

TABULAR FORM

1. Serial Number

| Sessions Case No. 401/2016

2. Name of Police Station and
Crime No. of the offence

| Pariyaram Medical College Police
| Station Crime No.326/2014

DESCRIPTION OF THE ACCUSED

3. Name		4. Father's Name	5. Occu- pation	6. Residence	7. Age
N V Krishnan	A1	Chanthu Nambiar	Agricult ure	Nayana Veetil (H), Pariyaram amsom, Mukkunnu, Chudala.	67/14
N V Bhaskaran	A2	Chanthu Nambiar	Agricult ure	Nayana Veetil (H), Pariyaram amsom, Mukkunnu, Chudala.	51/14
N V Chanthukutty	A3	Died			
Prakashan M V	A4	Nayana Veetil Krishnan	Abroad	Karod (H), Pariyaram amsom, Mukkunnu.	38/14
Radhakrishnan M V	A5	Nayana Veetil Krishnan	Abroad	Karod (H), Pariyaram amsom, Mukkunnu, Kuppam P O.	35/14

DATE OF

8.	Occurrence	]	13-05-2014
9.	Complaint	]	26-10-2015
10.	Apprehension of the accused	] ] ]	A1 & A2 - 22-05-2014 A4 & A5 - 25-07-2016 A3 – Died
11.	Release on bail	] ]	A1 and A2 - 02-07-2014 A4 & A5 - 10-08-2016 A3 – Died
12.	Commitment	] ] ]	A1 & A2 - 28-03-2016 A4 & A5 – 08-08-2016 A3 – Died
13	Commencement of trial	]	24-11-2021
13A	Commencement of evidence	]	09-09-2024
14.	Close of trial	]	16-03-2026
15.	Sentence/Order	]	30-03-2026
16.	Service of copy of judgment or finding on accused]]	---
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.]]]]]	----

Addl. Sessions Court -I, Thalassery,
Dated: 30-03-2026.

Sd/
ADDITIONAL SESSIONS JUDGE-I

IN THE COURT OF SESSIONS, THALASSERY DIVISION

Present: Sri. Philip Thomas, Addl. Sessions Judge-I, Thalassery
Monday, the 30th day of March, 2026/09th Chaithra, 1948

SESSIONS CASE No.401 OF 2016

(A1 & A2 committed by Sri. K Vidyadharan, Judicial First Class
Magistrate, Payyannur in C.P. No.24/2016
A4 & A5 committed by Smt.Alshari A, Judicial First Class Magistrate,
Payyannur in C.P. No.40/2016 in Pariyaram Medical College Police Station
Crime No.326/2014)

Complainant	State: Deputy Superintendent of Police, Taliparamba in Pariyaram Medical College Police Station Crime No.326/2014. (Prosecution conducted by Shri. C K Sreedharan, Spl. Public Prosecutor)
Accused	1. N V Krishnan, S/o Chanthu Nambiar, aged 67/14, Nayana Veettil (H), Pariyaram amsom, Mukkunnu.
	2. N V Bhaskaran, S/o Chanthu Nambiar, aged 51/14, Nayana Veettil (H), Pariyaram amsom, Mukkunnu.
	3. N V Chanthukutty, S/o Chanthu Nambiar, (Died)
	4. Prakashan M V, S/o Nayana Veettil Krishnan, aged 38/14, Karod (H), Pariyaram amsom, Mukkunnu.
	5. Radhakrishnan M V, S/o Nayana Veettil Krishnan, aged 35/14, Karod (H), Pariyaram amsom, Mukkunnu, Kuppam P O.
	(Accused Nos. 1 and 2 defended by Advs. B Raman Pillai (Senior Advocate), Nicholas Joseph and

coconut leaf, voluntarily caused grievous hurt to Prajul by beating on his head, and also voluntarily caused grievous hurt to CWs1 and 2 by beating with hands and sticks when they were attempted to prevent the attack against Prajul and attempted to murder them, and also destroyed the agricultural crops in the paramba causing damages to the tune of ₹11,703/- and Prajul, aged 23 years succumbed to the injuries on 21.05.2014 at 00.30 hours in KMC hospital, Mangalore and thereby committed his murder. Hence, the accused persons committed the above offences.

3. The final report was filed before the Judicial First Class Magistrate Court, Payyannur and the case was taken on file as CP 24/2016. Since accused Nos.4 and 5 were absconding, their case was split up and refiled as CP40/2016. After completing all the legal formalities, the case against A1 to A3 was committed to the Sessions Court, Thalassery. In the Sessions Court, the case was numbered SC 401/2016 and was made over to the Additional Sessions Court-III, Thalassery for trial. On 25.07.2016, A4 and A5 were arrested and produced before the Magistrate Court and their case was committed to the Hon'ble Sessions Court Thalassery and the case was numbered as SC 676/2016. Subsequently, SC 676/2016 was clubbed with SC 401/2016.

4. On issuing summons, the accused appeared. They were defended by a counsel of their own choice. Thereafter, A3 is reported to be dead. Heard. Charges were framed against A1, A2, A4 and A5 under sections 143, 147, 148, 447, 427, 326, 307, 506(ii) and 302 IPC r/w s.149 IPC. The charges were read over and explained to A1, A2, A4 and A5. They pleaded not guilty.

5. Thereafter as per Order No.A3-530/17088/2023 dated 26.08.2023 of the Hon'ble District Court, Thalassery, the case transferred to this Court for trial and disposal.

6. The Prosecution cited CWs 1 to 39 and Addl. witnesses 40 and 41, and out of them CWs 1, 2, 3, 12, 31, 30, 35, 36, 34, 9, 6, 8, 4, 19, 13, 32, 27, Addl. witness 40, 25, 37, 39, 38 and Addl. CW 41 were examined as PWs 1 to 23. Exts.P1 to P38 and MOs 1 to 8 were marked. The Special Public Prosecutor gave up the remaining witnesses.

7. After closing the prosecution evidence, A1, A2, A4 and A5 were questioned under section 313 Cr.PC. They denied all the incriminating evidence adduced against them by the Prosecution and they filed separate written statements. They filed more or less the same statement in all these cases. In all these statements, the accused admitted that they were innocent and it was Prajul and A1 to A3 who attacked the third accused and his mentally challenged son. The Investigating Officer, without conducting a proper investigation, referred the case filed by the 3rd accused and filed the final report in this case, because of the political influence PW1 had in the Home Department at that time.

8. Heard under Section 232 of the Code of Criminal Procedure. As there was evidence against A1, A2, A4 and A5, it was found that they were not entitled to be acquitted u/s.232 Cr.PC. Hence, they were called upon to enter on their defence evidence and to adduce evidence. On the side of defence, DW1 was examined and Exts.D1 to D19 were marked.

9. Heard.

10. The following points arise for determination: -

(i) Whether accused Nos.1, 2, 4 and 5 along with A3 formed an unlawful assembly with the common object of murdering PW1 and his family members as alleged by the Prosecution?

(ii) Whether members of the unlawful assembly committed rioting in prosecution of their common object as alleged by the Prosecution?

(iii) Whether the members of the unlawful assembly committed rioting armed with deadly weapons as alleged by the Prosecution?

(iv) Whether accused Nos.1, 2, 4 and 5 along with A3 in prosecution of their common object trespassed into the courtyard of PW1 as alleged by the Prosecution?

(v) Whether accused Nos.1, 2, 4 and 5 along with A3 in prosecution of their common object murdered Prajul as alleged by the Prosecution?

(vi) Whether accused Nos.1, 2, 4 and 5 along with A3 in prosecution of their common object voluntarily caused grievous hurt to PWs1 and 2 as alleged by the Prosecution?

(vii) Whether accused No.1 criminally intimidated PW1 as alleged by the Prosecution?

(viii) Whether accused Nos.1, 2, 4 and 5 along with A3 in prosecution of their common object attempted to murder PWs1 and 2 as alleged by the Prosecution?

(ix) Whether accused Nos.1, 2, 4 and 5 along with A3 in prosecution of their common object caused damages to the tune of ₹11,703/- to PW1 by destroying the agricultural crops as alleged by the Prosecution?

(x) What is the order or sentence to be passed?

11. **Point Nos. (i) to (ix)**:- For sake of convenience and to avoid repetition of discussion of evidence, these points are considered and determined together.

12. PW1 is the father of the deceased, Prajul. He deposed that he was residing with his wife and son, Prijith, at Mukkunnu Desom at the time of the incident while Prajul was staying in his tharawad house at Anchampeedika, where he had been residing since his college days. Prijith is working in Bangalore as a Software Engineer.

13. PW1 further deposed that the incident occurred on 13.05.2014 at about 7.00 p.m. in the yard of his house. On that day, he and his wife had gone to their tharawad house at Anchampeedika and returned by 6.30 pm. On reaching back home, his brother-in-law (PW3) approached him and informed him that the first accused was calling from the gate. Accordingly, he went to the gate, where the first accused questioned him whether he had “enjoyed when Balan died,” and further stated that he would compel him to reveal who the three other persons were. He replied that the culprits would be punished.

14. At that moment, the brother of Krishnan, A2, arrived there in a jeep and struck him two or three times on his face, causing him to fall down. He also kicked him and assaulted his neck and hand. Thereafter, both accused left the place. Hearing his cries, his wife and brother-in-law came to the spot and took him to the verandah of the house. They called his son, Prajul, and informed him of the incident and desired to be taken to the hospital.

15. By about 7:30 pm, his son Prajul reached there, and he explained to him what had happened. Seeing his father's condition, Prajul felt distressed and uttered something while standing in the courtyard. At that time, the accused persons—Krishnan (A1), Bhaskaran (A2), Chandukutty (A3), and the sons of Krishnan, namely Prakashan (A4) and Radhakrishnan (A5)—trespassed into the courtyard. Krishnan was armed with a wooden stick,

while Bhaskaran and Chandukutty carried an iron pipe and a chopper respectively. Prakashan and Radhakrishnan each carried a stem of the coconut leaves (മട്ടൽ കഷ്ണം). On entering the courtyard, the third accused, Chandukuthy (A3), shouted that all should be killed, and hacked his son, Prajul, on the head with a chopper. The second accused struck Prajul on the head with an iron pipe. The first accused beat PW1 and his wife with a wooden stick, while the fourth and fifth accused assaulted them with pieces of stem of coconut leaves (locally known as മട്ടൽ കഷ്ണങ്ങൾ).

16. Immediately, his brother-in-law, PW3, who was present at the place of occurrence, pressed a banyan at the site of the injury to control the bleeding. He identified the chopper as MO1, the iron pipe as MO2, the wooden stick as MO3, and the coconut leaves stem pieces as MO4 series. He also identified the dresses worn by Prajul as MO5 to MO7, and the banyan used by PW3 to control the bleeding as MO8. As the accused persons attacked them, they cried aloud, and on hearing their cries, another brother-in-law, (Vijayan CW7) came there. Seeing him, the assailants ran away from the place, leaving behind the iron pipe, the wooden stick, and the cudgel pieces in the courtyard. As summoned by his brother-in-law, Vijayan, his relative Lakshmanan from Empet (PW13) came there within ten minutes and took him and his son to the Pariyaram Medical College Hospital in an autorickshaw followed by his wife. He and his wife were admitted to that hospital, while Prajul was taken to Kasthurba Medical College, Mangalore as his injury was serious. Prajul died there on 21.05.2014, in the early morning while undergoing treatment.

17. On 13.05.2014 at 08.30 pm, the Police came to the hospital and recorded his statement. He identified Ext.P1 as the First Information Statement given by him to the police. According to him, there was a property dispute between the younger brother of the father of accused Nos. 1 and 2,

namely Krishnan Nambiar, and in order to help Krishnan Nambiar, the accused persons attacked them. He produced the photostat copy of the complaint filed by him on 03.02.2005 which was marked as Ext.P2 subject to the objection of the defence side on the ground that it was only a photo copy. He further deposed that after recording Exhibit P1 statement, the Police again recorded his statement on 14.05.2014 and on 22.05.2014. He and his wife were discharged on 19.05.2014 and 25.05.2014 respectively.

18. PW2 is the wife of PW1 and mother of the deceased. PW3 is the brother of PW2. PWs 2 and 3, more or less deposed in tune with the evidence of PW1.

19. PW2, in addition to the facts deposed by PW1, deposed that as A4 and A5 beat with the stem of coconut leaves and kicked her, she sustained injury above her right eye and there was hematoma below her right eye. On being attacked by the accused persons, she cried aloud and her elder brother Vijayan came to the place of occurrence and the accused persons left the place after leaving the weapons there. As summoned by Vijayan, Lakshman of Empett came there by 7.45 pm and took her husband and son in an autorickshaw to Pariyaram Medical College Hospital and thereafter she was taken to Medical College Hospital by some other person and she reached the hospital at 8.30 pm. As the injury of her son was serious, he was taken to hospital at Mangalore while her husband and herself were admitted there. She identified all the accused persons in the dock and deposed that the 3rd accused namely Chandukutty was dead. She also identified MOs1 to 4 used by the accused persons in attacking them and further deposed that MO4 series stem of coconut leaves.

20. PW2 further deposed that earlier to the incident in the case she had lodged a complaint against Balan and Chandukutty (A3). She produced the

photostat copy of the complaint filed by her on 16.05.2005 which was marked as Ext.P3 subject to the objection of the defence side on the ground that it was only a photo copy.

21. She also deposed that she witnessed the incident in the moon light and that she could identify the accused person as they were her relatives and seen them frequently. She further deposed that she had been discharged from Pariyaram Medical College Hospital on 20.05.2014.

22. PW3, the brother of PW2, also deposed in tune with PWs1 and 2. In addition to that he deposed that when Vijayan the elder brother of PW2 came to the place of occurrence hearing the cry of PWs1 and 2, A3 (Chandukutty) left the place with the chopper and the other left the weapons used by them in the yard. He also identified the weapons used by the accused person as well as the clothes worn by the deceased at the time of the incident. He also deposed that there was property dispute between PWs1 and 2 on the one side and Krishnan Nambiar on the other side and that it was the accused persons who gave all support to Krishnan Nambiar and so, the accused persons caused annoyance to PWs1 and 2 always. PW3 deposed that while ploughing the field of PW2, he obtained MO1 chopper, which he found immersed in the soil. He understood that it was the chopper used by A3 (Chandukutty) to hack the deceased Prajul, and he informed PW1 about it. He further stated that he identified the said chopper, and, as intimated by PW1, the Dy.SP, Taliparamba, reached the spot and took the chopper into custody after preparing the seizure mahazar. He also identified Ext.P4 as the statement under Section 164 Cr.P.C given by him before the Taliparamba Magistrate.

23. PW10, Ullas, a friend of the deceased, deposed that the deceased Prajul and his parents were known to him, and that Prajul was a permanent

resident of Anchampeedika at his father's family house. He stated that on 13.05.2014, between 7.00 p.m. and 7.30 p.m., Prajul called him and informed that his mother's cousins (മച്ചുനമ്പാർ) had hacked him on the head and beaten him with a pipe, and requested that he be taken to the hospital. At that time, PW10 was at Pazhayangadi, Thavam, and therefore he called his friend Jithin and directed him to go to Prajul's house at Mukkunnu along with Babu. Thereafter, PW10 himself went to Prajul's house along with his friends Kalesh, Akhil, and Nithin. On reaching there, they found Jithin and Babu present, who told them that Prajul and his parents had already been taken to the hospital.

24. PW10 and his companions then proceeded to Pariyaram Medical College Hospital, where they saw Prajul and his parents. However, they could not meet Prajul, and the Doctor informed them that the injuries sustained by Prajul were serious and that he was to be shifted to Mangalore. Accordingly, Prajul was taken in an ambulance to Kasturba Medical College Hospital, Mangalore, where he was admitted. PW10 further deposed that he informed Prajul's brother, Preejith, who was working in Bangalore, and that Preejith reached the hospital on 14.05.2014. While undergoing treatment, Prajul succumbed to his injuries on 21.05.2014 at 00.30 hours, and his body was taken to Wenlock Hospital, where an inquest was conducted. PW10 stated that he had witnessed the inquest and signed Ext.P10 inquest report.

25. He also testified that on 22.05.2014, between 11.00 a.m. and 11.30 a.m., he had gone to Prajul's house, where the uncle of Prajul (PW3) told him that while ploughing the land he had found a chopper. PWs 1 and 2 examined it and stated that it was the same chopper with which Chandukutty had struck Prajul on the head. Immediately, PW1 telephoned the Dy.SP, Taliparamba, who arrived by 12 noon and took the chopper into custody

after preparing Ext.P11 seizure mahazar. PW10 identified MO1 as the chopper so seized under Ext.P11.

26. PW12, Pradeepan V V, deposed that the deceased Prajul was the son of his maternal aunt Yashoda. He came to know about the injuries sustained by Prajul and his parents on the same day at about 8 p.m., when Lakshmanan telephoned him. He reached Pariyaram Medical College Hospital at about 8.45 p.m. that night. He understood from the doctor that the head injury sustained by Prajul was grievous and required surgery, and that it would be better to take him to Mangalore hospital. Accordingly, he along with others took Prajul to KMC Hospital, Mangalore, where Prajul was admitted in the ICU. After Prajul's elder brother arrived from Bangalore, he returned home the next morning. He further testified that on 19.05.2014 at 9 a.m., he saw Lakshmanan handing over the bloodstained clothes worn by Prajul at the time of the incident to the Circle Inspector of Thaliparamba. He saw a blue jeans pant, a black full-sleeve shirt, and a white vest being produced. The Inspector prepared a seizure mahazar and took them into custody. He signed the mahazar and he identified his signature in Ext.P15. He identified the blue jeans pants as MO5, the black full-sleeve shirt as MO6, and the bloodstained white vest as MO7.

27. PW12 further deposed that Prajul succumbed to the injuries while undergoing treatment at about 12.30 a.m. on 21.05.2014. On the same day, he reached Wenlock Hospital, Mangalore and he witnessed the inquest being conducted by the Circle Inspector of Thaliparamba. While preparing the inquest report, the police recorded his statement therein.

28. PW13, Lakshmanan O P, deposed that he was residing at Empettu in Pariyaram Panchayat and that Prajul's mother, Yashoda, was the younger sister of his wife's mother. He came to know about the incident in which

Prajul was injured, on 13.05.2014 when Vijayan telephoned him at about 7.30 p.m. Immediately, he went to their house. On reaching there, he saw Yashoda, Prajul, and Prajul's father lying injured in the courtyard. He immediately called Rajan, a nearby auto driver, who came with his auto-rickshaw. Prajul and his father were taken to Pariyaram Medical College Hospital and reached there at about 8 p.m. About ten minutes later, Yashoda was also brought to the hospital. All three were examined by the doctor. Since Prajul's injuries were serious, as advised by the doctor, Prajul was taken to KMC Medical College Hospital, Mangalore. As Yashoda and her husband were admitted at Pariyaram Hospital, he did not go to Mangalore.

29. On 14.05.2014 at about 9.30a.m, he showed the scene of occurrence to the Circle Inspector of Thaliparamba. The police prepared a mahazar there. He saw the police seizing one iron pipe, one wooden stick, two pieces of stem of coconut leaves (മടൽ കക്ഷണങ്ങൾ) and one bloodstained banian from the spot. He identified them as MOs 2 to 4 series and MO8. He stated that PW11 and Vimal had signed the scene mahazar prepared by the police. He also testified that the clothes worn by Prajul at the time of the incident, which had been cut and removed at Pariyaram Hospital, were produced before the Circle Inspector. The police took them into custody after preparing a seizure mahazar in which PW12 signed as a witness. PW13 identified those clothes as MOs 5 to 7. Finally, he deposed that Prajul, who was under treatment at Mangalore hospital, succumbed to his injuries at about 12.30 a.m. on 21.05.2014.

30. PW15, Lakshmanan, deposed that PW2 is his elder sister and that he was residing at Mukkunnu. He deposed that at the time of the incident he was at the shop in Thaliparamba where he was working and he came to know of the occurrence between 8.30 and 9 pm. Upon receiving the

information, he immediately travelled home by bus. Thereafter, he went to Pariyaram Medical College Hospital where he found his sister and her husband. At that time, the doctor was examining Prajul inside. As the condition of Prajul was stated to be serious and as advised Prajul was taken to Mangalore in an ambulance by his elder sister's son Pradeep (PW12). He and Rahul followed in a car to Mangalore hospital and reached Kasturba Medical College Hospital, Mangalore, at about 2 a.m. Prajul was examined by the doctor and admitted there. While undergoing treatment, Prajul died at 12.30 a.m. on 21.05.2014. PW14 further deposed that he gave a statement to the police at the time of the inquest examination of Prajul.

31. PW4, Preejith, the elder brother of Prajul, deposed that at the time of the incident, he was working in Bangalore and when his uncles, Lakshmanan and Vijayan, informed him about the incident and understood that Prajul was taken to Kasturba Medical College Hospital, Mangalore, he reached there at about 6 a.m. on 14.05.2014. He came to know that Prajul was in the ICU and had undergone surgery. He remained there to attend to him. While undergoing treatment, Prajul succumbed to the injuries at 12.30 a.m. on 21.05.2014.

32. PW4 further testified that while under treatment, Prajul had spoken to him about the incident. Prajul had told him that on 13.05.2014 at about 7 p.m., his maternal uncle Krishnan and Bhaskaran had come near the gate of their house. Bhaskaran had assaulted his father, pushed him down, and stamped on him, causing injuries. His parents had telephoned him to come home to take his father to hospital, and accordingly he came home. After seeing his father's condition, Prajul said something from the courtyard. At that time, Krishnan, Chandukutti, Bhaskaran, and Krishnan's sons Prakash and Radhakrishnan trespassed into the courtyard armed with weapons. Chandukutti struck Prajul on the head with a knife, Bhaskaran hit

him on the head with an iron pipe, Krishnan assaulted his parents with a wooden stick, and Prakash and Radhakrishnan attacked with pieces of stem of coconut leaves (മടൽ കഷണങ്ങൾ). Prajul's head bled profusely, and Bhaskaran pressed a cloth against his head to stop the bleeding. Thereafter, Prajul remembered nothing further. PW4 further deposed that the motive for the attack was a property dispute with Krishnan Nambiar, his mother's uncle, who was residing near their house. In that dispute, Krishnan Nambiar's elder brothers' sons, Krishnan, Bhaskaran and Chandukutti had been supporting him and were hostile towards his family. It was due to that enmity, they attacked his brother and parents. He also deposed that his statement was recorded in column 9 of the inquest report.

33. The definite case of the defence is that on 13.05.2014 at about 07.30 pm while accused No.3, Chandukutty, and his differently abled son were proceeding to the grocery shop along the Kuppam-Chudala road and when they reached near the residence of DW1, Raju @ Rajesh, Prajul and PW1 to PW3, in furtherance of their common intention to kill Chandukutty, attacked him with choppers, wooden stick and stone and inflicted several injuries on Chandukutty. His son was also assaulted. Hearing their hue and cry, and seeing the brutal assault on them, the neighbours rushed to the scene and then the assailants, Prajul and PW1 to PW3 retreated from the scene. Seriously injured Chandukutty(A3) was immediately taken to the Pariyaram Medical College Hospital in an autorikshaw and he was examined by the doctor at 07.50 p.m and admitted in the hospital. After shifting Chandukutty to the hospital, Prajul and his father engaged in a quarrel with the people of the locality at or after 7.45pm and in that incident Prajul might have sustained some head injury. The case relating to the incident in which Chandukutty was injured is pending before the court as SC 684/2017 and the trial in both cases was held as case and counter case.

34. The first aspect to be determined at the outset is whether A1, A2, A4 and A5 along with Chandukutty (A3) formed an unlawful assembly with their common object to murder Prajul as alleged by the prosecution.

35. The learned defence counsel contended that it was only to rope in A1, A2, A4 and A5 along with A3, PW1 deposed in Court that all the accused persons came together to the courtyard of his house armed with weapons, and it is evident from Ext.P1, first information statement, given by PW1.

36. In this respect, the evidence of PW1 is that hearing the utterances of Prajul all accused persons trespassed into the courtyard of his house armed with weapons. However, this evidence is quite contrary to the statement that he had given in Ext. P1, FI Statement. In Ext.P1, PW1 stated that, on hearing the utterances of Prajul, Chandukutty (A3), reached there armed with a knife, followed by Bhaskaran (A2), who was also armed with a knife. It was also stated that after A2 and A3 hacked Prajul with choppers, Krishnan (A1), Prakashan (A4) and Radhakrishnan (A5) reached there, and A1, A4 and A5 also beat them with their hands. (ആ ശബ്ദം കേട്ട് കൃഷ്ണന്റെ അനുജൻ നയനാവിട്ടിൽ ചത്തുകുട്ടി കത്തിയുമായി വന്നു പിറകെ തന്നെ ഭാസ്കരനും കത്തിയുമായി വന്നു.....വന്നപാടെ ചത്തുകുട്ടി കൊല്ലാൻ എല്ലാത്തിനെയും എന്ന് പറഞ്ഞ് ചത്തുകുട്ടിയും ഭാസ്കരനും പ്രജ്ജലിന്റെ തലയിൽ വെട്ടി. ഭാര്യയെയും അവർ വെട്ടി. അപ്പോഴേക്കും കൃഷ്ണനും കൃഷ്ണന്റെ മക്കളായ പ്രകാശനും, രാധാകൃഷ്ണനും എത്തി. അവരും ഞങ്ങളെ കൈ കൊണ്ട് അടിച്ചു).

But PW1 denied having given these statements and he was contradicted with them and they were marked as Exts.D1 to D4. Exts. D1 to D4 contradictions were duly proved through PW7. So, it can be seen from the evidence of PW1 that his deposition that A 1 to 5 came to the place of occurrence together is an improvement from his previous statement, Ext.P1, which was given

within a short time after the incident. From Ext. P1, FI Statement, as pointed out by the defence counsel, it well evident that the improvement made by PW1 from his previous statement is only with the motive to rope in A1, A2, A4 and A5 along with A3 so as to make them constructively liable.

37. Further, from the evidence of PW1, it is evident that none among A1, A4 and A5 attacked Prajul who was lying in the courtyard of the house. If they had the common object to murder Prajul or to cause hurt to him, definitely they would have also attacked Prajul in prosecution of their common object. On the basis of the above discussion, what can only be found is that the Prosecution has failed to prove that the accused persons formed an unlawful assembly with the common object of doing away with PW1 or any of his family member including Prajul.

38. Based on the above finding, now the liability of each accused person, according to the overt acts alleged against them, is now to be determined. Accordingly the overt acts alleged against each accused is shown below one by one:

- (i) A3 hacked Prajul on his head with a chopper;
- (ii) A2 beat Prajul with MO2 iron rod on his head;
- (iii) A1 beat PWs 1 and 2 with MO3 wooden stick;
- (iv) A4 and A5 beat PWs 1 and 2 with MO4 series pieces of stems of coconut leaves.

39. The defence contended that the prosecution story is incredible and that the evidence of all the witnesses, particularly that of PW1 to PW3, who alleged to have witnessed the incident, is wholly unreliable.

40. The defence counsel first drew the attention of the court to the discrepancies in the evidence of PW1 and the contradictions and material omissions in the statement of PW1 as well as the discrepancies in the evidence of PW 2 and PW3.

41. PW1 deposed that, when Prajul made certain utterances while standing in the courtyard, the accused persons trespassed into the said courtyard, and A1 was armed with a wooden stick, A2 with an iron pipe, A3 with a chopper, and A4 and A5 with pieces of coconut leaves stems. PW2 and PW3 also deposed in the same line with that of PW1 with respect to the weapons possessed by the accused persons.

42. But the evidence of PW1 is quite contrary to his statements in Ext.P1 FI Statement. In Ext.P1, PW1 stated that on hearing the utterances of Prajul, Chandukutty (A3) reached there armed with a knife and hacked Prajul with the knife. His further statement is that A3 was followed by Bhaskaran (A2), who was also armed with a knife and he also hacked Prajul with the knife in his hand. When PW1 was confronted with this portion of his statement, he denied having made such a statement. His explanation was that it might have been a mistake committed at the time of recording, and accordingly the portion was marked as Exhibit D1. This contradiction was duly proved by the defence side through PW7 who recorded Ext.P1 FI Statement of PW1. So the evidence of PW1 that A1 hacked Prajul with a chopper on his head and that A2 had beaten him with an iron pipe is quite contrary to his statement in Ext. P1. Also, it was his case when he gave Ext. P1 FI Statement that A2 & 3 hacked his wife, PW2, also with the knife in their hands. But he denied having made the statement that A2 and 3 hacked his wife and the contradiction was marked as Ext. D3 and it was also proved.

43. The defence further pointed out that PW1 had not stated in Ext.P1 that any of the accused persons came there armed with a wooden stick or with pieces of coconut leaf stalk. In cross-examination, PW1 admitted that he had not given any statement in Ext.P1 to the effect that the accused persons had come there armed with a wooden stick or pieces of coconut leaf stalk and attacked any of them with such a weapon.(Para 39 of deposition of PW1). On the other hand, the statement of PW1 in Ext. P1 is that A1, A4 and A5 beat him and his wife by their hands. So it can be seen that the deposition of PW1 that A1, A4 and A5 came there with wooden sticks and coconut leaf stalk pieces is an embellishment.

44. Also, the most crucial thing pointed out by the defence counsel was that PW1 did not state that A3 came there with a chopper. However, from Ext.P1, it can be seen that the statement of the PW1 to the Police was that the A2 and 3 came to the gate of the house of PW1 with a knife possessed by each of them, and both of them hacked Prajul with the knife possessed by them. Further, till 22.05.2015, on which day MO1 chopper was recovered from the field of PW2, neither PW2 nor PW3 had a case that A3 hit Prajul with a chopper. Till then, the case of PW1 to PW3 was that A3 hit Prajul with a knife. Also, in cross examination, PW2 admitted that she had not stated to the police in her statement taken on 14.05.2014 that a chopper was used in the attack by A3 (Para 23 of the deposition of PW2). Moreover, PW1 to PW3 admitted that a knife and a chopper are different.

45. In Ext.P1, PW1 did not state that any other accused reached there armed with any weapon and A1, A4 and A5 beat PWs 1 and 2 with their hands. Also, in Ext. P1, PW1 had no case that A2 or any other accused came to the place of occurrence with an iron pipe. Further, PW2 also did not state that A4 and A5 were armed with pieces of coconut leafstalk. When she was

contradicted with respect to this omission, her answer was that police might have omitted to write it.

46. Ext.P4 is the statement of PW3 recorded by the learned Magistrate under Section 164 CrPC. In Ext.P4, PW3 did not state either the fact that A3 Chandukutty came to the place of occurrence with a chopper or that he hacked Prajul with the chopper. When he was contradicted with this omission, he had no explanation for the same.

47. The sanctity attributed to the first information statement is being that it is the first statement without any concoction. In this case, PW1 had given Ext.P1 FI Statement within five and half hours after the incident. So it is to be expected that the statement given by him at that time was without much concoction, even though there were some false additions in it with respect to the overt acts committed by each of the accused persons. In that statement there is no mention with respect to the use of the weapon namely, chopper and it is specifically stated that A3, Chandukutty came with a knife and hacked on the head of Prajul with it. Further, as pointed out by the defence counsel, PW2 and PW3 were not having a case till 22.05.2015, that A3, Chandukutty, had attacked Prajul with a chopper. This causes some serious doubt as to the prosecution case that A3, Chandukutty, hacked Prajul with a chopper causing him fatal injury as alleged by the prosecution. If Chandukutty was armed with a chopper and had he attacked Prajul with the chopper, PW1 would have stated it in his first information statement and he would not have stated the weapon used by Chandukuthy as a knife. Also, if such a weapon had been used in the incident by Chandukutty, PW2 and PW3 who claimed to have seen the incident would have stated it in their statements and they would not have waited till 22.05.2015 to make such a statement as to the use of a chopper in the incident. Here it is also pertinent to note that PW1 to PW3 deposed that knife and chopper are different.

48. Moreover, from the records it is seen that the investigating officer after arresting the 3rd accused did not take any step to obtain the police custody of the accused to recover the weapon, knife or chopper, alleged to have been used by the accused in the alleged incident. This also creates serious suspicion as to the Prosecution case that the 3rd accused using a chopper attacked Prajul.

49. Further, the learned defence counsel has rightly pointed out that PW1 exhibited a tendency to exaggerate the incident from the very inception. In Ext.P1, PW1 alleged that A2, Bhaskaran, came armed with a knife and that both Chandukutty and Bhaskaran hacked PW2. However, PW2, in her cross-examination, categorically deposed that she did not sustain any injury from hacking with a knife. Likewise, in Ext.P1, PW1 had stated that A1 and his children, A4 and A5, reached the place of occurrence and assaulted them with their hands. Yet, while deposing before the Court, PW1 materially improved his version by asserting that A1 beat him and PW2 with MO3, a wooden stick, and that A4 and A5 assaulted them with MO4 series, pieces of coconut leaf stalk. These improvements, which introduce the use of weapons absent in the earliest version, cannot be treated as minor discrepancies but amount to material contradictions, thereby casting serious doubt on the credibility of PW1's testimony.

50. It is well settled that while minor inconsistencies in witness testimony may be overlooked as natural, material contradictions which go to the root of the prosecution case cannot be ignored. In the present case, the improvements made by PW1 are not trivial variations but substantial departures by PW1 from his earliest version in Ext.P1. The introduction of the weapons, MO2 to MO4 series, which were absent in the initial statement, materially alters the nature of the alleged assault and particularly the involvement of those accused to whom the use of these weapons are

attributed to. Such embellishments, coupled with PW2's categorical denial of having sustained injuries from hacking with a knife, cast serious doubt on the veracity of PW1's evidence. When the substratum of the prosecution case rests upon testimony that is tainted by exaggeration and improvement, the Court is constrained to view it with suspicion and cannot safely rely upon it without independent corroboration.

51. Now, the question that arises is whether the evidence of PW4 and PW10 can be relied upon to corroborate the testimony of PW1 to PW3 or can it be taken as dying declarations of Prajul.

52. PW4 deposed that Prajul had told him that he was hacked by a chopper by Chandukutty. In cross-examination, he reiterated that he had told to the police at the time of the inquest examination that Prajul had told him that he was hacked by Chandukutty. But it is seen that he had not given such a statement when he gave the statement at the time of the inquest examination. He also deposed that Prajul did not tell him that Krishnan (A1) beat him with coconut leafstem. But, it is seen that he had stated so while he gave the statement at the time of inquest examination. When he was contradicted with it in cross-examination, he deposed that he did not remember that he had given such a statement. Also, in cross-examination, he deposed that Prajul had not told him that either Krishnan or Prakashan or Radhakrishnan had done anything to him. But it is seen that he had stated that while he gave the statement at the time of the inquest examination that Krishnan had beaten Prajul with coconut leafstem and when Prajul fell down, Krishnan, Prakashan and Radhakrishnan stamped on him and beat him with coconut leafstems on both his elbows. When PW4 was contradicted with this portion of his statement given in Ext.P10 inquest report, he denied having made such a statement and the contradiction was marked as Ext.D11 and the same was duly proved through PW20. So on an analysis of the

evidence of PW4, it is seen that he had stated many things which Prajul had not told him. In that circumstance, the evidence of PW4 that Prajul had made a dying declaration has no evidentiary value. Moreover, he has not stated in his statement or in his deposition that when Prajul told him about the incident. In that circumstance, this court is not in a position to ascertain whether the deceased had made the revelation as to his cause of death when he was mentally fit to give such a statement. So the evidence of PW4 is not at all credible and cannot be acted upon as a dying declaration of Prajul.

53. According to PW10, after Prajul had sustained injuries, he telephoned him and told him that he had been assaulted by the cousins of his mother. However, this version does not appear to be credible, since PW1 deposed that after being hacked by Chandukutty, Prajul collapsed at the scene. In such circumstances, it is difficult to accept the evidence of PW10 that Prajul, after sustaining a hurt on his head, was in a position to call him over the phone and to share that he had sustained hurt and the cause of his injury. Moreover, the Prosecution has not produced any document to prove such a telephonic call by Prajul to PW10. In these circumstances, the evidence of PW10 that Prajul had called him, and told him the cause of the injury which later resulted in his death, cannot be believed. Also, the evidence of PW4 and PW10 cannot be used to corroborate the evidence of PW1 to PW3.

54. The next aspect pointed out by the defence counsel is that the medical evidence does not tally with the alleged overt acts committed by the accused persons. In Ext.P1, PW1 deposed that A2 and A3 hacked on the head of Prajul with a knife in their hands. But there is only one injury that is seen to have been noted in Ext.P19 which is a deep incised wound having a size 6x3 cm on the right temporal region. If A2 and A3 inflicted one cut injury each there would have been two wounds there on the head of Prajul.

During evidence, PW1 altered his version and deposed that only the 3rd accused inflicted cut injury on the head of Prajul using a chopper and the 2nd accused beat him with an iron pipe. But except the only one incised wound stated above, there is no other wound or even a contusion on the head of Prajul when he was first examined in Pariyaram Medical College Hospital. In that circumstance the version of PW1 that A2 beat Prajul on his head with an iron pipe is also not at all believable. If the 2nd accused had been beaten with an iron pipe as alleged by the Prosecution definitely there would have been a contusion injury on his head. The lack of such an injury itself would show that the Prosecution allegation that A2 beat Prajul with an iron pipe or that he hacked Prajul on his head with a knife is not credible. It is true that in the autopsy report there are 3 sutured wounds on the head of deceased Prajul. But from the medical records it can be seen that these sutured wounds are the outcome of the different operations that Prajul had undergone to manage the extradural hematoma that he had sustained in the incident. Also, it is well evident from the evidence of PW17 that the only injury noted by him in Ext.P18 wound certificate was the 3 cm sutured lacerated wound over the right temporoparietal area of the scalp. Moreover, the alleged cause of injury noted in Ext.P18 was assaulted by known persons (Krishnan, Bhaskaran and Chandukutty) hit with an iron pipe. This inconsistency, in fact, completely rules out the prosecution's case that A2 and A3 attacked Prajul with knives which each of them had wielded. This casts some serious doubt as to the Prosecution case.

55. The defence counsel also assailed the Prosecution case put up by the learned Special Public Prosecutor through PW16 that injury numbers 1 to 3 in Ext.P17 are sufficient to cause death individually and collectively in the ordinary course of nature because it is come out in evidence that Prajul had sustained only one injury in the alleged incident and injury Nos.2 and 3

were caused due to surgical interventions. As already stated it is clear that the two of the three injuries noted in Ext.P17 found on the head of Prajul was due to the surgical intervention on him by the doctors to manage extradural hematoma.

56. Another aspect pointed out by the defence side is that the Prosecution has no consistent case as to the enmity alleged to have been there between the accused and the family of PW1. According to the Prosecution, the accused persons attacked due to the animosity they had with PW1 and his family on account of family disputes. The learned defence counsel submitted that when Prosecution alleges motive for the commission of offence it is their bound duty to prove the same and the failure to prove the motive is fatal to the Prosecution case. The learned defence counsel drew the attention of this Court to the decision of the Hon'ble Apex Court in **Kumar v. State 2018 KHC 6413**. The defence counsel pointed out that from the evidence of PW1 to PW3 it has come out that there is no direct enmity between the accused persons and Prajul and his family. According to PW1 and PW2, the accused persons were siding with Krishnan Nambiar with whom PWs1 and 2 had a property dispute. Moreover, it is pointed out that PW2 admitted in cross-examination that A4 and A5 did not interfere in the dispute between her family and with the family of Chandukutty or Balan or Krishnan Nambiar. Also, it is admitted that whenever Prajul was at home and A4 and A5 were at home they were in a good relationship. Further PW4, the brother of deceased Prajul deposed that the incident in the case happened because of the property dispute between his parents with Krishnan Nambiar. At the same time he also admitted that the property dispute between them and Krishnan Nambiar was very long back before 13.05.2014. The defence counsel pointed out that to cover up these lacuna the learned Special Public Prosecutor in re-examination further asked PW4 while this

incident happened even for the dispute between them and Krishnan Nambiar over long back before 13.05.2014 and PW4 deposed that Krishnan Nambiar was supported by Chandukutty and A1 and A3 and because of that enmity the incident happened. The learned defence counsel contended that if his version is correct PW1 ought to have the motive of enmity towards the accused as they had supported his opponent Krishnan Nambiar. To prove their disputes Ext.P2 was marked through PW1 and Ext.P3 was marked through PW2. These documents were marked subject to the objection raised by the defence side on the ground that they were only photo copies. The Prosecution did not produce any receipt to prove that those complaints were received by those authorities to whom they were submitted. No step has also been taken to produce the original or to prove that such complaints were submitted before those authorities. In that circumstance the objection is sustainable and those documents cannot be taken into account. In that circumstance it is to be found that the prosecution has failed to prove the enmity between PW1 and PW2 with the accused persons.

57. On the basis of the decisions of the Apex Court in **Chandrashekhhar and another v. State (2017 KHC 531)** and **Brahm Swaroop Vs. State of U.P. 2010 KHC 4818**, the Special Public Prosecutor argued that Criminal Jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Also, where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicated some one.

58. This Court finds that the above principle is to be applied in this case only after taking into account the defence contention that the deceased and the prime witnesses were the real aggressors.

59. As already stated, the defence case is that on 13.05.2014 at about 07.30pm, while accused No.3, Chandukutty, and his differently abled son were proceeding to the grocery shop along the Kuppam-Chudala road and when they reached near the residence of DW1, Raju @ Rajesh, Prajul and PW1 to PW3, in furtherance of their common intention to kill Chandukutty, attacked him with choppers, wooden stick and stone and inflicted several injuries on Chandukuthy. To substantiate the defence case, learned counsel for the accused further drew my attention to the following aspects emerging from the prosecution evidence.

60. First, the learned defence counsel pointed out the discrepancy regarding the place of occurrence as revealed in the evidence of PWs 1 to 3 and other materials in the case. On the basis of this, the defence attempted to present that the incident occurred in the manner suggested by them and not in the way projected by the prosecution.

61. The learned defence counsel first drew the attention of the court to the discrepancy regarding the place of occurrence as emerging from the depositions of PWs 1 to 3 and other materials on record. It was contended that such inconsistency strikes at the root of the prosecution case, inasmuch as the place of occurrence of the alleged incident itself remains doubtful. On the strength of this infirmity, the defence sought to contend that the occurrence had in fact taken place in the manner suggested by them, and not in the version projected by the prosecution.

62. The attention of the Court was drawn to the evidence of PWs 1 to 3 and Ext. P12 scene mahazar. PW20, the Investigating Officer, prepared

Ext.P12 scene mahazar as pointed out to him by PW13. As per Ext.P12, the place of occurrence is described as the front courtyard on the northern side of the house bearing Door No. XII/227 of Pariyaram Grama Panchayat and its surroundings.

63. The prosecution evidence is that the incident occurred in the front courtyard of the house of PW1. According to the testimony of PW1, Prajul was uttering something, standing in the courtyard, and at that time A1 to A5 trespassed into the courtyard and attacked Prajul, his wife, and himself. PW2, the wife of PW1, also deposed that while Prajul was uttering something, standing in the courtyard, the accused persons came through the gate and attacked them. In cross-examination, she specifically stated that the attack on Prajul took place in the courtyard of the house (Para 34 of the deposition of PW2). PW3 too supported the version of PW1 and PW2, and deposed in the same line.

64. But the statement of PW1 in Ext.P1 F I statement is quite contrary to the evidence adduced by him before Court. In Ext.P1, PW1 stated that the incident occurred at or near the gate of his property. However, during trial, he shifted the place of occurrence to the courtyard of the house, situated about 10.5 metres away from the gate (The distance between the road and the courtyard is 12 metres as deposed by PW1 and as seen from Ext.P12, and the road margin (gap between the gate and the tar end is 1.5 metres)). PW1 specifically stated in Ext.P1 that when A2 and A3 arrived, hearing the utterances of Prajul, he and his wife were near the gate, and A2 and A3 struck Prajul and his wife on the head with the knife they carried. At that time, A1, A4 and A5 also reached the spot and assaulted them with their hands. Sustaining hurt from the accused persons, they ran from the gate towards the courtyard of the house, followed by the accused, and it was there that Prajul fell in the yard of the house.

65. But, the evidence of PWs1 to 3 is that the spot at which Prajul fell was the place of occurrence where the accused persons inflicted injuries upon him. From Ext.P12, it can be seen that the courtyard where Prajul fell was 10-12 metres away from Kuppam-Chudala road. PW1 also admitted that there is a distance of 12 metres from the road to the court yard. When PW1 was contradicted with his previous statement, in Ext.P1 that when they were standing near the gate, the accused persons came there and inflicted them hurt, he deposed that he did not read the statement and had only signed the statement as instructed by the Police and that particular portion was marked as Ext.D1. When PW1 was further confronted with his statement in Ext.P1, wherein it was recorded that after sustaining injuries near the gate they ran to the courtyard, the accused persons followed them and Prajul fell in the courtyard, he denied having made such a statement. This contradiction in his First Information Statement was accordingly marked as Ext. D6. According to the learned defence counsel, the shifting of the place of occurrence from the gate to the courtyard of PW1's house was intended to suppress the actual events that transpired there and to negate the defence version put forward by them.

66. he learned defence counsel assailed Ext.P12 scene mahazar on many grounds. First, the learned counsel pointed out that the place of occurrence was pointed out by PW13 who came to the place of occurrence after the incident, and who took PW1 and the deceased to hospital. From the evidence of PW13, it is clear that he had not seen the incident and according to him, he pointed out the place of occurrence to the police for preparing Exhibit P12, assuming that the place where Prajul was found lying was the place of occurrence. Moreover, though all the witnesses especially, PW1 to PW3, deposed that sustaining hurt on head, Prajul had profuse bleeding. Moreover, PW2 in cross examination deposed that at the place where Prajul

was attacked, there was so much blood. But not a trace of blood is seen to have been found at the place of the alleged occurrence.

67. Another aspect pointed out by the learned defence counsel is that Ext. P12 was marked by the prosecution through PW11. However, PW11 turned hostile to the prosecution and deposed that he had signed Ext. P12 at the house of CW5. He further stated that he did not see the Investigating Officer collecting any material objects from the place of occurrence. On going through the evidence of PW11, in cross-examination, he deposed that a clash had occurred between Chandukuthy and Prajul on the Kuppam–Chudala road. Significantly, the Special Public Prosecutor did not cross-examine PW11 on this aspect in re-examination, and hence the evidence of PW11 that the incident happened on the road remains unchallenged. Also, it has been pointed out that PW11 had deposed that CW5 was available in the locality. This evidence of PW11 was also not challenged by the prosecution. So the case of the defence that though CW5 was available in the locality, the prosecution has purposefully withheld CW5 from court so as to keep away the real facts from court is to be accepted. With respect to CW7 who came at the place of occurrence immediately after the incident also, the defence side raised the contention that the prosecution purposefully withheld the witness so as to keep away the real things from the notice of the court. But, learned Special Prosecutor submitted that Prosecution has the liberty to decide which of their witnesses are to be examined and who need be examined.

68. On going through the evidence adduced by the prosecution, including the depositions of PWs 1 to 3, the scene mahazar, and Ext. P1, it is evident that there has been a clear shifting of the place of occurrence from that stated by PW1 in his First Information Statement, so as to make it appear that the place of occurrence was within the courtyard of the house.

The learned Special Public Prosecutor contended that slight variations in the place of occurrence are of no consequence and would not affect the prosecution case.

69. It is indeed true that minor discrepancies regarding the exact spot of occurrence are not fatal to the prosecution, for in a scuffle or brawl one cannot expect the place of occurrence to remain static. In the present case, however, the variation is about 10–12 metres between the place of occurrence as stated in Ext.P1 and that borne out by the evidence. Moreover, the specific case of the prosecution witnesses is that the incident happened in the courtyard of PW1's house, and that the accused persons followed PWs 1 to 3 and Prajul from the gate to the courtyard and inflicted injuries upon them there. This circumstance casts serious doubt on the prosecution version, particularly in view of the defence plea that A3 was attacked while he was proceeding along the road in front of the gate.

70. From Ext. D16(a), the out patient record of A3, Chandukutty, it is seen that he had sustained injuries. From Ext.P16 (a), Chandukutty had sustained the following injuries:

1. Superficial linear incised wound of 7cm on left forearm upto the elbow ;
2. 3x1 cm incised wound on left elbow;
3. 4 cm superficial, linear incised wound on left elbow;
4. 1x1 cm incised wound on upper lip;
5. 2 x 1 cm lacerated wound on tongue;
6. Abrasions right arm, left scapular region forehead; and

7. Loosening of tooth.

71. PW18 deposed that Chandukutty was taken to the hospital with the history of assault by known people with knife at 7:30pm at Mukkunnu on 13-5-2014.

72. On the side of the defence, DW1 was examined. DW1 is the neighbour of PW1 and PW2. He deposed that he knew Chandukutty and that he had given a statement in this case to the Judicial Magistrate, Thaliparamba as well as to the Inspector of Police, Thaliparamba. The incident happened on 13.05.2014. He was returning on his scooter from the Supermarket at Kuppam and by 07.30 he reached near the gate of his house. When he reached there, he found Chandukuthy (A3) lying on the road in a pool of blood, with his mentally challenged son beside him, crying. He also found PW1, his wife Yashoda, his son Prajul and his brother-in-law proceeding fast to the side of their gate and there were choppers in the hands of Prabhakaran and Prajul, and PW3 Bhaskaran wielded a wooden stick. He saw all these in the light of his scooter. Near Chandukuthy, K.V. Pradeep was also present. He found his father observing all these scenes from the gate of his house. Hearing the cries of Chandukuthy and his son, people began to gather around them. At that time, Chandukuthy's brother and others arrived, and together they placed him in an autorickshaw that came along the road and took him to the hospital. Chandukuthy had fallen and was lying on the road about three meters west of his house gate. He further testified that Chandukuthy had injuries on both his hands, as well as on his lips and tongue, and his whole body was covered in blood. About ten minutes after Chandukuthy was taken to the hospital, he heard a commotion in front of Prabhakaran's house gate and later he came to know that there occurred a commotion between the local people gathered there and Prabhakaran, and his son Prajul. On the next day he learned that in the

commotion, Prajul was injured and was taken to the hospital and the next day, he went to Pariyaram Medical College Hospital and saw both Chandukutty and Prabhakaran. He identified Ext.D18 as the statement given by him to the Magistrate under section 164 Cr.PC in the case and Ext.D19 as the certified copy of the final report in SC 1027/2019 which was a case filed by Prabhakaran against him and the 4th and 5th accused in this case. He deposed that such a false case was foisted against him, as he and his father were not ready to give false evidence against Chandukuthy and his brothers. In cross-examination, he admitted that Prabhakaran had given complaints against his father relating to the erection of a septic tank without keeping the minimum distance from the well of Prabhakaran and obtained order for removing the septic tank. The defence counsel contended that, owing to the enmity DW1 had against Chandukutty in relation to the complaint filed by Prabhakaran and the order obtained by Prabhakaran against his father, he was deposing falsely against Prabhakaran.

73. From the evidence of DW1, though DW1 denied that he had any enmity towards Prabhakaran, it can be seen that naturally he would have some enmity towards Prabhakaran because of the complaint and the order obtained thereon by Prabhakaran against his father for removing the septic tank which was built by his father without keeping the required distance from Prabhakaran's well. Further, also from the conduct of DW1, it is evident that his evidence is not true because of his unnatural behaviour. When a person is found lying injured, it is natural that one who has an acquaintance with him would take him to hospital. This should have been expected from DW1, particularly because, according to him, he had visited Chandukutty and Prabhakaran on the next day. If his evidence that he had visited them on the next day is true, his conduct in not taking Chandukuthy who was found injured at that place, to the hospital is quite unnatural, and

for that reason his evidence cannot be believed. Therefore, I do not find the evidence of DW1 to be credible.

74. The learned defence counsel contended that the prosecution has suppressed the injuries sustained by the 3rd accused in the case and thereby suppressed the genesis of the case and the actual things happened in the incident by not explaining the injuries sustained by the third accused in the case.

75. On the basis of Exhibit A16 series and the oral testimony of PW8, the defence side contended that injury numbers 1 to 5 noted in Exhibit D6(a) had been caused by a sharp weapon like chopper or bill hook. Also, the defence counsel pointed out that the deposition of PW18 and injury Nos. 1 to 3 in Exhibit D6(a) being defensive wounds would make it clear that Chandukutty sustained hurt while he warded off the chopping of Prajul and Prabhakaran (PW1) with his hand and that the defence contention that the injuries on Chandukutty would make probable the defence case that while Chandukuthy was walking along the road in front of their house, Prajul and PW1 to PW3 attempted to kill him. The case of the defence is further substantiated by the oral testimony of DW1. From the medical records, it could be seen that Chandukuthy was admitted in Pariyaram Medical College Hospital within a few minutes of the incident ie, at 7.50pm and on the same day, his first information statement, Exhibit D12 was recorded by the police from the hospital and based on the same Exhibit D13 FIR was registered by PW8, the Station House Officer, Pariyaram for the offences punishable under Sections 323, 324 and 307 read with Section 34 IPC at 00.45hrs on 14.05.2014. The investigation in that case was also conducted by PW20, taking them as case and counter cases. But due to the political intervention, an independent investigation in both these cases were thwarted and it is evident from the deposition of PW20 and from the preparation of Exhibit

P12 scene mahazar and seizure of MOs 2 to 4. Even though there was sufficient materials and evidence, reflecting the fact that Chandukutty had sustained injuries being attacked by the deceased and PW1 to PW3, the Investigating agency filed a refer report with the finding that the case was false.

76. Also, it is contented that Ext.P33 final report in respect of the crime registered on the basis of the first information statement of Chandukutty has not been proved. PW21 who laid the refer charge, deposed in cross-examination that he did not conduct any investigation in respect of the case relating to the incidents in Ext.P33 final report and that he cannot say anything about the authenticity of that final report. He also deposed that he did not question the Investigating Officer who filed Ext. P33 final report and that he had not included that Investigating Officer in the witness list. At the same time, he admitted that he had come to understand that the case in Ext. P33 was a connected case with this case and not a case and a counter case. He also admitted that he came to understand that the incidents in the two cases occurred at two different places at two different times. On the basis of these materials, the learned defence counsel contended that the Investigating Agency failed to follow the guidelines as to how an investigation in such cases ought to be made. The learned defence counsel pointed out that the guidelines enunciated by the Apex Court in **Nathilal v. State of UP 1990 SCC (CRI) 638**. It was also contended by the defence counsel that in a criminal case, especially in a murder case, it is the bounden duty of the prosecution to explain the injuries sustained by the accused. If the prosecution fails to place on record the materials connected with the injuries on the person of the accused or fails to offer any plausible explanation for the origin of such injuries, the conclusion to be arrived at is that the prosecution is suppressing the genesis of the crime.

77. Though the evidence of DW1 that he saw Chandukutty in an injured condition and found PWs 1 to 3 and Prajul leaving the place armed with weapons not credible, it is a fact which stands proved that Chandukutty had sustained injuries in the incident. From the evidence of the prosecution witnesses in this case, it can be seen that all the prosecution witnesses, particularly PW1 to PW3, suppressed the injuries sustained by Chandukutty and they pretended ignorance as to the injuries sustained by the accused No. 3 (Chandukutty). Further, PW3 deposed that Chandukutty did not sustain any injury in the case and that he might have sustained some abrasion only. He also deposed that they did anything to him and it was to implicate them in the case, he was admitted in hospital for no reason. At the same time, from the deposition of PW20, the Investigating Officer in the case, that he had knowledge that Chandukuthy had sustained several injuries in the attack by chopper and had been admitted in Pariyaram Medical College Hospital from 13.05.2014 to 22.05.2014. But he admitted that he had not taken any steps to collect the treatment records of Chandukuthy from the hospital and that he did not question the doctor who treated him. On the other hand, the evidence of PW21 is that he did not understand that Chandukuthy was admitted in the hospital from 13.05.2014 to 22.05.2014 and that he did not check either the wound certificate of Chandukutty nor questioned the doctor who treated Chandukutty. So it is well evident that without conducting a proper investigation in the case as to the circumstances in which Chandukuthy had sustained the injuries in Exhibit D16(a), the investigating agency had referred the case.

78. On the basis of the above state of affairs, the defence contended that the prosecution case had to fail for the sole reason that the prosecution had failed to explain the injuries on the accused. The defence counsel, heavily relying upon the decisions of the Apex Court in **Mohar Rai and Bharath Rai**

v. State of Bihar, (1968 Cri.LJ 1479 and Lakshmi Singh and Others v. State of Bihar, (1976 KHC 958) contended that by not explaining the injuries on the body of the accused, the prosecution has failed to bring forth the genesis of the case for the appreciation of the court the real things transpired there which is very fatal to the prosecution case. On the other hand the learned Special Public Prosecutor submitted that it is well settled now that minor unexplained injuries on the body of the alleged assailants is not fatal to the prosecution case.

79. Already this court had discussed the injuries sustained by Chandukuthy (A3) and the deposition of PW18 that those injuries could be inflicted either by a chopper or a bill hook. Further, PW18 deposed that those injuries could be defensive wounds also.

80. So, what is to be considered is whether the injuries sustained by Chandukutty (A3) could be considered as minor injuries to be ignored, considering the defence case.

81. Already, this Court has reproduced the injuries sustained by A3, Chandukutty, and from those injuries it could be seen that three of the injuries are not minor injuries but serious injuries including two incised injuries on his hand. From the nature of those injuries and as deposed by PW15, it could be seen that those injuries were incised wounds and they could be inflicted by a sharp-edged weapon. So, it cannot be considered as minor injuries, as contended by the Special Public Prosecutor, to be ignored on the basis of the decisions cited by the Learned Special Public Prosecutor on this aspect. So I find that one of the accused persons namely Chandukuthy (A3) had sustained severe injuries including three incised wounds on his body. PW18 deposed that those injuries may be defensive wounds, and injury numbers 1 to 5 may cause profuse bleeding. So, the

defence side has succeeded in putting up a probable case as to the injuries sustained by A3. In that circumstance, it is to be found that the non-explanation of the injuries on A3 is fatal to the prosecution case. On the other hand, the prosecution has failed to prove that it was the accused persons who were the aggressors.

82. The view of this court is also supported by another fact borne out from the evidence of the prosecution. From the evidence of PW1 itself, it can be seen that the prosecution case is that hearing the utterances made by Prajul, A3 came to the place and attacked them. Admittedly, the house of A3 is 100 metres away from the house of PW1. In that circumstance, the chance of A3 coming to that place hearing the utterances from his house bearing a knife/chopper is quite improbable also. Otherwise, Chandukutty must have been waiting there with a knife/chopper expecting that Prajul would make such utterances at that time. If it is not so, there is no chance for Chandukutty to reach there from his house which is 100 metres away from the place of occurrence. On the other hand, it makes more probable the case of the defence that while Chandukutty was passing along the road in front of the house of PW1, Prajul attacked him. The probability for this is more because from the evidence it can be seen that he was in an agitated condition on coming to know that PW2 was beaten by A2 in the case. For the reasons discussed above and this Court having found that the defence has proved on the balance of probabilities its contention that the deceased Prajul was the aggressor, the evidence of PW1 and PW2 cannot be accepted as gospel truth solely because they were injured persons in the case.

83. Now, the remaining allegation of the prosecution is that accused persons committed mischief in the field of PW1 and PW2, and thereby caused damages to the tune of ₹11,703/-. But none of these witnesses deposed that they had seen any of the accused persons committing any

mischief in the property as alleged in the prosecution. In that circumstance, there is no evidence before this court that the accused persons committed mischief as alleged by the Prosecution.

84. Based on the above discussion, I find that prosecution has failed to prove that the accused persons have committed the offences alleged against them. Hence Point Nos.(i) to (ix) are found against the prosecution.

85. **Point No.(x)** :- Based on the finding on Point Nos.(i) to (ix), it is found that the Prosecution has failed to prove that the accused persons were guilty of the offences alleged against them and they are acquitted u/s.235(1) Cr.PC.

In the result, Accused Nos.1, 2, 4 and 5 are acquitted of the offences alleged against them u/s. 235(1) Cr. PC. Their bail bonds stand cancelled and they are set at liberty. Charge against A3 abated.

MOs 1 and 2 will be broken up and sold as per Rule 268 of Criminal Rules of Practice; MOs 3 to 8 being valueless shall be destroyed.

Interim custody of the jeep having Regn. No.KL-14-5757 was given to the RC owner as per Order in Crl.MP 4518/2014 dated 22.07.2014 of the Judicial First Class Magistrate Court- Payyannur. Interim custody is made absolute after the appeal period.

(Dictated to the Confidential Assistant transcribed and typed by her corrected and pronounced by me in open Court on the 30th day of March, 2026).

Sd/
ADDL. SESSIONS JUDGE-I

WITNESSES FOR THE PROSECUTION:-

Rank	Name	Eye witness/ police witness/ expert witness/ Medical witness/other witness.
PW1	Shri. Prabhakaran P P	- Eye Witness
PW2	Smt.Yesodha V K	- Eye Witness
PW3	Shri. Bhaskaran V K	- Eye Witness
PW4	Shri.Preejith K	- Other Witness
PW5	Shri. Raveendran M P, ASI of Police, Taliparamba PS	- Police Witness
PW6	Shri. Suresh K V, SCPO, Taliparamba PS	- Police Witness
PW7	Shri. Pankajakshan K P, SCPO, Pariyaram Medical College PS	- Police Witness
PW8	Shri. Sudheer K, SI of of Police, Pariyaram Medical College PS	- Police Witness
PW9	Shri. Manasan A, Village Officer, Pariyaram	- Other Witness
PW10	Shri.Ullas C	- Other Witness
PW11	Shri. Bhaskaran A	- Other Witness
PW12	Shri. Pradeepan V V	- Other Witness
PW13	Shri. Lakshmanan O P	- Other Witness
PW14	Shri. Hareendran K P	- Other Witness
PW15	Shri. Lakshmanan K	- Other Witness
PW16	Dr. P Suresh Kumar Shetty, Professor & Head of Department of Forensic Medicine & Toxicology, Kasturba Medical College, Mangalore	- Medical Witness
PW17	Dr. K P Divakar Shetty, Casualty Medical Officer, Kasturba Medical College, Mangalore	- Medical Witness
PW18	Dr. Shanavas K Moosa, Govt.Medical College, Kannur	- Medical Witness
PW19	Shri.Gangadharan M, Agriculture Officer, Pariyaram.	- Other Witness
PW20	Shri. Santhosh P K, CI of Police,	- Police Witness

	Taliparamba PS		
PW21	Shri.Surendran A, DySP, Taliparamba	-	Police Witness
PW22	Shri. Sudarsan K S, DySP, Taliparamba	-	Police Witness
PW23	Dr.Muralidhar Pai, Professor of Neurosurgeon in Kasturba Medical College, Mangalore	-	Medical Witness

EXHIBITS FOR THE PROSECUTION:-

Sl. No.	Date	Exhibit number	Description
1	13-05-2014	P1/PW1	First information statement
2	03-02-2005	P2/PW1	Photo copy of complaint filed by Prabhakaran P P before SI of Police, Taliparamba Police Station.
3	16-05-2005	P3/PW2	Photo copy of complaint filed by Yeshoda before Superintendent of Police, Kannur.
4	26-06-2014	P4/PW3	164 Cr.PC statement of Bhaskaran
5	17-09-2014	P5/PW5	Seizure Mahazar (Case sheet of Prajul K from KMC Hospital, Mangalore)
6	14-05-2014	P6/PW5	Patient record of Prajul K issued from KMC Hospital, Mangalore.
7	15-05-2014	P6(a)/PW5	X Ray of Prajul
8	20-05-2014	P6(b)/PW5	X Ray report and film of Prajul
9	20-05-2014	P6(c)/PW5	X Ray of Prajul
10	15-05-2014	P6(d)/PW5	Chest X Ray report of Prajul
11	20-05-2014	P6(e)/PW5	Chest X Ray report of Prajul
12	20-05-2014	P6(f)/PW5	Chest X Ray report of Prajul
13	14-05-2014	P6(g)/PW5	Radiodiagnosis Image of Prajul
14	14-05-2014	P6(h)/PW5	Radiodiagnosis Image of Prajul
15	16-05-2014	P6(i)/PW5	Radiodiagnosis Image of Prajul
16	16-05-2014	P6(j)/PW5	Radiodiagnosis Image of Prajul

17	16-05-2014	P6(k)/PW5	Radiodiagnosis Image of Prajul
18	16-05-2014	P6(l)/PW5	Radiodiagnosis Image of Prajul
19	14-05-2014	P6(m)/PW5	Report of NECT Scan of Brain of Prajul
20	16-05-2014	P6(n)/PW5	Report of NECT Scan of Brain of Prajul
21	16-05-2014	P6(o)/PW5	Radiodiagnosis report.
22	14-05-2014	P7/PW8	First Information Report.
23	24-07-2014	P8/PW9	Site Plan
24	24-07-2014	P9/PW8	Possession Certificate issued by Village Officer, Pariyaram
25	21-05-2014	P10/PW10	Inquest report
26	22-05-2015	P11/PW10	Seizure Mahazar (കുത്തിയാൾ)
27	14-05-2014	P12/PW11	Scene Mahazar
28	14-05-2014	P13/PW11	Portion in 161 statement of Bhaskaran A
29	14-05-2014	P14/PW11	Portion in 161 statement of Bhaskaran A
30	19-05-2014	P15/PW12	Seizure Mahazar (Dress of Prajul)
31	16-06-2014	P16/PW14	Seizure Mahazar (KL 14-5757 number Jeep)
32	21-05-2014	P17/PW16	Postmortem report
33	01-07-2014	P18/PW17	Wound certificate of Prajul K issued from KMC Hospital, Mangalore.
34	13-05-2014	P19/PW18	Wound certificate of Prajul K issued from Pariyaram Medical College Hospital.
35	13-05-2014	P20/PW18	Wound certificate of Prabhakaran issued from Pariyaram Medical College Hospital.
36	13-05-2014	P21/PW18	Wound certificate of Preetha issued from Pariyaram Medical College Hospital.
37	16-05-2015	P22/PW19	Report of Agricultural Officer, Krishibhavan, Pariyaram.
38	14-05-2014	P23/PW20	Section 427 IPC adding report

39	21-05-2014	P24/PW20	Section 302 IPC adding report
40	22-05-2014	P25/PW20	Arrest & Inspection memo of A1.
41	22-05-2014	P26/PW20	Arrest & Inspection memo of A2
42	22-05-2014	P27/PW20	Arrest & Inspection memo of A3
43	22-05-2014	P28/PW20	Report regarding adding full address of accused Nos.1 to 3
44	25-05-2014	P29/PW20	Seizure Mahazar (Photo copy of complaint filed by Prabhakaran and Yesoda)
45	20-05-2014	P30/PW20	List of property (RP No.316/14)
46	02-07-2014	P31/PW20	Copy of forwarding note
47	28-02-2015	P32/PW20	Forensic Science Lab Report.
48	05-11-2014	P33/PW21	Certified copy of report regarding submission of final report in Crime No.327/14 of Pariyaram Medical College Police Station.
49	14-05-2014	P34/PW21	Certified copy of FIR and FIS in Crime No.327/14 of Pariyaram Medical College Police Station.
50	25-07-2014	P35/PW22	Kachit for receving vehicle No.KL 14 5757 Jeep
51	11-08-2014	P36/PW22	Seizure Mahazar (Wound certificate, Case sheet and Death summary of Prajul)
52	20-07-2014	P37/PW22	Report regarding taking investigation charge
53	14-05-2014	P38/PW23	Death Summary of Prajul

WITNESS FOR THE DEFENCE:-

Rank	Name	Eye witness/ police witness/ expert witness/ Medical witness/other witness.	
DW1	Shri. Rajesh C M	-	Other Witness

EXHIBITS FOR THE DEFENCE:-

Sl. No.	Date	Exhibit number	Description
1	13-05-2014	D1/PW1	Portion in First information statement of Prabhakaran P P
2	13-05-2014	D2/PW1	Portion in First information statement of Prabhakaran P P
3	13-05-2014	D3/PW1	Portion in First information statement of Prabhakaran P P
4	13-05-2014	D4/PW1	Portion in First information statement of Prabhakaran P P
5	13-05-2014	D5/PW1	Portion in First information statement of Prabhakaran P P
6	13-05-2014	D6/PW1	Portion in First information statement of Prabhakaran P P
7	15-06-2014	D7/PW1	Certified copy of FIR and complaint in Crime No.433/14 of Pariyaram Medical College Police Station.
8	30-11-2013	D8/PW1	Certified copy of CMP No.6337/13 on the file of the Judicial First Class Magistrate, Payyannur.
9	17-05-2014	D9/PW3	Portion in 161 statement of K Bhaskaran
10	11-10-2018	D10/PW3	Certified copy of deposition of PW2 Bhaskaran in CC 1110/14 on the file of the Judicial First Class Magistrate, Payyannur.

11	21-05-2014	D11/PW4	Portion marked in statement of Preejith with inquest report.
12	14-05-2014	D12/PW7	Certified copy of First information statement in Crime No.327/14 of Pariyaram Medical College Police Station.
13	14-05-2014	D12 (a)/PW7	Portion marked in FIS in Crime No.327/14 of Pariyaram Medical College Police Station.
14	14-05-2014	D13/PW8	Certified copy of First information report in Crime No.327/14 of Pariyaram Medical College Police Station.
15	21-05-2014	D14/PW15	Portion marked in statement of Lakshmanan K with inquest report.
16	13-05-2014	D15/PW18	Referral letter issued from Pariyaram Medical College Hospital
17	13-05-2014	D16/PW18	Certified copy of Out Patient Record of Chanthukutty issued from Pariyaram Medical College Hospital.
18	13-05-2014	D16(a)/PW18	Certified copy of Case Record of Chanthukutty issued from Pariyaram Medical College Hospital.
19	10-07-2014	D17/PW22	Report regarding formation of special investigation team for investigation.
20	09-07-2014	D18/DW1	Certified copy of statement of Rajesh u/s. 164 Cr PC given in Crime No.327/14 of Pariyaram Medical College Police Station.
21	27-08-2014	D19/DW1	Certified copy of final report in Crime No.433/2014 of Pariyaram Medical College Police Station

MATERIAL OBJECTS:-

1.	MO1/PW1	:	കത്തുൾ
2.	MO2/PW1	:	Iron pipe
3.	MO3/PW1	:	മര വടി
4.	MO4 MO4(a)/PW1	:	Series മട്ടൽ കപ്പങ്ങൾ
5.	MO5 /PW1	:	Blue Jeans pants
6.	MO6/PW1	:	Shirt (Black colour)
7.	MO7/PW1	:	Beniyan (Knighthood)
8.	MO8/PW1	:	Beniyan (blood stain)

Sd/
ADDITIONAL SESSIONS JUDGE-I

**IN THE COURT OF SESSION,
THALASSERY**

SESSIONS CASE No.401/2016

JUDGMENT

DATED: 30 .03.2026

1. The Registrar, (Subordinate Judiciary),
High Court of Kerala, Kochi-682031.
2. The Chief Judicial Magistrate,
Thalassery.
3. The Spl. Public Prosecutor.