.50,000/- (Rupees fifty thousand only) each. In default of payment of fine, they shall undergo rigorous imprisonment for four months each.

6. A1 and A2 are sentenced to undergo rigorous imprisonment for 10 years each for the offence punishable under section 326 read with section 34 of IPC and to pay a fine of Rs.25,000/- (Rupees twenty five thousand only) each. In default of payment of fine, they shall undergo rigorous imprisonment for four months each.

7. A1 and A2 are also sentenced to undergo simple imprisonment for one month each for the offence punishable under section 341 read with section 34 of IPC.

8. A1 was in judicial custody from 24.04.2016 to 25.07.2016. A2 was in judicial custody from 24.04.2016 to 14.07.2016. Set off is allowed for the aforesaid period, if the appropriate Government orders remission or commutation of the sentence.

9. Substantive sentences shall run concurrently.

10. The fine amount if realised, Rs.2,00,000/- (Rupees two lakhs only) lakhs shall be paid to dependants of deceased Saheer and Rs.1,00,000/- (Rupees one lakh only) shall be paid to PW6 Shafeer as compensation under section 357(1)(b) of Cr.P.C.

11. DLSA shall provide compensation to the dependants of deceased Saheer from the Victim Compensation scheme U/s.357A of Cr.P.C. Sent a copy of this judgment to DLSA.

12. MO1 to MO18 are ordered to be destroyed, after the disposal of the appeal.

J U D G M E N T

The Accused Nos.1 and 2 are prosecuted for the offences under Sections 341, 326, 302, 307 r/w 34 IPC. Accused No.3 faces indictment for the offence under section 201 of IPC.

2. The prosecution case is that A1 and A2 on 22.04.2016, at about 08.45 p.m., at Ayipuzha-Thumbol, in furtherance of their common intention wrongfully restrained C.H. Saheer and stabbed him with a knife and caused his death. It also alleged that A1 voluntarily caused grievous hurt to PW6 Shafeer, when he tried to restrain the attack on Saheer. Accused No.3 is alleged to have harboured and concealed Accused Nos.1 and 2 with the intention of screening them from legal punishment.

3. Immediately after the incident, both the deceased and Shafeer (PW6) were initially taken to Unity Hospital at Irikkur. Thereupon, they were shifted to AKG hospital at Kannur, since the injuries sustained were life-threatening in nature. Saheer C.H was declared dead on his arrival at AKG Hospital. PW6 Shafeer was admitted in AKG hospital and underwent treatment till 30.04.2016. Sri.Vijayan (PW21), Additional Sub Inspector of Police, Mattanur Police Station, recorded the first information statement of Shafeer on 23.04.2016 at about 03.00 a.m. from AKG Hospital, Kannur. As per Ext.P7 first information statement, PW21 registered Crime No. 686/2016 of Mattanur Police Station for the offences under Sections 341, 302, 307 read with 34 IPC. After the registration of the FIR, Sri.Shaju Joseph (PW22), Circle Inspector of Police, Mattanur Police Station, commenced the investigation. He conducted inquest proceedings on the dead body of deceased

Saheer and prepared Ext.P30 inquest report. He recovered jeans pant (MO11), black coloured pant (MO12) and blood stained white underwear (MO13) from the body of the deceased. He proceeded to the scene of occurrence and prepared Ext.P2 scene mahazar. On 23.04.2016 MO2 to MO8 were taken into custody from the scene of occurrence. PW22, the Investigating Officer arrested A1 and A2 on 24.04.2016. He arrested A3 on 25.04.2016, as per Ext.P27 arrest memo and Ext.P28 inspection memo. He recovered MO7 knife under section 27 of the Indian Evidence Act as per Ext.P31 disclosure statement of A1. He also recovered a shirt (MO9) and dhothi (MO10) worn by the accused during the time of the commission of the offence. The investigation was completed by Sri. A.V. John, Circle Inspector of Police, Mattanur Police Station.

4. The chargesheet against the accused persons were filed before the Court of the Judicial First Class Magistrate, Mattannur. The learned Magistrate, having taken the case on file as C.P. No. 91 of 2017, and being satisfied that the offences alleged were exclusively triable by the Court of Session, committed the case to the Hon'ble Sessions Court, Thalassery, under Section 209 of the Code of Criminal Procedure. The case was thereafter transferred to this Court for trial and disposal. There was sufficient prima facie materials to frame charges against the accused. Therefore, charges were framed for the above mentioned offences and read over and explained to the accused. The accused pleaded not guilty and claimed to be tried.

5. The prosecution examined PW1 to PW23, and Exts.P1 to P43 were marked. MO1 to MO16 material objects were also marked. Exts.C1 to C18 court

documents were also marked. After the closure of prosecution evidence, the accused were examined under Section 313(1)(b) Cr.P.C. The accused denied all the incriminating circumstances appearing in evidence against them. DW1 to DW8 were examined as defence witnesses. Ext.D1 to D6 were marked. The accused emphatically denied having committed any offence. The first accused filed a statement under section 313(5) of the Code of Criminal Procedure. He stated that the deceased and Shafeer were SDPI workers. There were disputes between CPI(M) workers and SDPI workers in connection with the election at Pallatt School. There was also an incident in which posters of CPIM leader E.P.Jayarajan was torn by SDPI activists. The SDPI workers had threatened him in connection with these incidents. On 22.04.2016 he went to Kannur along with Haneefa and Basheer to purchase gold ornaments and wedding dress in connection with the marriage of Haneefa's daughter. He returned back at about 06.30 pm, at Thumbol, Ayipuzha along with Basheer and Haneefa. He parked the vehicle near Haneefa's house. At that juncture, the deceased along with PW6 and other NDF/SDPI workers dragged him out of the car and attacked him using iron rods. During the attack the NDF workers had also removed the fuse of the nearby transformer and there was darkness all around. The assailants attacked him with iron rods and hands. They also destroyed and vandalised his car using sharp edged weapons. He somehow managed to escape from the scene of occurrence. He would further say that he sustained grievous injuries in the incident and was treated at different hospitals.

6. I have heard the learned Additional Public Prosecutor for the State. I have also heard Adv. K. Viswan, learned counsel for A1; Adv. Navin P. Esow, assisted

by Adv. Haneefa, for A2; and Adv. John Sebastian, learned counsel for A3, in extenso.

7. The following are the points that arise for consideration:-

- 1. Has the prosecution proved that the deceased Saheer died as a result of the injuries sustained on 22.04.2016 at about 06.30 p.m.?*
- 2. Has the prosecution proved that Shafeer C.H. (PW6) sustained injuries on account of the attack on 22.04.2016 at about 08.30 p.m.?*
- 3. Has the prosecution proved that the first accused and the second accused, in furtherance of their common intention, caused the death of Saheer C.H.?*
- 4. Has the prosecution proved that the first accused and the second accused, in furtherance of their common intention, caused grievous hurt to Shafeer (PW6)?*
- 5. Has the prosecution proved that the third accused harboured the first and second accused with the intention of screening them from legal punishment?*
- 6. What offence or offences, if any, have the accused committed?*
- 7. If the offences are proven, what should be the punishment?*

8. **Point No.1**:- The first question to be considered is whether the prosecution has proved that the death of Saheer was homicidal. It is also necessary to consider whether PW6 Shafeer sustained injury in the same occurrence on 22.04.2016. PW6 herein is the injured witness. He would depose that on

22.04.2016 at about 08.30 p.m., the first accused stabbed Saheer on his chest with a knife. The second accused immobilized Saheer by holding his hands which enabled the first accused to carry out the attack. When he intervened to restrain the attack, the first accused brandished the knife towards him. As a result, he sustained injuries on his left thigh. Anfeer and Aslam (PW7) raised a hue and cry. Naufal came to the spot from his shop. Thereupon, the accused fled from the scene of occurrence. Both the injured were immediately shifted to Unity Hospital at Irikkur. Thereupon, they were shifted to AKG Hospital, Kannur. Saheer was pronounced dead on arrival. PW6 was admitted therein at AKG Hospital at Kannur. He underwent treatment from 22.04.2016 to 30.04.2016. Exhibit P8 is the treatment certificate relating to Shafeer, issued by Dr.Ram Mohan K. (PW8), the Chief Medical Officer of AKG Hospital. The evidence of PW8 and Ext.P8 wound certificate prove that PW6 Shafeer was admitted on 22.04.2016 at about 21.51 hours. He noted an incised wound over the anterior aspect of the left thigh, measuring 15 cm x 6 cm x 5 cm, with muscle cut, on the body of Shafeer. The allegation, as noted in Exhibit P8, was that the injured was assaulted by a known person using a knife near Irikkur. PW8 doctor would further depose that the injured Shafeer was treated as an inpatient and was discharged on 30.04.2016. PW8 confirmed that the injury sustained by PW6 was grievous in nature and it could be caused by MO7 knife.

9. Exhibit P9 is the post-mortem certificate issued by Dr. Gopalakrishna Pillai (PW9), Professor of Forensic Medicine, Academy of Medical Sciences, Pariyaram. PW9 would depose that, as per the requisition received from the

Inspector of Police, Mattanur, he conducted the post-mortem examination of Saheer C.H, aged 25 years, between 11.45 a.m. and 12.45 p.m. on 23.04.2016. As per Exhibit P9, the following injuries were noted on the body of the deceased:-

- i. Incised penetrating wound 4.5x 2cm vertically placed with slight obliquity on the front of chest, the lower, outer, sharply cut end being 1.5cm below the left nipple, at the 7'oclock position(with a small tailing 0.5cm long); the other end was blunt. There was marginal contusion along the edges of the wound. The wound entered the chest cavity through the 5th left intercostals space by cutting the left half of the sternum, pierced the pericardium and terminated by entering in to the right lower chamber of the heart obliquely(3x0.3cm), 4.5cm above the apex of the heart. Pericardial sac contained 200 ml of blood with clots. Left chest cavity contained 1500 ml of blood with clots. Left lung was partially collapsed. The wound was directed backwards, upwards and slightly inwards. The chest wall thickness including the sternum was 3cm.
- ii. Incised stab wound 1.5x 0.5 cm vertically placed with slight obliquity on the back of chest in the midline, 16cm below the root of neck. The wound was wedge shaped, the blunt part being at the upper end; the wound, directed backwards and downwards for a depth of 5 cm terminated by dislodging a small piece of bone from the spine of the underlying vertebra.
- iii. Multiple small abrasions over an area 2x1.5cm close to the outer end of right eyebrow,
- iv. Abrasion 1x0.8cm, 1.5cm outer to the right eye.

10. PW9 opined that death was caused due to the stab injury to the chest involving the heart. PW9 would further depose that the injury sustained by Saheer was sufficient in the ordinary course to cause death. He would also depose that injury No.1 and injury No.2 can be caused by MO7 knife. The evidence of PW9, Dr. Gopalakrishna Pillai, would demonstrate that the antemortem injuries, found on the dead body of Saheer, was a result of the stab injury to the chest involving the

heart. Therefore, on consideration of the evidence of PW9 and Exhibit P9 post-mortem certificate, I have no hesitation in holding that the injury sustained by Saheer was homicidal in nature. There is no reason to disbelieve or doubt the above evidence of the witnesses. When the medical evidence of Dr. Gopalakrishna Pillai (PW9) and Dr. Ramohan (PW8), are read in conjunction with the evidence of PW6 Shafeer and PW15 Naufal, there is ample evidence on record to prove that the deceased died as a result of stab injury sustained on 22.04.2016 at about 08.30 p.m. These points are accordingly answered in favour of the prosecution.

11. **Point No.2 to 6**:- These points are inter connected and are considered together for the sake of convenience. PW6 Shafeer herein is the injured witness. PW6 was residing at Ayipuzha. On 22.04.2016 at about 08.30 p.m., he went near the shop of Noufal and was talking with his friends Anfeer (CW3), Aslam (PW7), and Shabeer (CW4). After some time, the first accused, Nasar, along with Basheer and Haneefa, came to the scene of occurrence in a Swift car bearing registration number KL-58-L-8826. The car was parked in the road near the house of Haneefa. Haneefa, went to his house with two pillows. The first accused, Nasar, in a threatening voice, directed Saheer to come near him (നീ ഇങ്ങോട്ട് വാടാ). The first accused tried to push Saheer. During the scuffle, Nasar fell down. At that juncture, the second accused caught hold of the hands of Saheer and immobilized him. The first accused took a knife, from his waist, and stabbed Saheer in his chest. The first accused again stabbed Saheer on his back. When PW6 tried to prevent the attack, the first accused threatened to kill him and brandished the knife towards him, which

caused injuries on his left thigh. Thereupon, Saheer fell down, and on account of the injuries sustained, PW6 sat down. Anfeer and Aslam screamed for help. Noufal came running to the spot from his shop, whereafter, the first and the second accused fled from the scene of occurrence towards Haneefa's house.

12. PW6 testified that he was initially taken to Unity Hospital, Irikkur in the car of one Shabeer. It was informed that the injuries were serious in nature and therefore they were directed to be shifted to a hospital at Kannur. Thereupon, both PW6 and deceased were taken to AKG Hospital at Kannur in a Tata Sumo car of one Sajeer. PW6 would depose that he was admitted in the AKG hospital, since the injury sustained by him on his thigh was deep in nature. He would further depose that the doctor who examined Saheer informed them that Saheer had died. PW6 has also explained the motive for the attack. He would state that there were disputes between Saheer and the first accused regarding the second marriage of one Ashraf. Ashraf, who was the husband of Saibunneesa, (cousin of deceased) contracted a second marriage. The first accused assisted Ashraf in conducting his second marriage. Saheer has confronted the first accused in connection with this incident. Therefore, there existed animosity between the first accused and deceased. PW6 stated that his statement was recorded by the police from AKG Hospital, Kannur on 23.04.2016 at about 01:00 a.m. He identified Ext.P7 First Information Statement recorded from AKG Hospital, Kannur. He identified A1, A2, and A3. He also identified MO7 knife used by the first accused.

13. PW7, Aslam was examined as an eyewitness to the occurrence. He deposed that on 22 April 2016, at about 8.30 p.m., he, along with PW6 Shafeer, the deceased Saheer, and others, were sitting in front of Naufal's shop. At about 8.45 p.m., a Swift car bearing registration No. KL-58-L-8826 arrived from the Panallad side and stopped in front of Haneefa's house. Haneefa alighted from the vehicle carrying two pillows and went inside his house. A1 called Saheer towards him. Saheer and PW6 went near him. A1 questioned Saheer regarding his objection to Ashraf's second marriage. A1 caught hold of Saheer and pushed him. When PW6 intervened A1 attempted to push him. PW6 moved aside, causing A1 to fall down. PW7 further stated that at that time A2 Basheer was holding Saheer. Nazar then took out a folding knife from his waist, opened it, and stabbed Saheer on the chest. When Saheer turned, Nazar again stabbed him on the back. When PW6 attempted to restrain the attack, A1 threatened him and swung the knife towards him, causing injury to PW6 on his left thigh. Saheer collapsed at the scene. PW6 who sustained injuries on his thigh sat down. PW7 and others screamed for help, upon which the accused fled from the scene of occurrence. The injured persons were immediately conveyed to hospital. Saheer was declared dead at AKG Hospital, Kannur. PW6 was admitted in the same hospital. PW7 also identified MO7 as the folding knife used by A1 during the attack. PW7 identified A1 Nazar and A2 Basheer in court. PW7 further deposed that the motive arose from a dispute relating to Ashraf's second marriage which was arranged by A1. This was questioned by the deceased. He also stated that the occurrence took place under sufficient lighting from the nearby premises, ensuring clear visibility at the place of occurrence. PW7 further

deposed that on the next day at about noon, the Investigating Officer prepared scene mahazar. PW7 pointed out the place of occurrence to the investigating officer. He stated that the Assistant Director of RFSL, a photographer, and a fingerprint expert were also present. He also identified MO1 series as the packets containing blood-stained scrapings collected from the road. PW7 deposed that the police had taken into custody a pair of brown and black shoes worn by A1. He identified as MO2 series. He also identified the broken side mirror of the vehicle (MO4), glass pieces of the vehicle (MO5), the rear bumper with number plate (MO8). PW7 also identified pair of red hawai slippers (MO3 series) which were collected from the scene of occurrence. He stated that though he did not sign the mahazar, it was signed by witnesses T.P. Musthafa and Valappinakkathu Nazar._

14. The above evidence of PW6 and PW7 is also corroborated by the evidence of PW15 Noufal. PW15 would depose that on 22.04.2016 at about 08.45 p.m., while he was in his shop, a car suddenly came and parked near the road in front of Haneefa's house. At that time, he heard hue and cry emanating from that place. When he came outside from the shop, he saw the first and second accused running towards Haneefa's house. He saw Saheer lying on the ground in a pool of blood. PW6 was sitting on the ground, holding his thigh. He ran towards the spot and saw PW7 Aslam and Anfeer. They informed him that the first accused had stabbed Saheer and that the second accused had immobilized Saheer by catching hold of his hands. In order to prevent the blood from oozing out of the chest, he removed his dhoti and tied it around the chest of Saheer. Thereafter, Saheer and

Shafeer were taken to the hospital in the car of Shabeer. PW7 Aslam and Anfeer accompanied them in the car. They informed him that they were proceeding to Irikkur Hospital. PW15 went to Irikkur Hospital in Rashid's car. Upon reaching there, he came to know the injured had been shifted to AKG Hospital, Kannur. While proceeding to Kannur, he received information that Saheer had died. He further deposed that he had signed Exhibit P13 inquest report as a witness. Apart from him, Hilal, Siddiq, Anfeer, and Hashim had also signed in the said document as witnesses. He identified MO12 full-sleeved shirt, MO13 jeans pant, MO14 rubber chappal, MO15 trouser, and MO16 blood-stained underwear, which were seized by the police during the inquest proceedings from the dead body of Saheer.

15. PW14 is the witness to Ext.P11 and P12 mahazar. He was residing at Ayyippuzha, during the relevant period. He was working as a driver of a mini lorry which was ordinarily engaged in transporting timber. He would depose that on 04.05.2016, at about 9.30 a.m., he had gone to the front of the Thumbol mosque for the purpose of loading timber. He noticed a police vehicle there. He stated that four police personnel and A1 Nazar were present in the vehicle, and that Nazar alighted from the vehicle. Thereupon, A1 and the police personnel proceeded on foot through a pathway on the side of the mosque. He followed them. PW14 deposed that they went to the house of A1. A1 produced a green coloured shirt and a double mundu with a maroon border before the police. The police seized these articles as per Ext.P11 mahazar. PW14 identified MO9 shirt and MO10 dhoti. He also stated that thereafter the police, along with A1, proceeded to a place near Kalappara

mosque. A1 took out a knife and produced it before the police from a cashew plantation, where it was concealed. He described the knife as a folding knife with a key chain attached. He identified MO7 knife. He further deposed that the police prepared a document in connection with the recovery of the knife. The knife was taken by the police after being wrapped. He and Noufal signed in the said document as witnesses. He identified Ext.P12 mahazar.

16. The learned counsel for the accused would argue that the entire prosecution case has been subsequently created on account of political rivalry. It is contended that it was, in fact, Saheer, Shafeer, and other SDPI workers who attacked the first accused on account of political enmity. The learned counsel for the accused would submit that, with regard to the attack on the first accused, Crime No. 693/2016 was registered at Mattanur Police Station against the deceased Saheer and PW6 Shafeer for the offences under Sections 341, 324, 427 read with 34 IPC. After the completion of the investigation in the said case, a charge sheet was filed against the deceased Saheer and PW6 Shafeer by arraigning them as the first and second accused. Exhibit D6 is the final report in Crime No. 693/2016 filed against Saheer and Shafeer for the offences under Sections 341, 324, 427 read with 34 IPC. The learned counsel for the first accused would submit that, since the counter case registered against the deceased Saheer and Shafeer has been charge-sheeted, this Court should disbelieve the case of the prosecution. It is further contended that if the allegations in Ext.D6 are false, the prosecution ought to have filed a closure report. It is contended that filing of chargesheet in the counter case validates the

defence of the first accused.

17. I am afraid I am unable to accept the aforesaid contentions raised by the accused. If the aforesaid contentions are accepted, it would be tantamount to saying that mere filing of final report in the counter case will result in obliterating the main case. If that be so, it would enable the actual offender, after causing the death of the victim, to institute a counter case against the victim and the injured witnesses and to contend that he is entitled to acquittal. Therefore, mere filing of a counter case by the accused will not absolve the liability. In the present case, after the commission of the murder of Saheer, both the first accused and the second accused were absconding. Exhibit P7 F.I. Statement of PW6 was recorded on 23.04.2016 at about 01.00 a.m. As per the above statement, Exhibit P19 F.I.R was registered on 23.04.2016 at about 03.00 a.m. The FIR in the counter case was lodged by the first accused on 24.04.2016 after the death of Saheer. Therefore, it is evident that the counter case alleging assault by Saheer and PW6 Shafeer were lodged only as an afterthought.

18. The learned counsel for the accused would contend that, if the prosecution has a case that the allegations contained in the counter case are false, they ought to have filed a negative final report stating that the allegations are false. I am unable to agree. It must be noted that the chargesheet in the counter case was filed primarily based upon the statement of the first accused. The genuineness and veracity of the allegations made by the first accused in his 161 statement and first information statement is a matter to be tested in trial by the court. Therefore merely

raising counter allegations of assault by the victim and registering a counter case will not suffice. The accused will have to demonstrate by preponderance of probability that allegations in the main case are improbable or inconsistent or that the version in the counter case is probable so as to create reasonable doubts in the mind of the court regarding the veracity of the main case.

19. The contention of the learned counsel for the accused that, when there is a case and rival versions arising out of the same transaction, the prosecution ought to have filed a negative final report cannot be accepted. There may be cases where A may sustain injuries at the hands of B and, in the course of the same transaction, B may also sustain injuries. Both A and B would have their own rival versions of occurrence, which will be conflicting with each other. In such cases, there is nothing wrong in filing separate charge sheets. In this context, reference can be placed upon the decision of the Full Bench of the Hon'ble High Court of Kerala in ***Augustine v. State of Kerala, 1982 KLT 351*** (F.B) wherein it was held as follows:-

“.....There can also be case and counter case where both the prosecuting agencies are private individuals. Thus A may sustain injuries at the hands of B and in the course of the same transaction B may sustain injuries at the hands of A. Both A and B would be having their own versions of the occurrence which would be conflicting with each other. In such cases if A and B prefer complaints against each other, those cases also come under the purview of 'case and counter.' It is now well recognised that cases and counter cases of the above type should be tried and disposed of by the same Court, trial in one being followed by the other and the judgment in both being pronounced in quick succession. The underlying principle is that since the cases relate

to the same occurrence and the witnesses in one may figure as accused in the other case and they may give conflicting versions, for grasping the real facts and for a proper appreciation of the evidence, it is always desirable that the two cases are tried by the same Court. The case law leading to the above practice has been discussed in detail by Ramaswami J., in Ramakrishnayya v. State, AIR 1954 Madras 442. It may not be necessary to go into more details regarding the procedure to be followed in cases where the prosecuting agencies are different in the case and the counter case as that may not be of much help in resolving the present controversy. In riot cases where there are factions the police on investigation may find that each of the rival parties overstepped the bounds of law and committed offences of independent nature. In such cases there is nothing wrong in filing separate charge sheets against each because one would not necessarily be false if the other were true. We are not now concerned with the procedure to be followed in such cases also. In the case and counter case of the type we are concerned the rival versions put forward may not stand together and if the main case is true, the counter case would necessarily be false. The question that is posed is whether in such cases it is incumbent on the part of the police to see that charge sheets are filed in both in spite of the fact that as a result of investigation they form the opinion that one of the versions is false.

20. Further, a final report filed by the Investigating Officer is only an opinion of the Investigating Officer formed after the investigation based on the materials collected by him. The same cannot be considered as evidence. In ***Abhinandan Jha v. Dinesh Misra***, AIR 1968 SC 117, the Hon'ble Supreme Court held that the final report is only an opinion of the police that there was sufficient evidence against the accused, and that the court may agree or disagree with the said opinion. The court

can disagree with the conclusions arrived by the Investigating Officer. In ***Dablu Kukur v. State of Jharkhand***, 2024 SCC Online 629: 2024(2) KHC 428, the Supreme Court again observed that a charge sheet is nothing but a final report under Section 173(2) of Cr.P.C. It is an opinion or intimation of the Investigating Officer to the concerned Court that, on the materials collected during the course of investigation, an offence appears to have been committed by a particular person or that no offence appears to have been committed. The genuineness or veracity of the statement of the first accused which led to the filing of the chargesheet is to be determined by the court after a full fledged trial. Therefore, there is nothing wrong in the investigating officer filing chargesheet as per the statement of the first accused. However, the mere fact that a charge sheet has been filed in the counter case initiated at the behest of the first accused, does not by itself constitute a ground to disbelieve the main case.

21. The learned counsel for the accused placed heavy reliance upon the decision of the Hon'ble Supreme Court in ***Lakshmi Singh and Others v. State of Bihar*** reported in AIR 1976 SC 2263, to contend that none of the prosecution witnesses have explained the injuries on the accused. It is argued that when the prosecution witnesses fail to explain the injuries on the body of the accused, it can be reasonably believed that the prosecution has suppressed the genesis of the incident. It is argued that none of the witnesses have explained the injuries sustained by the accused on his legs. The learned counsel for the accused would argue that in Exhibit D4(a) body note recorded by PW22 it is mentioned that in the right leg

below the thigh there was swelling and below the thigh there was blackening. Therefore, it is contended that the said injury sustained by A1 has not been explained by the prosecution.

22. The failure to explain injuries may, in a given case, cast doubt upon the prosecution case but it cannot, as a matter of invariable rule, result in rejection of the entire prosecution case irrespective of the weight of other evidence. Each case must be examined upon its own facts, and the credibility of the prosecution must be tested in the light of the whole record, not by the mechanical application of a single rule. In *Baba Nanda Sharma v. State of Assam* reported in (1977) 4 SCC 396, the Hon'ble Supreme Court held that if the evidence is clear, cogent, and creditworthy, then the non-explanation of the injury on the accused ipso facto cannot be a basis to discard the entire prosecution case. In *Vijayee Singh v. State of U.P.*, reported in (1990) 3 SCC 190, a three-judge bench of the Hon'ble Supreme Court held that it was not prepared to accept the broad proposition of law advanced by the defence that in every case where the prosecution fails to explain the injuries found on some of the accused, the prosecution case should automatically be rejected without any further inquiry. The prosecution is not obliged to explain each and every injury on the accused, even though the injuries might have been caused in the course of the occurrence. If the injuries are minor in nature, the prosecution need not explain such injuries. But at the same time, if the prosecution fails to explain a grievous injury on one of the accused persons which is established to have been caused in the course of the same occurrence, then certainly the court looks at the prosecution case with a

little suspicion on the ground that the prosecution might have suppressed the true version of the incident.

23. It will also be useful to refer to the decision in ***Thakaji Heeraji v. Thakur Kuber Singh, Chaman Singh and Others***, (2001) 6 SCC 145 where a three judges bench of the Hon'ble Supreme Court considered the previous judicial precedents on the point and expounded the law as under:-

17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In Rajender Singh v. State of Bihar (2000) 4 SCC 298, Ram Sunder Yadav v. State of Bihar (1998) 7 SCC 365 and Vijayee Singh v. State of U.P (1990) 3 SCC 190, all three-Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not

explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

18. The High Court was therefore not right in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons. The High Court ought to have made an effort at searching out the truth on the material available on record as also to find out how much of the prosecution case was proved beyond reasonable doubt and was worthy of being accepted as truthful.

24. In view of the aforesaid discussion, the prosecution is not under an absolute obligation to furnish an explanation for every minor and superficial injury which the accused may have sustained, even though such injury might reasonably be supposed to have been occasioned in the course of the same occurrence. Where, however, the injury sustained by the accused is grievous in nature during the course of the same occurrence, the prosecution is ordinarily bound to explain such injuries. There is no broad proposition of law that the prosecution should, in each and every case, explain the injuries on the accused. It depends upon the facts and circumstances of each case and the nature of the injury.

25. In the instant case the supposed injury sustained by the first accused is superficial and minor in nature. Exhibit D4 is the certified copy of the F.I.R in Crime No. 693 of 2016, which was registered by PW22 as per the F.I.Statement of the first accused. Exhibit D4(a) shows that below the left leg, the muscles of the left leg had darkened and there was also swelling below the kneecap. Dr.Chandran (DW1) is the Assistant Surgeon, Taluk Hospital, Kuthuparamba. He issued Exhibit

D5 certificate of medical examination regarding the treatment of the first accused on 24.04.2016. However, it must be observed that DW1, Dr. Chandran, who initially treated the first accused on 24.04.2016, would categorically depose that the first accused had not sustained any visible injury or swelling on his legs. He also noticed the presence of ecchymosis. He would also depose that ecchymosis can be caused due to leaking from minor blood vessels and it can result due to a fall or in case of diseases like hemophilia. Dr.Safar Iqbal (DW2), Chief Medical Officer, Community Medical Center, Mattannur examined the first accused on 25.04.2016. He issued Exhibit D6 and Exhibit D18 medical certificates. DW2 deposed that on 25.04.2016 at about 12.30 p.m., he had examined the first accused. He would depose that the first accused was having pain in the right knee. He complained of tenderness at the patella of the right knee. The first accused also complained of tenderness over the fibular region of the left knee. He would categorically depose that tenderness is elicited when pressure is applied to a particular area, and a pain sensation will be responded to by the patient. The pain sensation can be pretended or exaggerated by the patient.

26. DW3, Dr. Mitha, was working as Assistant Surgeon at Community Health Center, Kannur. On 05.05.2016, she examined the first accused. The first accused had complained of pain in the right knee. However, the examination of the first accused revealed no visible injuries. She issued Exhibit D9 certificate of medical examination. DW3, however, in cross-examination admitted that the tenderness and difficulty in walking as reflected in Exhibit D9 were noted as per the

statement given by the first accused. She also stated that lacerations and contused lacerations can be caused as a result of an attack using an iron rod. However, no such injuries were noted. DW3 categorically opined that she did not notice any external injuries.

27. DW6, during the relevant period, worked as Medical Officer at Central Prison, Kannur. She examined the first accused on 26.04.2016. She would say that there was a contusion present over the lateral aspect of the left leg and thigh of the first accused. The patient was treated with NSAIDs.

28. DW1, the Assistant Surgeon at Taluk Hospital, Kuthuparamba, who issued Exhibit D5 certificate, specifically stated that he had not noticed any visible injury or swelling over the body of the first accused. Further, the evidence of DW2, DW3, DW4, DW6, and DW7 would show that the accused had not sustained any visible injuries or lacerations or contusions over the body.

29. The definite case of the accused was that he was brutally attacked with iron rods by Shafeer, and other accused persons. If that be so, the first accused would have definitely sustained lacerated injuries in case of attack using iron rods. DW1 Dr.Chandran and DW3 Dr. Mitha P.K., have very categorically deposed that an attack using an iron rod will normally result in lacerations and contused lacerations. However, during the medical examination, no such injuries were noticed on the body of first accused. Therefore, on consideration of the aforesaid medical evidence, it is evident that in case of an attack using an iron rod, there is every probability that it would have resulted in lacerations or contusions on the accused. A1 specifically stated that he was dragged from the car and thereafter the

assailants attacked him repeatedly over his legs. If that be so, it is beyond comprehension how no visible injuries were sustained by A1. Therefore, the allegations of attack using iron rod is discredited and impeached by the medical evidence of DW1 and DW3.

30. Now I will deal with the evidence of DW6 Dr.Shiny. DW6, the doctor who treated A1 on 26.04.2016, deposed that A1 was having a contusion over the lateral aspect of the left leg and thigh. DW6 would further depose that the first accused was treated by the orthopedic surgeon. Ext.D7 reveals that the first accused was examined by the orthopedic doctor on 27.04.2016 and 06.08.2016. The learned counsel for the accused would rely upon the aforesaid oral evidence of DW6 Dr. Shiny, to contend that the first accused had sustained a contusion over the lateral aspect of the left leg and thigh, and therefore, the prosecution witnesses are bound to explain the said injuries. I am unable to agree. The accused is not correct in contending that the prosecution has not explained the said contusions sustained by the first accused. PW6 Shafeer gave evidence to the effect that the first accused tried to push him. When he moved away, A1 fell down. Therefore, it is quite possible that the minor contusion over the lateral aspect of the left leg and thigh was caused as a result of the first accused falling down while trying to push PW6. The same is in consonance with the evidence of DW6 Dr. Shiny, who confirmed that the contusion sustained can be a result of fall. The evidence of PW6 when read in conjunction with the medical evidence sufficiently explains the minor contusion, if any, sustained by the first accused. Therefore, the contentions in this regard cannot be countenanced.

31. DW6, Dr.Shiny and DW7, Dr.Prashanth.P.K the then Medical Officers at Central Prison, Kannur, categorically deposed that the first accused had complained of tenderness and pain over his left leg, and therefore he was referred for orthopedic consultation. They would also depose that the first accused was diagnosed with osteoarthritis. DW6 further stated that osteoarthritis is a joint disorder, where cartilage breaks down and results in joint pain and reduced movement. Osteoarthritis can develop within a period of 6 months to one year. DW6 would further depose that the symptoms of osteoarthritis will be exacerbated when a person sleeps on a cement floor in jail and such a person would have difficulty in walking. DW6 and DW7 would further depose that the medicines which are prescribed for reducing pain on account of blunt force trauma and osteoarthritis are more or less similar. DW6 would also state that the trauma which has been sustained by the first accused can also be possible due to osteoarthritis. The evidence of DW6 and DW7, in fact, proves that the first accused was previously suffering from osteoarthritis. The aforesaid evidence of DW6 and DW7 should be read in conjunction with Exhibit D7 medical certificate, which shows that the symptoms of osteoarthritis may have been pretended by the accused so as to develop a false defence.

32. Now coming to the question of tenderness, DW1 and DW2 categorically stated that pain and tenderness can be pretended. It must be noted that DW1 examined the patient on 24.04.2016 at 05.15 p.m. However, DW1 specifically stated that he had not noticed any swelling in either leg. According to the first accused, he was repeatedly and brutally attacked using iron rods. In case of such

brutal and repeated attacks, lacerations are necessary. However, no such laceration was caused in the instant case. Further, DW1 specifically stated that for swelling in the leg to subside, a minimum of one week's time is required. He would further go on to say that depending upon the nature and severity of the injury sustained, swelling may take more than one week to subside. However, he emphatically stated that blunt injury swelling will not be cured within one or two days. If that be so, it is very improbable that the swelling would have subsided within two days. However, strangely no swelling was present when the first accused was examined on 24.04.2016 and 25.04.2016. It is difficult to imagine that the swelling was entirely cured within 2 days. The same according to the medical evidence of DW1 is an impossibility. It is important to note that the first accused was first treated on 24.04.2016 by DW1 Dr.Chandran. It is totally improbable and impossible to believe that the swelling of the first accused healed on 24.04.2016 within one day without any medication.

33. Therefore, the medical evidence of DW1, DW2, DW3, DW6, and DW7 conclusively shows that the allegations of attack using iron rod is totally inconsistent with the medical evidence which completely rules out any such attack. The first accused fell down when he tried to attack PW6. Thereafter, he got up, and while getting up, he stabbed Saheer. It must be noted that the first accused was already suffering from osteoarthritis, a serious disorder in which the cartilages break down, resulting in joint pain and reduced movement. The first accused, who was suffering from this serious disease, was admittedly exerting considerable pressure and strain on his legs, especially while attacking Saheer at the stage of getting up.

This might explain the pain on the leg, as arthritis can worsen during heavy exercise or physical exertion. The accused, who was absconding for two days, had used the medical symptoms of osteoarthritis, as a defence. Hence, the contentions in this regard are liable to be rejected.

34. The learned counsel for the accused contends that the materials produced by the prosecution itself are sufficient to conclude that it was the deceased Saheer, Shafeer, and other SDPI activists who had initiated the attack. Reliance is placed upon the evidence of PW13, the Assistant Motor Vehicles Inspector and Ext.P10, and Ext.D3 documents. PW13 inspected the car bearing registration number KL-58L-8826. He noticed the following damages:-

- i. The bonnet was dented.
- ii. The door glasses and windshield were broken.
- iii. The front bumper was damaged.
- iv. The rear bumper was detached.
- v. Dashboard and interior fittings were damaged.
- vi. Right-hand side assemblies were broken.

35. PW13 further reported that no mechanical defects were noted. Exhibit D3, the damage assessment report, recorded a loss of Rs.1,00,000/- to the vehicle. Exhibit P5 photographs also depict extensive damages. However, the existence of such damage, by itself, does not establish that it was caused in the manner as stated by the accused. The learned counsel for the accused argues that the prosecution suppressed Exhibit D3. This contention cannot be readily accepted. The prosecution has produced Exhibit P10, report issued by PW13, which records the extensive

damages sustained by the vehicle. Exhibit P5 series photographs corroborate the same. Therefore, apart from Exhibit D3 damage assessment report, the prosecution has fairly produced Exhibit P5 series photographs and Ext.P13 report which would show that the vehicle sustained extensive damages. Hence, the allegation of suppression is without merit. It is also important to note that Exhibit D3 was produced along with the counter-case filed against the deceased Saheer and PW6 Shafeer instituted by the first accused. Thus, the accused is not correct in contending that the prosecution suppressed evidence regarding damage sustained by the vehicle. Therefore, there was no suppression of any material evidence affecting the fairness of the investigation.

36. Now, the question to be considered is whether Exhibit P10 certificate, Exhibit P5 series photographs, and Exhibit D3 damage assessment report can be considered as relevant factor to indicate that it was in fact the deceased Saheer, PW6, and others who initiated the attack on the first accused. The evidence of PW12 Raghavan, the Sub Inspector of Police, Mattannur Police Station assumes significance in this regard. PW12, stated that he received wireless information that certain persons had sustained stab injuries at Ayipuzha-Thumbol Road. He reached the scene of occurrence at about 9.00 p.m. and remained there till 11.00 p.m. Upon arrival at the spot he saw local people attacking the vehicle. He further deposed that by that time information had spread that Saheer had died and more people were assembling at the spot. He was satisfied that if the vehicle was not removed immediately from the spot, there was every probability that the people gathered there would have completely vandalized the car and destroyed other material

evidence. Therefore, he took the vehicle to the police station to prevent further damage and vandalism. The above evidence would clearly indicate that the damage caused to the vehicle was subsequent to the incident. Therefore, it is evident that the attack on the vehicle was carried out after the incident.

37. PW15 is an independent witness to the occurrence. He categorically stated that he had not witnessed any attack on the vehicle. PW15 categorically denied the suggestion that the vehicle was attacked by Saheer and SDPI activists. PW15 Noufal is a disinterested witness. He has no animosity against the accused persons. Therefore, the damage reflected in Ext.P10, Ext.P5 series and Ext.D3 cannot be said to have occurred as contended by defence. The prosecution is not bound to examine witnesses to prove that the vehicle was attacked by local people subsequent to the incident. The prosecution is not bound to answer all conceivable defences raised by the accused. I am of the view that the failure of the prosecution to examine any independent witness to prove that the car was attacked by local people subsequent to the incident is neither necessary nor fatal to the prosecution case. PW12 has clearly given evidence to the effect that the car was subsequently attacked and vandalised by the mob. The substratum of the prosecution case remains intact. The prosecution case regarding the attack on deceased Saheer and PW6 Shafeer is consistently proved as per the evidence of PW6 , PW7 and PW15. Further, the prosecution evidence clearly shows that soon after the incident, the first accused and second accused fled from the scene of occurrence, and immediately thereafter, the deceased Saheer and Shafeer (PW6) were shifted to the hospital. Therefore, to expect PW6 and PW15 to speak about the attack on the car which is a

subsequent event cannot be countenanced.

38. The learned counsel for the accused submits that there is a cut mark on the bumper as a result of attack by a sharp-edged weapon. The learned counsel contends that PW15 in his evidence admitted a cut mark on the bumper of the vehicle. I have carefully scrutinised the evidence of PW15. PW15 has nowhere stated that there is any cut mark on the bumper. I have also closely examined the MO8 bumper. There is absolutely no such cut marks which is visible to the naked eye. There is no evidence whatsoever to prove that the car was attacked with any sharp-edged weapons, as contended by the defence.

39. But let us suppose for the sake of arguments, there was some cut mark on the bumper. The inference that the defence intends to draw would still fail. If persons from the neighbourhood gathered at the spot subsequently, after learning that youngsters from the locality had been attacked, and vented their anger upon the vehicle of the accused, the Investigating Officer is not bound to trace the persons who attacked the car and bumper. The mere lapse on the part of the Investigating Officer in investigating about a collateral event relating to the attack on the car is definitely not a reason to disbelieve the entire case of the prosecution, especially since there is overwhelming evidence to support the case of the prosecution. It is not necessary that every peripheral and collateral episode surrounding an offence should be explained by the prosecution. What it demands is proof of the offence and that proof here is overwhelming. When there is reliable ocular evidence regarding the occurrence, failure to explain a subsequent incident would not affect the

substratum of the prosecution case. In the above circumstances, the damage caused to the vehicle, which is found to be a subsequent incident, cannot be relied upon to hold that the deceased party were the aggressors. The contention raised by the accused in this regard is devoid of any merits. The evidence of PW6 and PW15 would clearly establish the prosecution case regarding the attack on Saheer and the injuries sustained by PW6 Shafeer.

40. The learned counsel for A2 would argue that there is delay in registration of Ext.P19 FIR. The F.I.R in the present case was registered on 23.04.2016 at 03.00 a.m. The learned counsel for the accused would rely upon the evidence of PW12 to contend that PW12 had reached the scene of occurrence at about 09.00 p.m. on 22.04.2016. PW12 further, in his cross-examination, admitted that the DYSP and other police officials were present at the scene of occurrence during that time. Therefore, it is argued that the police ought to have registered an FIR based on the information received from the witnesses who were available at the scene of occurrence. The learned counsel for the accused would rely upon the decision of the Constitution Bench of the Supreme Court in *Lalita Kumari v. Govt. of U.P. and Others (2014) 2 SCC 1*, to contend that the police is bound to register an FIR based upon the earliest information. I have no quarrel with the proposition of law so stated by the learned counsel for the accused. When the police officer receives information regarding the commission of a cognizable offence, the police officer is bound to register an FIR. However, a simple delay of a few hours in registration of FIR itself will not itself vitiate the prosecution case, unless there are indications to show that

the FIR has been deliberately delayed to fabricate evidence or to add additional accused persons along with the real culprits. In the present case, there is undoubtedly no delay in registration of F.I.R. The F.I.R was registered as per Ext.P7 FI Statement of PW6 Shafeer, which was recorded on 23.04.2016 at about 01.00 a.m. Thus, the F.I statement was recorded promptly and transmitted to the police station and Ext.P19 F.I.R was registered on the same day at 03.00 a.m. Therefore, it is evident that there is no delay in registering the F.I.R in the instant case.

41. The learned counsel for the accused would place heavy reliance upon the decision of the Hon'ble High Court of Kerala in ***Mottammal Shaji @ Kakka Shaji and Others v. State of Kerala 2017 (2) KLT 242***. The learned counsel relied upon the observations in paragraphs 55, 56, and 57 to contend that when police personnel are present at the crime scene before the registration of the crime, such officer ought to have registered an F.I.R based upon the statements of witness available at the scene of occurrence. It is argued that in the instant case also, as per the evidence of PW12, the police officials had reached the scene of occurrence at about 09.00 p.m., and therefore the failure to record the F.I.R vitiates the prosecution case. In ***Mottamal Shaji*** (supra), the Hon'ble High Court disbelieved three eyewitnesses on a variety of reasons after analysing the facts and circumstances of the case, including the fact that the alleged eyewitnesses were highly interested witnesses and relatives of the deceased. In that case, the Hon'ble Court considered the presence of police at the scene even before registration of the F.I.R as a matter of concern while

appreciating the truthfulness of the prosecution case. However, the aforesaid decision does not lay down any broad proposition of law that when police personnel were present at the scene of occurrence a few hours before the registration of F.I.R, the entire prosecution case should invariably fail. No such proposition of law can be discerned from the above decision as canvassed by the defence. In that case, apart from the aforesaid circumstances, the Hon'ble High Court found that the F.I.R, registered on 05.12.2000, reached the court after a delay of 6 days, on 12.12.2000. Further, the Hon'ble High Court observed with concern that the relatives who had witnessed the incident had disclosed about the incident only after five days after the incident. For these reasons, the court disbelieved the prosecution case. The court in that case has not laid down any proposition of law of universal application that the presence of the police personnel at the scene of occurrence a few hours before the registration of the F.I.R should result in the dismissal of the prosecution case. There can be numerous situations when the police officers would have reached the scene of occurrence before the registration of F.I.R. For example, where the victim has been attacked and would be lying in a pool of blood, with no observer nearby daring to take the victim to the hospital. In most of these cases, it is the police officials who shift the victim to the hospital. There can also be situations where the police officer receives vague information regarding the incident through phone or wireless. The police may proceed to the scene of occurrence to prevent the escalation. Subsequently, they may record the statements of the injured witnesses from the hospital. If that be so, can it be said that the prosecution case should fail. I think not.

42. As in this case, the police officers may also receive wireless information or telephonic information regarding the attack, and they may proceed to the scene of occurrence to verify about the genuineness of the said information. Merely because the police officers proceeded to the scene of occurrence to ascertain the truthfulness of the information and consequently reached the scene of occurrence before the registration of the F.I.R, it cannot be held against the prosecution.

43. The learned counsel for the accused would rely upon the statement of PW12 to the effect that when he reached the scene of occurrence, certain persons present there informed him about the attack on Saheer and Shafeer. Therefore, it is argued as to why PW12 had not taken any steps to register the F.I.R. It is contended that the prosecution failed to declare PW12 as hostile and to challenge his testimony accordingly. I am unable to accept the said submission. The prosecution is required to treat a witness as hostile only where the witness resiles from his previous statement or gives evidence materially inconsistent therewith. Section 154 of the Indian Evidence Act, which reads as follows:-*“The court may, in its discretion, permit the person who calls a witness put any questions to him which might be put in cross-examination by the adverse party”*.

44. From a reading of the abovesaid provision, it is clear that the discretion is conferred upon the Court to permit cross-examination of his witness, and it does not contain any conditions or guidelines which may govern exercise of such discretion. But, it is always expected that the courts have to exercise such discretion judicially and properly in the interest of justice. The Hon’ble Supreme Court in ***R.K Dey v.***

State of Orissa, AIR 1977 S.C 170, has also held as follows:-

“In other words a witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the Court is satisfied that the witness bears hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell the truth. In order to ascertain the intention of the witness or his conduct, the Judge concerned may look into the statements made by the witness before the Investigating Officer or the previous authorities to find out as to whether or not there is any indication of the witness making a statement inconsistent on a most material point with the one which he gave before the previous authorities. The court must, however, distinguish between a statement made by the witness by way of an unfriendly act and one which lets out the truth without any hostile intention.”

45. The issue fell once again for consideration and the aforesaid principles were re-stated by the Hon'ble Supreme Court in ***Shiv Kumar alias Baleshwar Yadav v. State of Chhattisgarh, 2025 INSC 1231***. The Supreme Court held that that before a witness can be declared hostile and the party examining the witnesses is allowed to cross-examine, there must be some material to show that the witnesses are not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing. The circumstances under which the Court will exercise the discretion under Section 154 of the Evidence Act, 1872 (Section 157 of the Bharatiya Sakshya Adhinyam (BSA), 2023) and permit the party calling the witness to put any question which might be put in cross-examination by the adverse party will depend on the facts and circumstances of each case. Small or insignificant

omissions cannot be the basis for treating the witnesses hostile and the Court before exercising its discretion must scan and weigh the circumstances properly and ought not to exercise its discretion in a casual or routine manner.

46. Therefore, the prosecution is required to treat a witness as hostile only where the witness resiles from his previous statement or gives evidence which is materially inconsistent with his previous statement. A party will not normally be allowed to cross-examine his own witness and declare the same hostile unless the Court is satisfied that the statement of witness exhibits an element of hostility or that he has resiled from a material statement or where the court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to get out the truth. A witness is not hostile simply because his evidence turns out to be less helpful than the prosecution had hoped. Witnesses frequently disappoint. The question is whether, the witness has crossed the line from being merely unhelpful into being actively untruthful or adverse. Therefore there must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing, before a witness can be declared hostile and the party examining the witness is allowed to cross examine him. Merely because the witness speaks about the truth which may not suit the party on whose behalf he is deposing the same and favourable to the other side, the discretion to allow the party concerned to cross-examine its own witness cannot be exercised. The jurisdiction to permit cross-examination of one's own witness is, thus, a guarded one. It cannot be exercised at will.

47. It is necessary, at this stage, to apply the aforesaid principles to the evidence of PW12. The evidence of PW12 does not disclose any element of hostility. PW12 deposed about the presence of the other police personnel at the scene of occurrence. However, the said evidence of PW12 is not a material contradiction or significant omission from his previous statement. At best, it is a peripheral detail which does not have any effect the substratum of the prosecution case. I am of the view that the elaborations of this nature fall within the category of insignificant discrepancies, which cannot form the basis for treating a witness as hostile. The evidence of PW12 shows that he has supported the prosecution case in material particulars. PW12 has not exhibited any hostility against the prosecution. His testimony is not contradictory to his prior statements. There is nothing to show that he is an untruthful witness.

48. PW12 would depose that when he reached the scene of occurrence, the people gathered there had informed him about the attack on Saheer and Shafeer. However, the evidence on record clearly proves that the persons who had witnessed the incident were not present at the scene of occurrence. The deceased Saheer, Shafeer (PW6), Muhammed Aslam (PW7), Anfeer, and Shabeer and PW15, Noufal, had proceeded to the hospital immediately after the incident. Therefore, there was admittedly no witness available at the scene of occurrence who had witnessed the incident when PW12 and other police officials reached the scene of occurrence at about 09.00 p.m. Further, PW12 has emphatically deposed that when he reached the scene of occurrence, no eyewitnesses were available. If that be so, it would be

preposterous to expect the police officials to register an F.I.R based upon vague hearsay information. Hence, the contentions in this regard are discountenanced.

49. The decision relied upon by counsel for Accused No. 2 in ***Nallabothu Ramulu @ Seetharamaiah and Others v. State of Andhra Pradesh, (2014) 12 SCC 261***, is inapplicable to the facts of the present case. In that matter, the Hon'ble Supreme Court set aside the judgment of the High Court, which had reversed an order of acquittal passed by the trial court. The Supreme Court noted serious lapses on the part of the Investigating Officer, particularly the failure to record the F.I.R on the basis of statements given by the injured witnesses, and held that the trial court's findings were reasonable. It was further observed that the High Court ought not to have interfered with the acquittal in a routine or casual manner. The factual situation therein bears no relevance to the present case.

50. The learned counsel for the accused has also relied upon the decisions rendered by the Division Bench of the Hon'ble High Court of Kerala in ***Kunjumammed and Others v. State of Kerala (2014) 2 KLJ 860*** and ***Rajesh and Others v. State of Kerala (2014) 1 KLD 554***, to contend that delay in the registration of the F.I.R is fatal to the prosecution case. Learned counsel has further placed reliance on the decision of the Hon'ble Supreme Court in ***Ramesh Baburao Devaskar and Others v. State of Maharashtra (2007) 13 SCC 501***. In the said case, although the F.I.R was registered on 21.10.1993, it reached the Court after a delay of more than four days. Moreover, the prosecution witness had failed to disclose the incident to the police when he met the Investigating Officer. For these

reasons, the Court disbelieved the prosecution case.

51. In the present case, none of the eyewitnesses had occasion to meet the Investigating Officer, much less any other police official, so as to set the criminal law in motion by furnishing information leading to the registration of the F.I.R. In such circumstances, it cannot be contended that there was any deliberate suppression of the F.I.R or that the same was ante-timed. It is, therefore, evident that there was no delay whatsoever in the registration of the F.I.R in the present case. This is not a case where the eyewitnesses or injured witnesses had informed the police of the incident and the police, in turn, deliberately withheld or suppressed the registration of the F.I.R. Accordingly, the contentions advanced in this regard are devoid of merit.

52. The learned counsel for A2 contends that PW12, in his evidence, admitted that the DySP and other police personnel reached the scene of occurrence immediately after the incident, at about 9.00 p.m., and that this part of the evidence remained unchallenged. It is further argued that the prosecution ought to have declared PW12 hostile and cross-examined him in respect of the alleged adverse statement. In support of this contention, reliance is placed on the decision of the Hon'ble Supreme Court in *Kajal Sen and others v. State of Assam (2002) 2 SCC 551*. Having perused the said judgment, it does not lay down any principle that one favourable admission elicited by the defence would, by itself, will result in effacing the other evidence of the witness. The evidence of a witness is required to be read as a whole. PW12 has specifically stated that no eyewitnesses were available at the

spot, when he reached the scene of occurrence. Therefore, the evidence of PW12 indicates that from the time he reached the scene of occurrence until he left after securing the vehicle to prevent its vandalism, no eyewitnesses were available at the spot.

53. In the present case, PW12 admitted that the DYSP and police officials reached the spot at about 09.00 p.m. The question to be considered is whether the said statement of PW12 will have any bearing on the prosecution case. Merely because some police officers had reached the spot at 09.00 p.m., it cannot be contended that the prosecution has deliberately suppressed the F.I.R or ante-timed the F.I.R, unless there are clear indications to that effect.

54. The learned counsel for the accused has also placed reliance on the decisions of the Hon'ble Supreme Court in ***Kunju Muhammed and Others v. State of Kerala (2004) 9 SCC 193*** and ***Ram Sewak and Others v. State of M.P. (2004) 11 SCC 259***. In those cases, the Supreme Court examined the facts peculiar to each matter and ultimately acquitted the accused persons on a variety of reasons, including delay in the registration of the F.I.R and the doubtful nature of the testimony of the witnesses. In the said decisions, the Court disbelieved the version of the eyewitnesses for reasons specific to the facts of those cases. No general or broad proposition of law has been laid down by the Supreme Court therein. Admittedly, in the present case, there is the evidence of the injured witness, PW6, which stands amply corroborated by the testimony of PW15. In such circumstances, the decisions relied upon by learned counsel for the accused are inapplicable,

inasmuch as those cases involved the absence of reliable evidence from injured witnesses.

55. The learned counsel for the accused relies upon the decision rendered by the Hon'ble Supreme Court in *Sevi and Another v. State of Tamil Nadu and Another* (1981 SCC (Cri) 679). In that case, the Hon'ble Supreme Court considered a case wherein a Sub-Inspector of Police, upon receiving telephonic information regarding an incident, proceeded to the scene of occurrence carrying the F.I.R book, general diary, and hospital memo book. The Supreme Court observed that if the police officer was not satisfied with the information given by the witness that a cognizable offence had been committed, he could make an entry in the general diary to verify the information without registering an F.I.R. The Court further observed that if the Sub-Inspector was not satisfied with the information received by him that a cognizable offence had been committed and wanted to verify the information, it was his duty to make an entry in the general diary and thereafter proceed to the scene of occurrence and obtain a complaint from someone who was in a position to give a report regarding the commission of a cognizable offence. Thereafter, the procedure would be to send the report to the police station to be registered by the officer in charge of the police station.

56. In the present case, there is no evidence whatsoever to suggest that the Investigating Officer had taken the F.I.R book and general diary to the scene of occurrence. Further, in that case, apart from noting the above infirmities, the Court took serious objection to the conduct of the Investigating Officer in failing to

produce the F.I.R book, the counterfoil book, and the relevant entries made in the general diary. The Court also concluded that the evidence tendered by the witnesses was highly dramatised. Further, the Court concluded that the investigation itself was tainted. Therefore, this decision has no application to the facts of the present case. In the instant case, there is absolutely nothing to show that the witnesses have given dramatised evidence or provided a photographic account of the incident. I have already considered the evidence of PW6, the injured witness, and such evidence by no stretch of imagination can it be concluded as dramatised or exaggerated. Further, the of PW6 is also corroborated by the testimony of PW7 and PW15.

57. Further, reliance is placed on the judgment of the Hon'ble Supreme Court in *State of Andhra Pradesh v. Punati Ramulu and others*, 1993 Cri. L.J. 3684, wherein the Investigating Officer, despite receiving information disclosing a cognizable offence, failed to record the F.I.R and instead proceeded to the scene of occurrence. From the scene of occurrence a statement was recorded and treated as the F.I.R. The Hon'ble Supreme Court held that the earliest information received at the police station constituted the F.I.R under Section 154 Cr.P.C., and that the subsequent statement recorded at the scene was one under Section 162 Cr.P.C. On that basis, the investigation was found to be vitiated and unreliable. In that case, the Supreme Court found deliberate suppression of the earliest information and serious infirmities at the very inception of the investigation. It was held that the complaint, marked as Exhibit P1, could not be treated as the F.I.R, as it was hit by Section 162 Cr.P.C. The Supreme Court concluded that the Investigating Officer had

deliberately failed to record the first information report upon receipt of information disclosing a cognizable offence and had instead prepared the F.I.R at the scene after due deliberation, consultation, and discussion. In the present case, however, no such withholding, suppression, or fabrication of the F.I.R is either alleged or established. The facts of the instant case are different and do not advance the case of the defence. It cannot be said that the prosecution has created a false case against the accused. In the aforesaid judgment of the Hon'ble Supreme Court, the delay was held to be fatal in view of the fact that the eye - witnesses were created who were related to the deceased. Under this circumstance, the Hon'ble Supreme Court presumed that the delay was deliberately created by the prosecution to prop - up the witnesses. Admittedly, that is not the case herein. The witnesses who supported the case of the prosecution are not related to the deceased. None of the witnesses had any relationship with the deceased or with the accused.

58. In this context, reference can be placed upon the decision of the Hon'ble Supreme Court in ***Ram Jag v. State of UP (1974) 4 SCC 201***, wherein it was held as follows:-

16. According to the prosecution the occurrence took place at about 4 p.m and since the First Information Report was lodged at about 12.30 at night at the Tarabganj Police Station which is at a distance of about 4 miles from the scene of occurrence, the learned Sessions Judge held that there was undue delay in lodging the report and that the delay was not satisfactorily explained. It is true that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the first

information report was lodged after an undue delay so as to afford enough scope for manipulating evidence. Whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution.

59. Having considered the aforesaid legal position, it is evident that mere delay in registration of F.I.R itself will not vitiate the prosecution case. In the present case there is no delay in registration of F.I.R. The F.I.R was registered within 4 hours after the incident. PW6, the injured witness, and the deceased Saheer were initially shifted to the hospital at Irikkur. Thereafter, considering the life-threatening nature of the injuries sustained by the witnesses, they were shifted to AKG Hospital at Kannur for specialised treatment. Therefore, this is not a case where there is enormous delay or deliberate non-recording of statements of witnesses. In fact, the statement of PW6 was recorded within 4 hours while he was undergoing treatment at AKG Hospital. To shift the injured to Irikkur hospital and thereafter to shift them to hospital at Kannur itself will take around 1 or 2 hours. If this time is excluded, the supposed delay would be reduced to 2 hours. I do not find any delay in the registration of the F.I.R. The defence argument in this regard can only be considered a figment of imagination. A criminal trial is not like a fairy tale wherein one is free to give fight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the

crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjecture. [vide: ***State of Punjab v. Jagir Singh, Baljit Singh & Karam Singh***, [1974] 3 SCC 277] In the present case, The F.I.R. was registered promptly after the incident. The facts leading to the registration of F.I.R is entirely and rationally explained by the circumstances disclosed in evidence. The injured witness (PW6) and the deceased were first taken to the hospital at Irikkur. Thereafter they were shifted to A.K.G. Hospital, Kannur, in view of the serious nature of the injuries. The statement of PW6 was recorded within about 4.5 hours after the incident while he was undergoing treatment. In these circumstances, there is neither any delay nor any deliberate withholding of the complaint. The contention of the defence is without any substance and cannot be accepted. It must, accordingly, be rejected.

60. The learned counsel for the accused relied upon the decision in ***Allarakhia Habib Memon Etc. v. State of Gujarat (2024) 9 SCC 546***, to contend that, once the Investigating Officer has created false clues and when the investigation was tainted the accused is entitled to benefit of doubt. It is further contended that when the FIR

have been prepared after due deliberations, consultations, and discussions the same is a vitiating circumstance. I have no quarrel with the legal proposition so ably placed before the court by the learned counsel for the accused. However, in the present case, there is no evidence whatsoever to indicate that the F.I.R. was registered after due deliberation and consultation. In *Habib Memon (supra)*, the Hon'ble Supreme Court held that the F.I.R. was tainted for the reason that there was irreconcilable contradiction in the statement of the first informant. He stated that he gave a written complaint, whereas the police officer gave evidence to the effect that the F.I.R. was registered upon the oral statement of the first informant. There was also no endorsement regarding the date on which the F.I.R. was registered and when it reached the Magistrate. Further, the F.I. Statement also did not contain the time and date on which it was recorded. Upon consideration the aforesaid inconsistencies and contradictions between the F.I. Statement and the evidence of witnesses, the Supreme Court disbelieved the prosecution case. Further in that case, the Court also viewed with circumspection the fact that the first informant did not divulge the details to other police officers who were present at the spot. The Court also noted inherent contradictions and improbabilities in the evidence of the first informant and therefore acquitted the accused. The facts of that case turn on its own facts.

61. In the present case, the defence has no case that PW6, the injured witness, and PW15 failed to disclose the incident at the earliest instance. The statements of PW6, PW7, PW15 were recorded without any delay. The allegation of delay put forward by the accused is wholly unfounded and appears to be a mere figment of

imagination. There is not even the slightest delay in the registration of the F.I.R nor any suppression of the First Information Statement.

62. The learned counsel for the accused would argue that the prosecution has suppressed the real first information statement. It is contended that PW12 would definitely have recorded the statements of the witnesses from the scene of occurrence when he reached the spot at 09:00 p.m. The learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in ***Subramaniam v. State of Tamil Nadu (2009) 14 SCC 415*** to contend that where information is suppressed by the prosecution and the F.I.R is registered after recording statements of witnesses, the same is fatal to the prosecution case. Reliance is also placed on certain passages from ***Mohar Singh v. State of Rajasthan (1998) 9 SCC 654***, wherein the Hon'ble Supreme Court affirmed the acquittal of the accused on the ground that the first informant had admitted that the F.I.R was recorded by the police at a different place.

63. However, the aforesaid decisions are wholly inapplicable to the facts of the present case. In the instant case, the evidence of PW12 does not, in any manner, indicate that the statement of any witness was recorded either by PW12 or by any other police official at the scene of occurrence. There is absolutely no evidence on record to suggest that the statements of any witnesses were recorded from the scene of occurrence as canvassed by the defence. Further, it has emerged from the evidence of PW6 and PW15 that none of the eyewitnesses were present at the scene of occurrence when PW12, the Additional Sub Inspector reached the place of

occurrence. Admittedly, PW6, the injured witness, PW15 Noufal, Aslam, Anfeer, and Shabeer were all present at the hospital at the relevant time when PW12 reached the scene. PW12 has, in clear terms, stated that when he reached the scene of occurrence, no eyewitnesses were available at the spot. In such circumstances, there arises no question of PW12 or any other police official recording the statements of any such witnesses at the spot. In view of the aforesaid, the contention that the original information was suppressed by the police cannot be sustained. The allegation of suppression of the F.I.R is entirely artificial and devoid of any factual foundation, and is nothing more than a figment of imagination.

64. The learned counsel for the accused contends that PW12, in his evidence, has admitted that he reached the scene of occurrence upon receiving wireless information that certain persons had sustained stab injuries. It is argued that such information constituted sufficient notice of the commission of a cognisable offence; therefore, PW12 was under a legal obligation to register a First Information Report. Therefore, it is contended that the subsequent statement of PW6 Shafeer is hit by Section 162 of the Code of Criminal Procedure. In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in ***Ramsingh Bavaji Jadeja v. State of Gujarat, 1994 (2) JT (SC) 135 : 1994 CriLJ 3067***. In that case, P.S.I. Shimpi was informed on telephone by Head Constable Gopi Nath that a fight had taken place in Ambar Talkies and the dead body of one Sharad Kumar had been brought to the hospital. The P.S.I., after receiving this telephonic message, rushed to Irvin Hospital and first recorded the statement of PW 6 and sent the same to the City

Police Station for registration of the case. Thereafter he conducted the inquest of the dead body of the deceased and prepared the inquest report and proceeded with other investigation. The trial Court as well as the High Court treated this message received on telephone as the first information report. The Hon'ble Supreme Court, in **Ramsingh Bavaji Jadeja** (supra) after considering the law on the point, held as under: -

"But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as First Information Report. This can be illustrated. In a busy market place, a murder is committed. Any person in the market, including one of the shop owners, telephones to the nearest police station, informing the officer in charge, about the murder, without knowing the details of the murder, the accused or the victim. On basis of that information, the officer in charge, reaches the place where the offence is alleged to have been committed. Can it be said that before leaving the police station, he has recorded the First Information Report ? In some cases the information given may be that a person has been shot at or stabbed. It cannot be said that in such a situation, the moment the officer in charge leaves the police station, the investigation has commenced. In normal course, he has first to find out the person who can give the details of the offence, before such officer is expected to collect the evidence in respect of the said offence.

It is not in dispute that the investigating officer (PW 21), having received the telephonic message, immediately reached the hospital and he first recorded the statement of PW 6. He sent the said statement to the city police station, for registering a case. Thereafter he held the inquest on the deadbody of the deceased; sent the deadbody of the deceased for postmortem; prepared the injury report in respect of the injuries on the person of PW 6 and sent him for medical examination and treatment. Then he went to the scene of occurrence

and collected blood - stained crust of cement plaster and examined witnesses. Under the circumstances mentioned above the statement of PW 6, which was recorded by the investigating officer, after reaching the hospital should have been treated as the First Information Report..... According to us, the Sessions Judge as well as the High Court were in error in treating the cryptic message given on telephone by the Head Constable (PW 19) to the officer in charge, as First Information Report."

65. The position of law discernible from the above referred judgment is that if the telephonic message is cryptic in nature and the officer - in - charge proceeds towards the place of the occurrence to find - out the details and the nature of the offence then it cannot be said to be an FIR received by the investigating officer on telephone.

66. The next contention raised by the learned counsel for the accused is that, in Column No. 3(c) of Exhibit P19 FIR, the GD number is not specifically mentioned. It is contended that the aforesaid aspect should be read in conjunction with the fact that the Station House Officer in charge of Mattannur Police Station, has failed to produce the GD entry relating to Exhibit P19 FIR, despite a positive direction issued by this Court. The learned counsel for the accused relies upon the observations of the Hon'ble High Court of Kerala in ***Mottammal Shaji @ Kakka Shaji and Others v. State of Kerala [2017 (2) KLT 242]*** to contend that the failure of the prosecution to produce the GD book before the Court, despite a specific direction for its production is suspicious in nature. In that case, upon a detailed analysis of the evidence of the official witnesses, the Hon'ble High Court concluded that the prosecution had deliberately suppressed the General Diary. The Court

further found that the testimonies of the eye-witnesses (PWs 1 to 3 and PW4) were replete with contradictions, embellishments, and omissions. The Hon'ble High Court also held that the non-examination of CWs 2, 4, and 9 were fatal to the prosecution case. Along with the aforesaid circumstances, the Court also treated the non-production of the General Diary as another circumstance which renders the prosecution case doubtful. However, the Hon'ble High Court did not lay down any broad proposition of law that, in every case where the General Diary is not produced, it must invariably result in the rejection of the prosecution case, even where other reliable evidence is available to fasten the guilt upon the accused. In this context, reference can be placed on the decision of the Hon'ble Supreme Court in *State of Karnataka v. K. Yarappa Reddy*, A.I.R 2000 S.C.185. The Hon'ble Supreme Court was dealing with a case where the High Court acquitted the accused finding that in the Station House Diary produced before the court two sheets therefrom had been torn off and in that place another sheet has been pasted. The Supreme Court held that even if the investigation is found to be illegal, suspicious, or manufactured the rest of the evidence must be scrutinized independently. The Supreme Court clarified that lapses on the part of the investigating agency, including non-production or doubtful production of records, would not justify rejection of the prosecution case, if the ocular evidence on record is otherwise found to be credible and trustworthy. In the case of *State of H.P. v. Lekh Raj*, (2000) 1 SCC 247, the Hon'ble Supreme Court strongly disapproved the approach of discrediting the prosecution case on the basis of hyper technicalities and minor lapses of investigation agency and in *Lekh Raj* (Supra), it was held as follows:-

“10.The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind.

67. Therefore, when the ocular evidence of PW6, the injured witness, is inherently probable and intrinsically reliable, and the same is corroborated by the testimony of PW15, who is a totally disinterested witness and has no animus or axe to grind against the accused, it necessarily follows that the mere failure to produce General Diary is not fatal to the prosecution case. When there is overwhelming

evidence on record which proves the guilt of the accused, the prosecution case cannot be obliterated merely for the reason of failure to produce General Diary entry. In the present case, it is pertinent to note that the application for cause production of the General Diary was filed by the accused only in the year 2025, even though the incident occurred in 2016. The accused had not taken any steps earlier to secure production of the General Diary. The officer in charge of the police station, upon a thorough search, stated that the GD entry pertaining to the relevant period was missing, and that certain records had deteriorated. He further deposed that more than 20,000 documents are maintained in the police station. Hence, it is quite plausible that the relevant entry may have been lost or destroyed. Further, there is absolutely no challenge with respect to the absence of the GD entry details in the FIR. The FIR in the present case was registered by PW21, the Additional Sub Inspector of Police on the basis of the statement given by PW6. There is no suggestion in cross-examination regarding the aforesaid aspect. The defence ought to have put the necessary questions in cross-examination, which would have enabled PW21, the Additional Sub Inspector of Police to offer an explanation. Having regard to the aforesaid circumstances, the contention raised by the defence does not merit acceptance.

68. The learned counsel for the accused would contend that the non-sealing of the knife is fatal to the prosecution case. The knife was recovered on 04.05.2016 as per the disclosure statement of A1. The same was produced before the Court on 12.05.2016. The prosecution witnesses has not deposed that the knife was sealed.

Therefore, it is argued that there is every possibility that the prosecution has sprinkled blood over the knife. Before addressing the aforesaid arguments advanced by the learned counsel for the accused, it is appropriate to refer to the decision cited by the learned counsel for the accused. The decision of the Hon'ble Supreme Court in *Nilesh Baburao Gitte v. State of Maharashtra* in **2025 INSC 1191** relied by the learned counsel for the accused is not applicable to the facts of the present case. In that case, the Supreme Court disbelieved one of the star witnesses for the reason that his statement was recorded 15 days after the death of the deceased, and there is evidence on record in that case to show that he had visited the police station on the very next day of the death of the deceased. Even then, he did not divulge the circumstances or details to the police. Considering the above serious infirmity appearing in evidence and for other reasons, the Court disbelieved the evidence of PW3. In the present case, the statement of the injured witness was recorded soon after the incident from the hospital. The statements of the eyewitnesses were also recorded on the very next day without any delay. Therefore, the reliance placed upon paragraph 52 of the above judgment is fallacious and the same is not applicable to the facts of the present case. The decision in *Balaji v. State of Maharashtra (2019) 15 SCC 575* is also not applicable to the facts of this case. In that case, the entire prosecution case depended upon the dying declaration allegedly made by the deceased in a semi-conscious state. There was no injured witness nor any eyewitness in that case, and therefore the Hon'ble Supreme Court disbelieved the alleged dying declaration said to have been made to the witnesses. This case has absolutely no bearing on the facts of the instant case.

69. The decision of the Hon'ble Supreme Court in *Sahib Singh v. State of Punjab* AIR 1997 SC 2417 also has no application to the facts of this case. In that case, the Supreme Court was dealing with a case of recovery of a revolver from the bag of the accused. The prosecution relied upon the said recovery to prove the guilt of the accused. The Court disbelieved the case of the prosecution for the reason that the non-sealing of the weapon was a serious infirmity and therefore acquitted the accused. I now turn to the decision of the Hon'ble Supreme Court in *Salim Akhtar v. State of Uttar Pradesh* (2003) 5 SCC 499. In that case, the accused persons were prosecuted in connection with the hurling of explosive substances towards a police station, in which numerous persons were injured. While in police custody, the accused made disclosure statements under Section 27 of the Evidence Act. Based upon the aforesaid disclosure statements, pistols and RDX were recovered. In that case, the pistol which was allegedly recovered as per the statement of the accused was not sealed and did not contain any number or indication of its make to fix its identity in the recovery memo or in the F.I.R. For that reason, the Supreme Court held that in order to convict the accused for the offence under Section 5 of TADA, conscious possession has to be proved, and the failure to seal the weapon was a relevant circumstance. Consequently, the Court set aside the conviction. Therefore, *Salim Akhtar*(*supra*) and *Sahib Singh* (*supra*) were cases based upon the recovery of weapons and the Court disbelieved the factum of recovery in the aforesaid cases. In the aforesaid decisions, the recovery of the weapons and contraband materials constituted the main issue for determination. The Supreme Court, upon evaluation of the evidence, disbelieved the prosecution case insofar as such recovery was

concerned. However, the substratum of the present case does not depend upon validity of the recovery evidence. In the present case, the substratum of the prosecution case depends upon the credibility of the ocular testimony of the injured witness and the eyewitness. The prosecution case does not depend purely upon the recovery of the knife as per the confessional statement of A1. Therefore, the aforesaid decisions have no application to the facts of this case.

70. The decisions in *Vijay Kumar v. State of Rajasthan (2014) 3 SCC 412* and *Malai Chamy v. State of Tamil Nadu 2019 KHC 6072: (2019) 17 SCC 568* are also not applicable to the facts of the instant case. Both the cases dealt with situations where the prosecution case depended entirely upon circumstantial evidence. There was no direct witness to the alleged occurrence of the murder. In cases involving circumstantial evidence, the recovery of the weapon is considered a crucial circumstance in proving the guilt of the accused. The recovery of weapons or stolen articles are considered an important link in the chain of circumstances. In the aforesaid cases, the Hon'ble Supreme Court found that the recovery of incriminating materials was doubtful and, amongst various other reasons, held that the non-sealing of the weapon was one such circumstance. Importantly, the Court did not observe that the non-sealing of weapons should invariably result in the acquittal of the accused, even in a case of circumstantial evidence.

71. In the present case, there is ample evidence on record to prove the attack on the deceased Saheer by the first accused, who stabbed him with a knife. This has been clearly deposed by PW6 and supported by the consistent testimony of PW7

and PW15. It must also be observed that when the evidence of injured witnesses and eyewitnesses is available on record and is of sterling quality without any blemish, the Court can safely act upon such evidence. This assumes significance for the reason that the evidence of PW6, the injured witness, has been materially corroborated by the testimony of PW7 Aslam and PW15 Noufal. Therefore, I am satisfied that the prosecution has succeeded in proving the guilt of the accused beyond reasonable doubt. Therefore, the recovery of the knife does not assume decisive significance, inasmuch as there exists ample and cogent evidence on record independently establishing the involvement of the accused beyond reasonable doubt.

72. The learned counsel for A2 would contend that even if the entire prosecution evidence is believed, there is no common intention to commit murder of Saheer. It is argued that the incident happened spontaneously. The same was not pre-planned or premeditated. It is contended that there occurred a scuffle between A1 and Saheer. A2 might have intervened in that scuffle and caught hold of the hands of Saheer. Hence, it is contended that section 34 of IPC cannot be invoked to fasten guilt upon A2.

73. The learned counsel for the accused would argue that there must be a pre-arranged plan and meeting of minds between the accused persons. It is contended that no such pre-arranged plan is discernible from the evidence on record. There is nothing to show that the accused had, on any prior day, hatched any pre-arranged plan to commit the murder of Saheer. Therefore, it is argued that A2 cannot be

convicted with the aid of Section 34 IPC for merely catching hold of the hands of the deceased. I am unable to accept the aforesaid contentions advanced by the learned counsel. The pre-arranged plan as contemplated under Section 34 of the Act need not be elaborate, and it could arise suddenly, and upon the spur of the moment during the very course of the occurrence itself. A pre-arranged plan can also be formed hastily and spontaneously when circumstances so demand. In ***Pandurang v. State of Hyderabad***, AIR 1955 SC 216 a three-Judge Bench of the Supreme Court, speaking through Vivian Bose, J., observed as under:—

The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre arranged plan however hastily formed and rudely conceived. But pre arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e. g., the intention to rescue another and, if necessary, to kill those who oppose.

74. I may also refer to the judgment of the Hon'ble Supreme Court in the case of ***Suresh v. State of U.P.***, (2001) 3 SCC 673 where it was held that:

Section 34 of the Indian Penal Code recognises the principle of vicarious liability in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by another person with whom he shared the common intention. It is a rule of evidence and does not create a substantive offence. The section gives statutory recognition

to the commonsense principle that if more than two persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of the offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of the moment. The existence of a common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case.

75. Therefore, it is not essential that such prior meeting of minds and prior concert must have been at a distant anterior point of time. The common intention can develop at the spot in the spur of the moment. It is enough if it is shown that the co-accused, prior to the actual commission of the offence, entertained such common intention. The totality of circumstances will have to be taken into account. The course of conduct resorted to by the accused will have to be analysed to ascertain whether they are sufficient to indicate that prior to the infliction of the injury, all of them had shared a common intention. Even if it be that the common intention developed only at the spot, in the spur of the moment, the accused cannot avoid culpable liability under Section 34 I.P.C.

76. The evidence of PW6 and PW7, clearly proves that while A1 Nasar wielded the knife and inflicted the fatal stab wounds upon the deceased Saheer, A2 Basheer played an active role by physically restraining the victim. PW6 deposed

that the second accused caught hold of the hands of Saheer and immobilized him. PW7 also deposed that A2 Basheer was holding Saheer when A1 stabbed him. This physical restraint by A2 facilitated and enabled A1 to inflict the fatal stab wounds with precision. Therefore the act of A2 clearly demonstrates more than mere presence at the scene of occurrence. He actively participated in immobilising the victim while A1 stabbed him twice. A2 continued to restrain the victim even when A1 stabbed him a second time on the back, demonstrating persistence in the common objective. This clearly indicates a shared criminal intent. They had after the incident gone away together almost simultaneously, from the scene of the crime. They fled together from the scene of occurrence towards Haneefa's house. This coordinated action occurred within moments, indicating that common intention developed instantaneously. This is not a case of passive presence or mere failure to prevent a crime. The conduct of A2 goes beyond being a bystander. By physically restraining the victim and thereby preventing him from defending himself or escaping, A2 rendered direct and material assistance to A1 in accomplishing the murder. I have no hesitation to come to the conclusion that A1 and A2 were actuated by a common intention. The active participation is sufficient to bring A2 within the ambit of Section 34 IPC.

77. It is now necessary to address, distinctly and separately, the position of Accused No. 3. The charge against him is laid under Section 212 of the Indian Penal Code. Section 212 IPC postulates that a person must harbour or conceal an offender with the intention of screening him from legal punishment. The essential

ingredients, of section 212, are: (i) the commission of an offence by another person; (ii) harbouring or concealment of such offender; and (iii) a clear intention to screen the offender from legal consequences. The prosecution is bound to prove each of the above ingredients and none can be assumed.

78. There is no evidence whatsoever to attract liability against A3 under Section 212 of the Indian Penal Code. In the present case, the prosecution evidence does not disclose any overt act on the part of A3 which satisfies the aforesaid ingredients. The evidence of PW6 and PW7, which form the core of the prosecution case, do not attribute any role to A3 either in the commission of the principal offence or in any subsequent act of harbouring the offenders. The only circumstance appearing from the record is that the accused ran towards the house of A3 Haneefa after the occurrence. However, there is no evidence to establish that A3 provided shelter, assistance, or any form of protection to A1 and A2 with the requisite intention of screening them from punishment. I am of the view that merely because after the incident A1 and A2 fled towards A3's house, it cannot be inferred that A3 had harboured them. There is no evidence to prove that it was A3 who helped A1 and A2, to escape from the scene of occurrence. Further, the prosecution has not cited any neighbours as a witness to prove that A3 had in fact sheltered the offenders. Therefore, in the absence of any evidence whatsoever proving intentional harbouring, the essential ingredients of Section 212 IPC are not proved. Accordingly, the benefit of doubt must necessarily enure to A3.

79. Upon an anxious consideration of the entire evidence on record, I am of

the view that the prosecution has succeeded in establishing the occurrence in a cogent and consistent manner. The prosecution has succeeded in proving that the accused persons, acting in concert and with common intention, wrongfully restrained the deceased Saheer and inflicted upon him fatal injuries with a knife, thereby causing his death. The evidence of PW6, being an injured witness, carries substantial evidentiary weight and the same is consistent with the board probabilities of the case. PW6 has clearly deposed as to the overt acts attributed to A1 and A2. The evidence of PW6 is cogent, consistent and trustworthy. Even though PW6 was subjected to extensive cross examination, no material contradictions, or infirmities were elicited. The evidence of PW6 stands corroborated in material particulars by the evidence of PW7, an eyewitness to the occurrence. The sworn testimony of PW15 further lends assurance to the evidence of PW6 and PW7. The fact that PW6 sustained injuries on his left thigh is corroborated by Ext.P8 wound certificate. The ocular evidence is further fortified by the prompt registration of the First Information Statement. The medical evidence, substantiates the nature, situs, and severity of the injuries sustained by the deceased Saheer as well as PW6. The recovery of MO7 knife pursuant to the disclosure statement of the first accused, coupled with the seizure of blood-stained articles and other material objects from the scene, lends additional corroboration to the prosecution case.

80. The defence case put forth by the first accused relating to a counter-assault and false implication arising out of political rivalry is not substantiated.

Even though the prosecution witnesses were cross-examined at length nothing has been elicited to probabalise the defence case which is sufficient to displace the consistent and credible prosecution evidence. Further, said explanation is not supported by any convincing material on record. Mere suggestions of political rivalry, without anything more, is insufficient to discard otherwise reliable ocular testimony. In such circumstances, this Court is satisfied that the prosecution has proved beyond reasonable doubt that Accused Nos. 1 and 2, in furtherance of their common intention, wrongfully restrained the deceased and caused the death of Saheer, and further caused grievous hurt to PW6 Shafeer.

81. The next question to be considered is what are the offences that are attracted from proved facts. Did the first accused, when he set out upon his journey, or when he arrived at the scene of occurrence, intend to commit murder of Saheer? The intention to cause death cannot be deciphered when they started the journey or reached the scene of occurrence. The nature of the weapon also shows that an intention to cause death cannot be readily inferred from the nature of the weapon. The situs of the injury may be a relevant factor, but considering the spontaneity of the incident it cannot be inferred that the first accused entertained an intention to commit the murder of Saheer.

82. As per clause "thirdly" of Section 300, culpable homicide is murder. In the case of an act leading to death and done with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. The prosecution must

prove objectively that a bodily injury is inflicted and also the nature of the injury. The prosecution must also prove that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional or some other kind of injury was intended. It must be further shown objectively that the injury of the particular type inflicted is sufficient to cause death in the ordinary course and this has nothing to do with the intention of the offender.

83. The law on this subject has been stated by Vivian Bose J in *Virsa Singh v. State of Punjab* AIR 1958 SC 465 wherein four postulates required for establishment of the 'thirdly' clause have been explained thus:

- 1) First, it must establish, quite objectively, that a bodily injury is present;
- 2) Secondly, the nature of the injury must be proved; These are purely objective investigations.
- 3) Thirdly, it must be proved that there was an intention" to inflict that particular bodily injury, that it to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and,
- 4) Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

84. The fourth element, the learned Judge was at pains to point out, is a purely objective question. Learned Judge then observed as follows:

Once the intention to cause the bodily injury actually found to be

present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

85. The Supreme Court in *Virsa Singh* further observed that if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact; and whether the conclusion should be one way or the other is a matter of proof, where necessary by calling in aid all reasonable inferences of fact in the absence of direct testimony.

86. The first enquiry is did the first accused intend to inflict the particular injury he inflicted? If thirdly of Section 300 is to be applied, the assailant must intend to cause the particular injury that was inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter for inference to be drawn from the proved facts and circumstances of the case. The

Court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack. The injuries found on the person of the deceased were inflicted by the first accused with MO7 knife. It will be apposite straightaway to examine MO7 knife. MO7 is a sharp edged folding knife. The blade portion has a length of 10.5 cms. The broadest portion of the blade has a width of 2 cm. When closed, the knife has a total length of 23.5 cm. The injury was inflicted with such a weapon. The wound was an incised penetrating wound, measuring 4.5x2 centimetres, vertically placed with slight obliquity, situated on the anterior aspect of the chest, its lower outer sharply cut end lying 1.5 centimetres below the left nipple. The trajectory of the wound is of the gravest significance. The wound did not stop at the surface. The wound also did not stop at the chest wall. It first entered the chest cavity through the fifth left intercostal space, cutting through the left half of the sternum. It then pierced the pericardium by entering the right lower chamber of the heart obliquely. The cardiac wound measuring 3 x 0.3 centimetres, situated 4.5 centimetres above the apex of the heart. The sufficiency of that injury to cause death in the ordinary course of nature requires no elaborate elaboration. A penetrating wound of the right ventricle of the heart is, by any medical reckoning, an injury of an invariably fatal character. This would indicate that considerable amount of force was used in inflicting the stab. This was not a superficial cut. It was a forceful, directed, and lethal thrust by the knife. It is not as if the first accused used the knife in the dark without knowing which part of the body the knife would strike. The above circumstances would

clearly indicate that he was aiming the stab at a particular place and the knife entered the body at that place. It was a thrust aimed at the chest of the deceased at close range. As observed in *Virsa Singh* (supra) by the Hon'ble Supreme Court characteristic force that no one has a licence to go about inflicting injuries sufficient to cause death in the ordinary course of nature and then protest that he did not intend to commit murder. If a man inflicts such injuries, he must face the consequences, unless it can be shown that the wound was truly accidental. That he intended to do something entirely different. That the fatal injury was the result of mischance. There is no suggestion in cross-examination that the stab was aimed elsewhere and found the heart by mischance. It was a deliberate stab and not an accidental one. In these circumstances, I have no doubt that the accused intended to inflict this particular injury.

87. The injuries described in Exhibit P9 were inflicted by the first accused with MO7 knife. That death has resulted from the injuries is evident from Exhibit P9 and the oral evidence of PW9. That injury No.1 is sufficient in the ordinary course of nature to cause death is also clear from the oral evidence of PW9, the post mortem doctor. The injury was of such a nature that was sufficient to cause death, in the ordinary course of nature. That injury undoubtedly was intentionally inflicted. It cannot be described to be an accidental injury. The injury and the nature of injury is proved. That it was inflicted with MO7 knife is also established. There is not a semblance of data which can arouse any amount of doubt, in the mind of the court that the very injury was intended. In the circumstances, I am of the view that,

although the intention to cause death so as to attract Clause (1) of Section 300 IPC is not established, the case clearly falls within Clause (3) of Section 300 IPC. Accordingly, the culpable homicide committed by the first accused squarely amounts to murder within the meaning of Section 300 IPC.

88. Consequently, the Accused No.1 and Accused No.2 are liable to be convicted for the offences punishable under Sections 341, 326, 302, and 307 read with Section 34 of the Indian Penal Code. Hence, the points are answered in favour of the prosecution.

Dated this the 4th day of May, 2026.

Addl.Sessions Judge-IV, Thalassery

89. **Point No.8:-** The accused and the prosecution were heard on the question of sentence. The accused prayed for leniency in the matter of punishment. They submitted that they are the sole breadwinners of their respective families and sought maximum leniency.

90. Accused No.1 submitted that he is residing with his wife. He further submitted that all his children are married and residing separately. Therefore, he prayed for maximum leniency. Accused No.2 stated that he is the only earning member of his family comprising his wife and three children. He is the sole breadwinner of the family and therefore prayed for leniency in sentencing.

91. In *Bachan Singh v. State of Punjab* (AIR 1980 SC 898), the Hon'ble Supreme Court held that the death penalty should be imposed only in cases where life imprisonment is entirely inadequate having regard to the nature and circumstances of the crime. In *Machhi Singh v. State of Punjab* (AIR 1983 SC 957), the Hon'ble Supreme Court, following the principles laid down in *Bachan Singh*, laid down broad guidelines for the imposition of the death sentence. It was reiterated that the death penalty is to be awarded only in the most exceptional cases involving extreme culpability, and that life imprisonment is the rule while the death penalty is the exception.

92. The present case does not fall within the category of the 'rarest of rare' cases warranting the imposition of the death penalty, as no aggravating or unusual circumstance has been established to justify such an extreme penalty. Hence, life imprisonment will have to be imposed as the punishment.

In the result,

1. *A1 and A2 are found guilty for the offences under sections 341, 326, 302, and 307 read with Section 34 of the Indian Penal Code and convicted under section 235(2) of Cr.P.C.*
2. *A3 is found not guilty of the offences charged, and acquitted under section 235 (1) of Cr.P.C. Bail bond of A3 stands cancelled.*
3. *A1 is found guilty for the offence under section 302 IPC read with section 34 IPC, and sentenced to undergo imprisonment for life; and to pay a fine of Rs.2,00,000/- (Rupees two lakh only). In default of payment of fine he shall undergo rigorous imprisonment for 6 months.*
4. *A2 is found guilty for the offence under section 302 IPC read with section 34 IPC, and sentenced to undergo imprisonment for life; and to pay a fine of Rs.1,00,000/- (Rupees one lakh only). In default of payment of fine he shall undergo rigorous imprisonment for 6 months.*
5. *A1 and A2 are sentenced to undergo rigorous imprisonment for 10 years each for the offence punishable under section 307 read with section 34 of IPC and to pay a fine of Rs.50,000/- (Rupees fifty thousand only) each. In default of payment of fine, they shall undergo rigorous imprisonment for four months each.*

6. *A1 and A2 are sentenced to undergo rigorous imprisonment for 10 years each for the offence punishable under section 326 read with section 34 of IPC and to pay a fine of Rs.25,000/- (Rupees twenty five thousand only) each. In default of payment of fine, they shall undergo rigorous imprisonment for four months each.*
7. *A1 and A2 are also sentenced to undergo simple imprisonment for one month each for the offence punishable under section 341 read with section 34 of IPC.*
8. *A1 was in judicial custody from 24.04.2016 to 25.07.2016. A2 was in judicial custody from 24.04.2016 to 14.07.2016. Set off is allowed for the aforesaid period, if the appropriate Government orders remission or commutation of the sentence.*
9. *Substantive sentences shall run concurrently.*
10. *The fine amount if realised, Rs.2,00,000/- (Rupees two lakhs only) lakhs shall be paid to dependants of deceased Saheer and Rs.1,00,000/- (Rupees one lakh only) shall be paid to PW6 Shafeer as compensation under section 357(1)(b) of Cr.P.C.*
11. *DLSA shall provide compensation to the dependants of deceased Saheer from the Victim Compensation scheme U/s.357A of Cr.P.C. Sent a copy of this judgment to DLSA.*

12. MO1 to MO18 are ordered to be destroyed, after the disposal of the appeal.

(Dictated to the Confidential Assistant and typed by her, directly into the computer, corrected and pronounced by me in open court, on this the 4th day of May, 2026.)

ADDITIONAL SESSIONS JUDGE-IV

WITNESSES FOR THE PROSECUTION

Rank	Name		Whether eye witness, police witness, expert witness, Medical witness, other witness
PW1.	Sri.	Nasar.V	Other witness
PW2.	Sri.	Shameer.C.H	Other witness
PW3	Smt.	Shiji.N	Police witness
PW4	Sri.	Haris Pathirikodan	Other witness
PW5	Sri.	Radhakrishnan.A.K	Other witness
PW6	Sri.	Shafeer.C.H	Injured witness
PW7	Sri.	Muhammed Aslam.M	Eye witness
PW8	Dr.	Ram Mohan.K	Medical witness
PW9	Dr.	S.Gopalakrishna Pillai	Medical witness
PW10	Smt.	N.R.Bushra Beegum	Expert witness
PW11	Sri.	Chandran	Police witness
PW12	Sri.	Raghavan	Police witness
PW13	Sri.	Vykundan	Other Witness
PW14	Sri.	Shamsudheen	Other witness
PW15	Sri.	Noufal	Other witness
PW16	Sri.	Raheem.K.P	Other witness
PW17	Sri.	Valsaraj	Other witness
PW18	Smt.	Chandini	Other witness
PW19	Sri.	Sajeer Nadukkandi	Other witness
PW20	Sri.	Vijesh (Additional witness)	Police witness
PW21	Sri.	P.Vijayan	Police witness
PW22	Sri.	Shaju Joseph	Police witness
PW23	Sri.	A.V.Jhon	Police witness

EXHIBITS FOR THE PROSECUTION

Sl. No.	Date	Exhibit number	Description
1	23.04.2016	Exhibit P1/PW1	Seizure Mahazar
2	23.04.2016	Exhibit P2/PW1	Scene Mahazar
3	17.06.2016	Exhibit P3/PW2	Seizure Mahazar
4	24.04.2016	Exhibit P4/PW3	Seizure Mahazar
5	--	Exhibit P5 (Series)/PW3	Photographs
6	19.09.2016	Exhibit P6/PW5	Registration Particulars
7	23.04.2016	Exhibit P7/PW6	FIS
8	30.04.2016	Exhibit P8/PW8	Wound certificate
9	24.04.2016	Exhibit P9/PW9	Postmortem certificate
10	25.06.2016	Exhibit P10/PW13	Vehicle Inspection report
11	04.05.2016	Exhibit P11/PW14	Seizure Mahazar
12	04.05.2016	Exhibit P12/PW14	Seizure Mahazar
13	23.04.2016	Exhibit P13/PW15	Inquest report
14	04.05.2016	Exhibit P14/PW16	Seizure Mahazar
15	06.05.2017	Exhibit P15/PW17	Site Plan
16	--	Exhibit P16 (Series)/PW4	Photographs
17	--	Exhibit P17/PW4	CD
18	19.09.2016	Exhibit P18/PW4	Certificate u/s 65-B of Indian Evidence Act
19	23.04.2016	Exhibit P19/PW21	F.I.R.
20	26.04.2016	Exhibit P20/PW22	Property list
21	17.05.2016	Exhibit P21/PW22	Property list
22	24.04.2016	Exhibit P22/PW22	Arrest memo of A1
23	24.04.2016	Exhibit P23/PW22	Inspection memo of A1
24	24.04.2016	Exhibit P24/PW22	Arrest memo of A2
25	24.04.2016	Exhibit P25/PW22	Inspection memo of A2
26	25.04.2016	Exhibit P26/PW22	Full name and address adding report of A1 & A2
27	25.04.2016	Exhibit P27/PW22	Arrest memo of A3
28	25.04.2016	Exhibit P28/PW22	Inspection memo of A3
29	26.04.2016	Exhibit P29/PW22	Full name and address adding report of A3
30	26.04.2016	Exhibit P30/PW22	Section 212 IPC adding report
31	04.05.2016	Exhibit P31/PW22	True extract portion of the confession statement of A1
32	04.05.2016	Exhibit P32/PW22	True extract portion of the confession statement of A2
33	--	Exhibit P33/PW22	Property list

34	05.05.2016	Exhibit P34/PW22	Report of the delay in producing the material taken into custody.
35	–	Exhibit P35/PW22	Property list
36	–	Exhibit P36/PW22	Section 326 IPC adding report
37	–	Exhibit P37/PW22	Correction report regarding the time of incident in the F.I.R.
38	–	Exhibit P38/PW22	Property list
39	–	Exhibit P39/PW22	Forwarding note
40	23.04.2016	Exhibit P40/PW22	Investigation report by Dog Squad
41	–	Exhibit P41/PW23	Property list
42	01.12.2016	Exhibit P42/PW23	RFSL Report
43	28.12.2016	Exhibit P43/PW23	RFSL Report

WITNESSES FOR THE DEFENCE

Rank	Name		Whether eye witness, police witness, expert witness, Medical witness, other witness
DW1.	Dr.	Chandran	Medical witness
DW2.	Dr.	Zafar Iqbal.P.P	Medical witness
DW3	Dr.	Mitha.P.K	Medical witness
DW4	Sri.	Biju.M.V	Police witness
DW5	Dr.	Ashik Chandra.K.M	Medical witness
DW6	Dr.	Shiney	Medical witness
DW7	Dr.	Prashanth.P.K	Medical witness

EXHIBITS FOR THE DEFENCE

Sl. No.	Date	Exhibit number	Description
1	23.02.2017	Exhibit D1/PW7	Copy of Final report in Crime No.220/2017 of Mattannur Police Station.
2	11.05.2016	Exhibit D2/PW8	Contradiction in 161 Statement of PW8
3	25.06.2016	Exhibit D3/PW13	Certified copy of vehicle inspection report in Cr No.639/2016
4	24.04.2016	Exhibit D4/PW22	Certified copy of F.I.R. No.693/2016 of Mattannur Police Station
5	24.04.2016	Exhibit D4(a)/PW22	Copy of FIS in Crime No.693/2016 of Mattannore Police Station
6	24.04.2016	Exhibit D5/PW22	Certified copy of Wound certificate
7	--	Exhibit D6/PW22	Certified copy of Final report in Crime

			No.693/2016 of Mattannur Police Station.
8		Exhibit D7/DW6	Medical records of remand prisoners.

COURT EXHIBITS

Sl. No.	Date	Exhibit number	Description
1	22.04.2016	Exhibit C1/PW8	Doctor Intimation
2	22.04.2016	Exhibit C2/PW8	Doctor Intimation
3	26.07.2016	Exhibit C3/PW22	Affidavit filed by A1 in Cr No.686/2016 of Mattannur Police Station
4	04.08.2016	Exhibit C4/PW22	Order in C.M.P No.2568/2016 in Crime No.686/2016 of Mattannur Police Station
5	25.04.2016	Exhibit C5/PW22	Report regarding the remand of A1 & A2
6	25.04.2016	Exhibit C6/PW22	Medical Examination Certificate of A1
7	03.05.2016	Exhibit C7/PW22	Wound certificate of A1
8	04.05.2016	Exhibit C8/PW22	Medical Examination Certificate of A2
9	05.05.2016	Exhibit C9/PW22	Medical Examination Certificate of A1
10	26.04.2016	Exhibit C10/PW22	Report regarding the remand of A3
11	23.05.2016	Exhibit C11/PW22	Report regarding remand extension of A1
12	09.05.2016	Exhibit C12/PW22	Report regarding remand extension of A1 & A2
13	10.05.2016	Exhibit C13/PW22	Report regarding remand extension of A3
14	06.06.2016	Exhibit C14/PW22	Report regarding remand extension of A1 & A2
15	04.07.2016	Exhibit C15/PW22	Report regarding remand extension of A1 & A2
16	20.06.2016	Exhibit C16/PW22	Report regarding remand extension of A1 & A2
17	18.07.2016	Exhibit C17/PW22	Report regarding remand extension of A1
18	04.08.2016	Exhibit C18/DW2	Medical examination certificate of A1
19	22.12.2025	Exhibit C19/DW4	Affidavit filed by SHO, Mattannur Police Station.

MATERIAL OBJECTS

1	MO1/PW1	Brown packet (Blood)
2	MO1(a)/PW1	Brown packet (Blood)
3	MO2/PW1	Footwear (VKC 1 pair)
4	MO2(a)/PW1	Footwear (VKC 1 pair)
5	MO3/PW1	Hawai chappal (1pair)
6	MO3(a)/PW1	Hawai chappal (1pair)
7	MO4/PW1	Broken pieces of side mirror of the car
8	MO5/PW1	Glass pieces
9	MO6/PW1	T shirt of CW1

10	MO7/PW6	Knife
11	MO8/PW7	Car bumper with number plate (Back side)
12	MO9/PW14	Shirt of A1
13	MO10/PW14	Dothi of A1
14	MO11/PW15	Shirt of victim
15	MO12/PW15	White colour banyan of victim
16	MO13/PW15	Black colour jeans of victim
17	MO14/PW15	Footwear (left leg) of victim
18	MO15/PW15	Black colour pant of victim
19	MO16/PW15	White colour under wear of victim
20	MO17/PW16	Shirt of A2
21	MO18/PW16	White dhothi of A2

sd/-

ADDITIONAL SESSIONS JUDGE- IV

**IN THE COURT OF SESSION,
THALASSERY
SESSIONS CASE NO.176/2018
J U D G M E N T**

DATED :04.05.2026

To

1. The Registrar, High Court of Kerala
Ernakulam, Kochi – 682 031.
2. Judicial First Class Magistrate, Mattannur.
3. The District Collector, Kannur.
4. The Supdt. of Police, Kannur.
5. The Supdt., Central Prison, Kannur.
- 6 The Public Prosecutor, Thalassery.
- 7 Accused.
