IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946

DSR NO. 4 OF 2018

AGAINST THE JUDGMENT DATED 21.04.2018 IN SC NO.528 OF 2011 ON THE FILE OF THE ADDITIONAL SESSIONS COURT - III, ALAPPUZHA

PETITIONER:

STATE REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE, CHERTHALA POLICE STATION, CRIME NO. 1010/2009.

SRI.E.C.BINEESH P.P.

RESPONDENT:

R.BAIJU
KAKKAPARAMBATHUVELI VEEDU,
NORTH OF KIZHAKKETHAZHATHU SERVICE CO-OPERATIVE SOCIETY, CHERTHALA MUNICIPAL WARD NO.31.

SRI.S.SANAL KUMAR (SR.)

THIS DEATH SENTENCE REFERENCE HAVING BEEN HEARD ON 27.06.2024 ALONG WITH CRL.A.648/2018, 791/2018 AND CONNECTED CASES, THE COURT ON 02.08.2024 DELIVERED THE FOLLOWING:

2024:KER:58446

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946

CRL.A NO. 648 OF 2018

AGAINST THE JUDGMENT DATED 21.04.2018 IN SC NO.528 OF 2011 ON THE FILE OF THE ADDITIONAL SESSIONS COURT - III, ALAPPUZHA

APPELLANT/ACCUSED NO.5:

SETHU @ SETHUKUMAR
AGED 40 YEARS, D/O.NAGAPPAN, DRIVER,
CHOOLACKAL HOUSE, WARD NO.32,
CHERTHALA MUNICIPALITY, CHERTHALA.

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.T.ANIL KUMAR
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.THOMAS SABU VADAKEKUT
SRI.E.VIJIN KARTHIK

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031.

SRI.E.C.BINEESH P.P.

THIS CRIMINAL APPEAL HAVING BEEN HEARD ON 27.06.2024 ALONG WITH DSR.4/2018 AND CONNECTED CASES, THE COURT ON 02.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946

CRL.A NO. 791 OF 2018

AGAINST THE JUDGMENT DATED 21.04.2018 IN SC NO.528 OF 2011 ON THE FILE OF THE ADDITIONAL SESSIONS COURT - III, ALAPPUZHA

APPELLANTS/ACCUSED NOS.1 TO 4:

1 MANJU @ SUJITH,
S/O.VIJAYAN, CHEPPILAPOZHY VEEDU,
(NEAR KUTTIKADU JUNCTION),
CHERTHALA MUNICIPAL WARD NO.32, CHERTHALA.

2 KANNAN @ SATHEESHKUMAR
S/O.SADANANDAN, KODANATTU VEEDU,
(NEAR KUTTIKADU JUNCTION), CHERTHALA MUNICIPAL WARD NO.32, CHERTHALA.

3 PRAVEEN
S/O.PRAKASAN, CHEPPILAPOZHY VEEDU,
(NEAR KUTTIKADU JUNCTION), CHERTHALA MUNICIPAL WARD NO.32, CHERTHALA.

4 BENNY
S/O.MANIYAPPAN, VAVALLIYIL VEEDU, CHERTHALA MUNICIPAL WARD NO.31, CHERTHALA.

BY ADVS.
SRI.P.VIJAYA BHANU (SR.)
VISHNUPRASAD NAIR
SRI.T.A.SHAJI (SR.)
SRI.P.M.RAFIQ
SRI.ATHUL SHAJI
SRI.S.ABHILASH VISHNU
SRI.V.C.SARATH
SRI.M.REVIKRISHNAN

SRI.AJEESH K.SASI
SRI.VIPIN NARAYAN
SRI.THOMAS J.ANAKKALLUNKAL
SRUTHY N. BHAT
SRUTHY K K
RAHUL SUNIL(K/000608/2017)
NIKITA J. MENDEZ(K/2364/2022)

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, (REPRESENTING THE CIRCLE INSPECTOR OF POLICE, CHERTHALA POLICE STATION, ALAPPUZHA DISTRICT).
SRI.E.C.BINEESH P.P.

THIS CRIMINAL APPEAL HAVING BEEN HEARD ON 27.06.2024 ALONG WITH DSR.4/2018 AND CONNECTED CASES, THE COURT ON 02.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946

CRL.A NO. 836 OF 2018

AGAINST THE JUDGMENT DATED 21.04.2018 IN SC NO.528 OF 2011 ON THE FILE OF THE ADDITIONAL SESSIONS COURT - III, ALAPPUZHA.

APPELLANT/ACCUSED NO.6:

R. BAIJU
AGED 43 YEARS, S/O. RAMANAN,
KAKKAPARABATHUVELI HOUSE, CHERTHALA,
ALAPPUZHA DISTRICT.

BY ADVS.
SRI.SANAL KUMAR (SR.)
SRI.M.R.ARUNKUMAR
SMT.BHAVANA VELAYUDHAN
SMT.T.J.SEEMA

RESPONDENT/STATE & COMPLAINANT:

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

SRI.E.C.BINEESH P.P.

THIS CRIMINAL APPEAL HAVING BEEN HEARD ON 27.06.2024 ALONG WITH DSR.4/2018 AND CONNECTED CASES, THE COURT ON 02.08.2024 DELIVERED THE FOLLOWING:

2024:KER:58446

C.R.

P.B.SURESH KUMAR & M.B.SNEHALATHA, JJ.

D.S.R.No.4 of 2018

&

Crl.Appeal Nos.648, 791 and 836 of 2018

Dated this the 2nd day of August, 2024

JUDGMENT

P.B.Suresh Kumar, J.

The above Death Sentence Reference and the Criminal Appeals arise from S.C.No.528 of 2011 on the files of the Court of the Additional Sessions Judge-III, Alappuzha. There are altogether six accused in the case and among them, accused 1 to 5 stand convicted for offences punishable under Sections 143, 147, 148, 323, 324, 427, 449 and 302 read with Sections 149 and 120B of the Indian Penal Code (IPC) and the sixth accused stands convicted for the said offences, except the offence punishable under Section 148 IPC. Accused 1 to 5

are sentenced, among others, for imprisonment for life and the sixth accused is sentenced, among others, to death. DSR is the proceedings initiated by this Court for confirmation of the death sentence of the sixth accused and the Criminal Appeals are preferred by the accused challenging their conviction and sentence in the case. Among the appeals, Crl.A.No.791 of 2018 is preferred by accused 1 to 4, Crl.A.No.648 of 2018 is preferred by the fifth accused and Crl.A.No.836 of 2018 is preferred by the sixth accused.

2. An occurrence took place on 29.11.2009 in which one Divakaran died and two others injured, is the subject matter of the case. Divakaran was an activist of the political party “Indian National Congress”. He was also an office bearer of the said party for sometime. A group of activists of the political party “CPI(M)” trespassed into the courtyard of the house of Divakaran; attacked Divakaran and the members of his family and vandalised his house. The neighbours of Divakaran took him and the others who sustained injuries in the occurrence to the Taluk Hospital, Cherthala. As the condition of Divakaran was serious, he was referred to the Medical College

Hospital, Kottayam while the others were treated in the former hospital. Divakaran succumbed to the injuries while undergoing treatment at the Medical College Hospital, Kottayam on 08.12.2009.

3. A case was registered by Cherthala Police on the date of occurrence itself at 9:30 p.m. on a statement recorded from the daughter-in-law of Divakaran, Reshmi while she was undergoing treatment for the injuries sustained by her in the occurrence at the Taluk Hospital, Cherthala. The Circle Inspector of Police, Cherthala was in charge of the investigation in the case. Even though it was disclosed in the First Information Statement that the assailants were a group of four to five persons, the investigating officer maintained the stand from the very inception that the assailants were only a group of four persons. Consequently, the investigation in the case was confined only to the roles played in the occurrence by those four persons. That apart, it was stated in the First Information Statement that they were attacked since they refused to purchase the coir mats brought for sale from Kudumbasree on the same day afternoon. Despite the said statement, there was

no investigation about the persons involved in the sale of coir mats nor have they been arrayed as accused in the case, even though the Investigating Officer did not find any other reason for the four assailants who were found to be involved in the occurrence to attack the house of the deceased and caused injures to the inmates in the house.

4. While the investigation in the case was progressing, on 19.12.2009, the Circle Inspector of Police, Mararikkulam was put in charge of the investigation. The said officer, having felt that the officer who conducted the investigation till then was biased in favour of some of the accused and had not recorded the statements of the witnesses including the injured persons truly and correctly, made a request to the Chief Judicial Magistrate, Alappuzha, for recording the statements of the close relatives of the deceased who were present at the scene at the time of occurrence, under Section 164 of the Code of Criminal Procedure (Code). On the basis of the said request, the statements of the daughter-in-law, son and wife of the deceased were recorded under Section 164 of the Code on 07.01.2010. Later, based on the said

statements, the son of a local leader of the political party CPI(M) and a Municipal Councillor and the then Chairman of the Cherthala Municipal Standing Committee, were arrayed as accused 5 and 6 in the case. Later, after investigation, final report was filed in the case against all the accused alleging commission of various offences.

5. The allegation against the accused in the final report is that a criminal conspiracy was hatched at about 7 p.m. on 29.11.2009 among accused 1 to 6 at the courtyard of the house of the fifth accused to assault the son of the deceased and to commit murder of the deceased who were on inimical terms with them, and in pursuance to that criminal conspiracy, on the same day at about 7.30 p.m., accused 1 to 6 formed themselves into an unlawful assembly armed with deadly weapons, and in prosecution of their common object, criminally trespassed into the house of the deceased and attacked the deceased, his son Dileep and daughter-in-law, Rashmi and vandalised the house as also the movables therein. It was specifically alleged in the final report that the first accused attacked the son of Divakaran with a wooden log and

thereby caused injuries on his left shoulder and right side of his face and when Divakaran tried to intervene, the first accused attacked Divakaran also with the same wooden log at the back of his head and further that when Divakaran bent on account of the impact of the attack, the second accused inflicted a blow on the front of the head of Divakaran with a similar wooden log. It was also alleged that when Reshmi, the daughter-in-law of the deceased attempted to catch hold of Divakaran who was fainting down then, the first accused attacked Reshmi also using the same wooden log and thereby caused an injury on her right shoulder. It was further alleged that in the meanwhile, accused 3, 4 and 5 have destroyed the window glasses, doors, electric bulbs etc. of the house as also sewing machine, refrigerator and other movables kept therein.

6. On the accused being committed to trial, the Court of Session framed charges against them for offences punishable under Sections 143, 147, 148, 449, 323, 324, 427, and 302 read with Sections 149 and 120B IPC. When the charges were read over and explained to the accused, the accused denied the same and pleaded not guilty. The

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prosecution, thereupon, examined 21 witnesses as PWs 1 to 21 and proved through them 29 documents as Exts.P1 to P29. MOs I to VIII are the material objects identified by the witnesses. Exts.D1, D3, D4, and D6 to D15 are portions of statements of PWs 1 to 3 recorded under Section 161 of the Code and Exts.D2 and D5 are portions of the First Information Statement of PW1. After closing the evidence, when the circumstances appearing against the accused in the evidence of the prosecution were put to the accused, they maintained that they are innocent. According to the accused, Divakaran and members of his family suffered injuries in the group clash occurred in front of their house on the date of occurrence. As the court did not find the case to be one fit for acquittal in terms of Section 232 of the Code, the accused were called upon to enter on their defence, and at that stage, the accused examined a witness as DW1. Thereupon, on an elaborate consideration of the evidence on record, the Court of Session found the accused guilty of the charges, convicted and sentenced them, as stated in the opening paragraph of this judgment. The accused are deeply aggrieved by their conviction and sentence.

7. Heard Sri. P.Vijaya Bhanu, Sri.B.Raman Pillai and Sri.S.Sanal Kumar, the learned Senior Counsel appearing for accused 1, 5 and 6 respectively, Sri. Vishnuprasad Nair, the learned counsel for the second accused and Sri.Anwin John Antony, the learned counsel appearing for accused 3 and 4. Sri. E.C.Bineesh, the learned Special Public Prosecutor has also made elaborate arguments.

8. Elaborate arguments have been addressed by the learned counsel for the accused. As we propose to deal with the arguments advanced by the learned counsel in the succeeding paragraphs, it is suffice at this stage to state that the attempt made by all the learned counsel was to establish that the complicity of the accused in the crime has not been satisfactorily proved in the case, for the ocular evidence of the close relatives of the deceased were full of embellishments, contradictions and omissions. *Per contra*, the learned Public Prosecutor asserted that the evidence of the ocular witnesses which includes the injured are very much reliable, the same have been fully and completely corroborated by other evidence

let in by the prosecution and therefore, the impugned judgment does not warrant interference.

9. Having heard the learned counsel for the parties on either side, the following points are formulated for decision;

(i) whether the prosecution has established the occurrence involving all the six accused as alleged by the prosecution;

(ii) whether the prosecution has established that accused 1 to 6 hatched a criminal conspiracy to assault the son of the deceased and commit murder of the deceased and if so, the object of the conspiracy; and

(iii) the offences, if any, committed by the accused and the sentence to be imposed on them.

10. Point (i): In order to adjudicate the point, it is necessary to refer to the evidence let in by the prosecution. PW1 is the daughter-in-law of the deceased. She is one among the persons who suffered injuries in the occurrence. It is based on the statement recorded from PW1 that the case was registered. Ext.P1 is the statement recorded from PW1. The

version of PW1 as regards the occurrence was that on the relevant day, at about 7.00 p.m., accused 2 and 4 called out the name of PW2 from outside the house and PW2, instead of going outside the house, invited them inside the house; that accused 1 and 4 then came inside the house and when she turned towards PW2 hearing the noise of them beating him, she saw the sixth accused outside her house and exhorting that "അവനെയൊക്കെ അടിച്ചു കൊല്ലെടാ". It was also deposed by PW1 that on hearing the said exhortation, a few persons who were standing outside the house also barged into the house and beat PW2, and when she attempted to ward off the attack on PW2, the assailants attacked her also. It was her version that PW2 then went inside the next room and closed the door from inside and the first accused then started banging on the door of that room with a wooden log. It was also deposed by PW1 that in the meanwhile, the third accused caught hold of her two year old child, and PW3, the wife of deceased then intervened and took away the child from the third accused. It was the version of PW1 that the deceased who was then watching television in the adjoining room, came to the hall on hearing the noise and

the first accused then beat the deceased on his head using the wooden log carried by him and the blow fell on the right back of his head. It was also deposed by PW1 that the first accused thereupon beat on the head of the deceased two more times with MOI wooden log. It was also deposed by PW1 that in the meanwhile, the other accused who were present inside the house namely accused 2 to 4 also beat the deceased on his back as also on his leg. It was the version of PW1 that when the deceased sat down then by keeping his hand on his head on account of the beating, she rushed towards him to hold him and the first accused then beat her also on her right shoulder. It was also deposed by PW1 that she heard a loud exhortation from outside the house then and immediately thereupon, the fifth accused barged into the house and gave a kick on the abdomen of the deceased. It was also deposed by PW1 that in the meanwhile, the accused who remained inside the house damaged the movables therein and also broke the electrical fittings. PW1 identified MOIII as the wooden log used by the second accused to beat the deceased and others. It was clarified by PW1 that even though she signed Ext.P1 statement

prepared by the police on the night of the same day at the Taluk Hospital, Cherthala, she could not read it before affixing her signature, as the police officer who recorded the statement was in a hurry to go to the Medical College Hospital, Kottayam to which hospital the deceased was referred to from Taluk Hospital, Cherthala. It was also deposed by PW1 that since the police did not initially array the sixth accused as an accused in the case, PWs 1 and 2 complained to the Investigating Officer. In cross-examination, PW1 deposed that the fifth accused who is residing within 500 meters of her house is the husband of one of her friends and she knew his name even before the occurrence. Similarly, it was deposed by PW1 in her cross-examination that she knew the third accused as the person who was engaged for unloading stones in her house and the fourth accused as the person who usually stands at the place called Kuttikkadu junction. It was also deposed by PW1 in cross-examination that accused 2 to 4 were among the persons engaged for the concrete work of their house. It was clarified by PW1 that it was since the sixth accused was not arrested, PWs 1 and 2 realized that he was not arrayed as an accused in the

case and it is in that background that they applied for and obtained the certified copies of the statement given by them and approached the Magistrate for recording their statements. It was also clarified by PW1 that even though what was recorded in Ext.P1 were statements given by her, all the statements given by her were not seen recorded therein. PW1 also asserted that the investigating officer had not read over to her the statements recorded from her.

11. PW2 is the husband of PW1 and the son of the deceased. PW2 deposed that on the afternoon of the relevant day, accused 5 and 6 came to their house with one Chellappan for the sale of coir mats; that PW2 directed them to meet the deceased who was sitting, at the relevant time, at the front side of the house; that when they required the deceased to purchase a coir mat from them, the deceased took the stand that he does not require a coir mat as he is already in possession of a few coir mats; that the sixth accused then insisted that the deceased shall purchase one coir mat from them and when the deceased communicated to the sixth accused his firm stand that he will not purchase a coir mat from

them, the sixth accused reacted to the deceased stating "നിക്ക് വേണ്ടങ്കിൽത്തീ കത്തിച്ചുകള" and threw a coir mat in front of him. PW2 identified MOVI as the said coir mat. It was also deposed by PW2 that the said incident caused agony to the deceased and consequently, the deceased directed PW2 to raise a query in the Ward Council Meeting scheduled on that day about the compulsory sale of coir mats. It was deposed by PW2 that accordingly, he ascertained from the official of the Municipality, who was present in the Ward Council Meeting, whether the compulsory sale of coir mats made by the sixth accused and others was with the concurrence of the Municipality and the query of PW2 was answered immediately by the sixth accused who was present there, in an arrogant manner stating that if he does not require the coir mat, he can set it ablaze. As regards the occurrence, the version of PW2 was that at about 7 p.m. on the relevant day, when he opened the door of the house on hearing his name being called out by someone from outside, he saw accused 2 and 4 standing there and when they required him to come out of the house, he invited them inside and proceeded back, on the assumption

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that they would follow him. It was also deposed by PW2 that he noticed then through the door of the kitchen which was kept open, the shadow of a person on the side of the kitchen and as he sensed something wrong, he turned back and whilst so, he saw then the first accused attempting to beat him using a wooden log and when he turned his face then towards the left, the hit fell on his shoulder and cheek. PW2 deposed that he then heard an exhortation "അടിച്ചു കൊല്ലെടാ അവനെ". PW2 identified MOI as the wooden log used by the first accused to beat him. It was deposed by PW2 that by the time he got into a room and attempted to close the room in order to escape from the attack, the first accused banged on the door and as a result, a portion of the door broke and fell down. PW2 identified MOII as the said portion of the door. PW2 also deposed that the deceased came to the main room of the house by the time on hearing the noise and the first accused then beat the deceased using a wooden log repeatedly. It was deposed by PW2 that the deceased then sat on the floor keeping his hand on the head, and by the time, the second accused also hit him. It was also deposed by PW2 that in the meanwhile, the assailants

destroyed the furniture and other utensils in the house as also damaged the window glasses. PW2 identified MOIV series as the portions of furniture destroyed by the assailants. It was also deposed by PW2 that by the time, their neighbours rushed into their house on hearing the noise and the third accused then left the house after shattering a tube light and after brandishing the wooden log carried by him on those who had come to the house and the remaining accused followed him. PW2 also identified MOIII as the wooden log with which the second accused beat him and others. It was also deposed by PW2 that while the accused were leaving the house, they destroyed the outer windows as well and created noise by banging on the gate of the house. PW2 identified MOV series as the destroyed glasses of the windows. In cross-examination, to a specific question as to how he could see the sequence of events that took place in the house from inside the closed room, his answer was that he saw the sequence of events through the gap of the door from which MOII portion broke and fell down.

12. PW3 is the mother of PW2 and the wife of the deceased. As regards the occurrence, she corroborated

substantially the evidence tendered by PWs 1 and 2. PW3 also deposed that while some of the accused were attacking the deceased, PWs 1 and 2 from inside the house, there were two persons outside the house and one among them, all of a sudden barged into the house from the western side and after giving a kick to the deceased, went outside the house. It was specifically deposed by PW3 that it was the fifth accused who gave a kick to the deceased. It was also deposed by PW3 that it was thereafter that the fifth accused destroyed the windows of the house. PW3 also gave evidence as regards the destruction of the various movables such as sewing machine, refrigerator etc. made by the accused in the house as also the destruction of the windows. It was clarified by PW3 later that the accused flipped the cot and destroyed the tubelight on the southern side of the house. It was also asserted by PW3 that at that time, she saw the sixth accused standing on the northern side of her house and the accused left the house after leaving the wooden logs in the car porch of the house.

13. PW4 is a person who is residing in the immediate north of the house of the deceased. PW4 deposed

that at about 7 p.m. on the date of occurrence, when she rushed to the house of the deceased on hearing hue and cry from there, she understood that somebody beat the deceased as also PWs 2 and 3 and destroyed their house and she saw there at that time the first accused in a yellow t-shirt. Since PW4 did not give evidence consistent with the case of the prosecution, the Public Prosecutor was permitted to put questions to PW4 as provided for under Section 154 of the Indian Evidence Act and on such questions being put to PW4, she admitted that when the accused destroyed the movables inside the house of the deceased, there was a loud noise and nobody dared to go to that place then. Since PW4 did not identify the accused as the persons who attacked the deceased and the injured, the suggestion made to her by the learned Public Prosecutor was that she did not identify the accused as the persons who attacked the deceased and the injured on account of the influence of the accused, she denied the suggestion and stated that she did not identify the accused out of fear. The relevant portion of the evidence reads thus:

"ഞാൻ പ്രതിക്കളുടെ സ്വാധീനത്തിൽ അവരെ തിരിച്ചറിയാൻ കഴിയില്ല എന്ന് പറഞ്ഞല്ല. അവരെ പേടിച്ചാണ് തിരിച്ചറിയാൻ കഴിയില്ല എന്നുപറഞ്ഞത്."

In cross-examination, PW4 clarified that the sixth accused went to the house of the deceased for the sale of coir mat on the afternoon of the relevant day. It was also clarified by PW4 in cross-examination that when she reached the house of the deceased on hearing the hue and cry, she saw the deceased falling down and that it was while the deceased was lying down that the first accused beat him on his head.

14. PW5 is another neighbour of the deceased who participated in the Ward Council Meeting held on 29.11.2009, and she deposed that there were arguments in the Ward Council Meeting held on that day between PW2 and the sixth accused over the sale of coir mat and in the course of the arguments, the sixth accused told PW2 to set ablaze the coir mat if he does not want it. PW6 is another neighbour of the deceased who rushed to the house of the deceased on hearing the hue and cry from there and PW6 deposed that at that time he saw accused 1 and 2 standing outside the house of the

deceased and accused 3 and 4 smashing the windows of the house. It was also deposed by PW6 that when he entered inside the house, he saw the deceased vomiting and there were indications of a paralytic attack on his face and PW2 was standing by the side of the deceased with blood on his body. It was also deposed by PW6 that it was he who took the deceased to the hospital. In cross-examination, PW6 deposed that as the house of the deceased was being constructed then, there were wooden logs at the house of the deceased.

15. PW7 is a person residing near the house of the fifth accused. PW7 is the witness to Ext.P2 inquest. PW7 deposed that on the day on which the house of the deceased was attacked, his mother was in the Taluk Hospital, Cherthala and at about 7 p.m. on the said day, while he was proceeding to the hospital with food for his mother, he saw all the six accused standing in front of the house of the fifth accused. It was also deposed by PW7 that the second accused then asked him where he was going and PW7 replied that he was going to the hospital. It was also deposed by PW7 that when he turned back after proceeding a little further, he noticed that they were

discussing something. It was also deposed by PW7 that while he was in the hospital, he heard a noise near the casualty and when he went there, he saw the deceased lying unconscious. It was also deposed by PW7 that he informed PW2 at the hospital itself that he saw the accused together in front of the house of the fifth accused and that he informed the said fact to PW3 also on the following day. In cross-examination, PW7 stated that he belongs to the political party, BJP and that he was an accused in a few cases including a case registered at the instance of the sixth accused. It was also clarified by PW7 that the case registered against him at the instance of the sixth accused was settled between them.

16. PW10 was the Assistant Professor of Forensic Medicine attached to the Medical College Hospital, Kottayam at the time of occurrence. It was PW10 who conducted the post-mortem examination on the body of the deceased. Ext.P5 is the post-mortem certificate. Ante-mortem injuries 1 to 8 noticed by PW10 at the time of the post-mortem examination read thus:

> 1. 'G' shaped surgical stapled craniotomy wound (with adherent edges 28 cm. long involving right fronto parieto-temporal region, its front lower end, 2.5cm. above eyebrow

and 2 cm. outer to midline and back lower end in front of tragus of ear.
On dissection, the scalp showed contusion 10x8x1cm. involving the frontoparietal region, and temporalis muscles on either side. The left parieto occipital region showed contusion 9.5x8x1cm.
A circular piece of right tempero parietal bone of diameter 5.5cm. was seen raised, underneath, dura was incised and duroplasty was seen done. Brain showed contusion 5x3x1cm. involving the right temporal and 3x2x1cm, involving the left temporal lobe were subdural clots adherent to frontal and temporal lobes of brain. Brain showed flattened gyri and narrowed sulci with softening around it. (Surgically modified wound). Scalp contusion and intracranian haemorrhages were dark red in colour.

2. Abrasion 0.5x0.5cm. on the left side of back of head 1.5cm, outer to midline and 11cm, above root of neck.

3. Abrasion 3.45x2cm. involving the back of head, over occiput, 11cm. above root of neck.

4. Multiple small healing abrasions (covered with brown easily removable scab) over an area 2x1cm, on the left side of front of neck, 3cm. outer to midline and 2 cm, above collar bone.

5. Abrasions 0.7x0.3cm. on the right side of front of neck, 3cm, outer to midline and 2cm. above collar bone (covered with brown easily removable scab).

6. Contusion 1x0.5cm. skin deep on the left side of lower lip 0.5cm, outer to midline, corresponding to incisor tooth.

7. Linear contused abrasion 17x1-3cm. oblique on the right side of back of chest, its upper extent 9 cm. below top of shoulder and 12cm, outer to midline. (The contused abrasions were healing and hypopigmented at places).

8. Healing abrasion (covered with brownish scab) 2x1cm. on right side of front of abdomen, 2cm, outer to midline and 5cm. below costal margin.

It was opined by PW10 in his evidence that the death of the victim was due to head injury, and ante-mortem injuries 1 to 7

could be caused by MOI and MOIII and ante-mortem injury 8 could be caused by stamping or by kicking. PW11 was a senior resident in the Neurosurgery Department of the Government Medical College, Kottayam who issued Ext.P6 certificate stating that the deceased was admitted in the hospital on 29.11.2009 with severe head injury; that craniotomy surgery and haematoma evacuation were done and that the patient died at 11.55 p.m. on 08.12.2009.

17. PW12 was the doctor who examined PWs 1 and 2 at the Taluk Hospital on 29.11.2009. PW12 deposed that on that day, at 8.05 p.m. he examined PW2 and the injuries noted by him on the body of PW2 then were only an abrasion 3x2 cm on the right side of face and abrasion 0.5x0.5 on the back. It was also deposed by PW12 that the alleged cause of injury as mentioned to him by PW2 was "കണ്ണൻ, മഞ്ജു തുടങ്ങി കണ്ടാൽ അറിയാവുന്ന ചിലർ ചേർന്ന് മർദ്ദിച്ചതിൽ വച്ച് 7.45 P.M ചേർത്തല'. Ext.P7 is the wound certificate issued by PW12 in this connection. It was also deposed by PW12 that on the same day he also examined PW1 and he noticed tenderness then on her right flank and she was suffering from movement restriction on

her right shoulder. PW12 deposed that the cause of injury as informed to him by PW1 was the same as informed to him by PW2. Ext.P8 is the wound certificate issued by PW12 in this connection. In cross-examination, PW12 clarified that the deceased was also brought to the hospital along with PWs 1 and 2 and he was immediately referred to the Medical College Hospital, after giving first aid.

18. PW13 is the official of Cherthala Municipality who attended the Ward Council Meeting held on 29.11.2009. PW13 deposed that in the Ward Council Meeting, a youngster raised a query whether the sale of coir mats was in terms of any Government Order and the query was answered by the sixth accused stating that the coir mats were sold in terms of a scheme. According to PW13, nothing else happened in the Ward Council Meeting in respect of the said matter.

19. PW15 is the police official who recorded the statement of PW1 at about 7.30 p.m at the Taluk Hospital, Cherthala. PW15 deposed the said fact in his evidence. In cross-examination, he stated that he recorded all that was stated to him by PW1 and later read over the same to her and

she put her signature thereon, on being satisfied that the statement has been recorded correctly. PW17 was the police officer who registered the crime and conducted the initial investigation in the case. PW17 deposed that he prepared Ext.P3 scene mahazar and seized MOI and MOIII weapons and MOII, MOIV and MOV articles in terms of the same and later arrested accused 1 to 4 on 30.11.2009.

20. PW18 was the police officer who took over the investigation in the case from PW17. PW18 conducted a substantial part of the investigation. It was PW18 who affirmed in his evidence that the Left Democratic Front Government was in power in the State as also in the Municipality at the time of occurrence. It was also affirmed by PW18 that the sixth accused was, at that point of time, the Chairman of the Standing Committee of the Municipality. In cross-examination, PW18 stated that he took additional statements of PWs 1 to 3 prior to recording their statements under Section 164 of the Code. When PW18 was asked in cross-examination whether PWs 1 to 3 have stated to him in the additional statements about the involvement of any person other than accused 1 to 4,

the answer given by PW18 was that PW2 disclosed to him that two other persons were standing outside the house of the deceased. Similarly, even though PW18 stated that PWs 1 to 3 did not state in their additional statements the information, if any, passed on to him by PW7, it was added by PW18 that one Chellappan also gave a statement on 05.12.2009 that he saw all the six accused at about 7 p.m. on the date of occurrence in the house of the fifth accused. It was also clarified by PW18 that none of the witnesses disclosed in their statements given to him that they saw the fifth accused at the scene on the date of occurrence. Similarly, PW18 clarified that PW3 did not disclose to him in her statement recorded on 01.12.2009 that she saw somebody kicking her husband. To a specific question put to PW18 as to the date on which the statement of PW7 was recorded, PW18 stated that it was on 24.03.2010. Even though PW18 affirmed in cross-examination that his investigation revealed the presence of accused 5 and 6 at the scene at the time of occurrence, he clarified that there is no evidence to indicate that all the accused came together and left the scene

together after the occurrence. The relevant questions and answers read thus:

> "A5 ഉം A6 ഉം A1 to A4 ഒന്നാപ്പം place of occurrence ൽ എത്തി എന്ന് താങ്കൾക്ക് കേസുണ്ടോ (Qn) ആ സമയത് അവരുടെ presence ഉണ്ട് (An) ഒന്നിച്ചു എല്ലാപേരും വന്നതായി പറയുന്നുണ്ടോ (Qn) ഇല്ല (An) ഒന്നിച്ചു സംഭവം കഴിഞ്ഞ് മടങ്ങിപോയതായി പറയുന്നുവോ (Qn) ഇല്ല (An)"

It was also clarified by PW18 in the cross-examination that he did not get any information about any other occurrence that took place in front of the house of the deceased on the relevant day. In answer to a court question as to why the sixth accused was not arrested despite dismissal of applications preferred by him for anticipatory bail, the answer given by PW18 was that though PW18 tried to locate the sixth accused, the former could not do so. In the first remand application, it was asserted that there were only four accused in the case. However, in the subsequent police custody application, it is stated that there are other accused also in the case. When PW18 was asked by the court as to the reason for taking such a stand in the second remand application, he did not give any answer. Another question put to PW18 by the court was as to the reason why

accused 5 and 6 were not questioned despite the statement of Chellappan as also the 164 statements of the witnesses, the answer given by PW18 was that it was on account of his inexperience. It was clarified by PW18 that all the accused are CPM activists. To a specific question put to PW18 as to why the sixth accused was not questioned despite the fact that he had been to the house of the deceased on the relevant day, the answer given by PW18 was that there is no reason.

21. PW19 was the police officer who was in charge of the investigation in the case on 19.12.2009. PW19 deposed that on the said day, he preferred an application before the Chief Judicial Magistrate, Alappuzha to record the statements of PWs 1 to 3 under Section 164 of the Code and it is on that basis, their statements were recorded on 07.01.2010. In answer to a court question as to the reason for preferring an application for recording the statements of the witnesses under Section 164 of the Code, PW19 clarified that PWs 1 to 3 approached him on 19.12.2009 and informed him that there are two other accused in the case and it is in the said

background that PW19 preferred an application for recording their statements under Section 164 of the Code.

22. PW20 is the Judicial Magistrate who recorded the statements of PWs 1 to 3 under Section 164 of the Code. Exts.P25 to P27 are the statements of PWs 1 to 3 recorded under Section 164 of the Code. In cross-examination, PW20 clarified that PW1 disclosed to PW20 that the police has not recorded the statements given by PW1 in full.

23. PW21 was the police officer who completed the investigation in the case after taking over the investigation from PW18. PW21 deposed, among others, that the sixth accused surrendered before him on 24.07.2010 and his arrest was recorded at 6.15 p.m. on the said day and he was produced before the court with an application of remand at 8.15 p.m. on that day itself. It was also deposed by PW21 that in the meanwhile, the sixth accused was taken to the house of the fifth accused where the conspiracy allegedly took place and also got the fifth and sixth accused identified by the witnesses. After the cross-examination, on a question put to PW21 by the court as to the reason for the hurry to produce the sixth

accused in court where there are very serious allegations against him, without asking for his custody for interrogation, PW21 did not give any answer. Similarly, a question was also put by the court to PW21 as to the reason why PW19, who preferred an application before the Chief Judicial Magistrate for recording the statements of the witnesses under Section 164 of the Code was not cited as a witness in the case, the answer was that it was an omission on the part of PW21.

24. DW1 is Chellappan who was referred to by PW2 in his evidence as the person who accompanied the fifth and sixth accused to their house in the afternoon on the date of occurrence to sell coir mats. DW1 deposed that he had not gone to the house of the deceased anytime for the sale of coir mats. DW1 also deposed in his evidence that he participated in the Ward Council Meeting held on the date of occurrence and there was no discussion in the meeting over the sale of coir mats. It was also deposed by DW1 that he did not go in front of the house of the fifth accused on that day and that he has not given any statement to the police in connection with the case. In cross-examination, it was stated by DW1 that the house of

the deceased is located within 100 meters from the house of DW1 and that he did not enquire about the attack in the house of the deceased. It was, however, clarified by DW1 in cross-examination that he did not listen carefully and completely as to what transpired in the Ward Council Meeting on that day, even though he attended the meeting.

25. As already noted, the accused belong to the political party “CPI(M)” and among them, the sixth accused was a local leader of that party and was holding, at the time of occurrence, the office of the Chairman of the Cherthala Municipal Standing Committee. It has come out in evidence that at the time of occurrence, the said political party was in power in the State and also in the Municipality. The case of the prosecution is that the sixth accused and a few others went to the house of the deceased in the afternoon of the date of occurrence to sell coir mats and insisted the deceased to purchase a coir mat from them in the pretext that it is compulsory for everyone to buy coir mats from them; that the deceased refused to purchase a coir mat from the sixth accused; that the said conduct of the deceased caused

irritation to the sixth accused and he left the house of the deceased after leaving a coir mat there with the comment "തനിക്ക് വേണ്ടങ്കിൽ അത് കത്തിച്ചുകള". It is also the case of the prosecution that in the Ward Council Meeting held on the evening of the same day, PW2 questioned the forceful sale of coir mats by the sixth accused to those who are unwilling to buy the same and the said conduct of PW2 also irritated the sixth accused and he had shown his irritation to PW2 by telling him in the meeting in front of others that if he does not require the coir mat, he can set it ablaze. The occurrence took place within a few hours after the Ward Council Meeting. PWs 1 to 3 have a case that inasmuch as the sixth accused is a prominent leader of the political party CPI(M), PW18 was not prepared to array him as an accused in the case in spite of the fact that it has been specifically stated in the First Information Statement recorded immediately after the occurrence that the cause of the attack was the incident that took place in the house in the afternoon over the sale of coir mats. It is also their case that PW18 was in a hurry to close the case without proper investigation, taking the stand that the assailants were only

four persons. In the evidence given by PW1, it was categorically stated that PW15 who recorded the First Information Statement from her had not read over the same to her and her signature was obtained without reading over the statement to her. It was also deposed by PW1 that it was since accused 5 and 6 who were named by her and PW2 as the assailants in the subsequent statements were not arrested, they applied for and obtained the certified copies of the statements and having found that PW18 was deliberately not arraying accused 5 and 6 as accused in the case on account of the political influence, they approached PW19 for reddressal of their grievance. The evidence tendered by PW19 indicates that it is on account of the grievance of PWs 1, 2 and 3 that their statements were not truly and correctly recorded by PW15, that PW19 preferred an application for recording their statements under Section 164 of the Code. The materials indicate that it is in the light of the statements of the witnesses recorded under Section 164 of the Code that accused 5 and 6 were arrayed as accused in the case. The materials also indicate that even though the said persons were arrayed as accused 5 and 6, the sixth accused

was not arrested, though the fifth accused was arrested after about four months on 24.05.2010. It is seen that the sixth accused was arrested only much later when he surrendered before PW21, the investigating officer, who took over the investigation from PW18, completed the investigation and submitted the final report. It is interesting to note that the sixth accused surrendered in the office of PW21 at 6.15 p.m. on 24.07.2010 and within a span of two hours, the sixth accused was produced before the Magistrate and his custody was not sought for investigation, although very serious allegations including the allegation of a criminal conspiracy to cause the death of the victim was attributed against him. It is pertinent to note that even though PW19 had a specific role in the investigation, he was not cited as a witness in the final report by PW21. As noticed, when PW21 was questioned by the Court as to why PW19 was not cited as a witness in the case, he evaded from answering the said question stating that it was an omission on his part. Needless to say, PW21 did not cite PW19 as a witness to prevent PW19 from explaining to the Court the circumstances under which PW19 preferred an application to

record the statement of PWs 1, 2 and 3 under Section 164 of the Code. During the cross-examination of PW21, even though the court required him to explain the reason for the hurry to produce the sixth accused in court where there were very serious allegations against the sixth accused without asking for his custody for interrogation, PW21 did not offer any explanation. The facts and circumstances mentioned above would indicate beyond doubt that PWs 18 and 21 police officers were prejudiced in favour of accused 5 and 6 and they were extending all possible help to the said two accused and they would not have been arrayed as accused in this case, but for the intervention of PW19 to approach the Chief Judicial Magistrate to record the statements of PWs 1, 2 and 3 again, under Section 164 of the Code. It is trite that if the investigation in a case is suspicious, the rest of the evidence in the case will have to be scrutinised independent of the faulty investigation; otherwise criminal trial will descend to the level of investigating officers ruling the roost and if the court is convinced that the evidence of a witness to the occurrence is true, the court is free to act upon such evidence [See **State of**

Karnataka v. K.Yarappa Reddy, (1999) 8 SCC 715]. It is apposite in this context to quote paragraph 19 of the judgment of the Apex Court in **K.Yarappa Reddy,** which reads thus:

> "19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."
>
> (Underline supplied)

The evidence in this case, in the facts and circumstances narrated above, needs to be appreciated keeping in mind the dictum in **K.Yarappa Reddy**.

26. Let us now revert to Point (i). To begin with, the accused maintained that there was no occurrence as alleged by the prosecution. What was suggested by the accused to the

witnesses who supported the prosecution case is that there was another occurrence on the evening of the alleged day outside the house of the deceased and the deceased as also the members of his family suffered injuries in the said occurrence. Even though such a suggestion was made to the witnesses, nothing was brought out in the case to show that another incident took place on the relevant day in front of the house of the deceased. The fact that no other occurrence took place on that day, has been brought out in evidence by the accused themselves from the investigating officer and the stand taken by the investigating officer when he was questioned about the same was that, to his knowledge and information, there was no such incident. In other words, there cannot be any doubt that the occurrence as alleged by the prosecution, had taken place and the deceased and the members of his family suffered injuries in that occurrence and further that the deceased succumbed to the injuries sustained to him in the said occurrence.

27. The next aspect to be considered is the denial by the accused of their complicity in the occurrence. The

materials on record indicate that the attack in the house of the deceased was an unanticipated one lasting only for a few minutes, during which the assailants caused substantial damage to the house, and also destroyed every movable that stood in their way, apart from causing serious injuries to the residents of the house. They did not even spare the two year old child of PW2 from the attack. There cannot be any doubt to the fact that one who is witnessing such an occurrence would not be able to recollect precisely and accurately the sequence of events, especially when several persons are involved in the occurrence, for his/her attention would be to recollect one incident after the other and he/she may not be able to see everything that transpires at the scene of occurrence. That apart, it has come out that the witnesses examined in the case were unwilling to depose in court in tune with their previous statements, and one among them, namely PW4 has even gone to the extent of stating that she is unable to depose the truth as she is afraid of the accused. These are also matters to be borne in mind, while appreciating the evidence in the case.

28. The occurrence was attempted to be proved by the prosecution mainly through the oral evidence tendered by PWs 1 to 4 and 6. The learned Senior Counsel for the first accused, at the outset, contended that the evidence tendered by the said witnesses are not consistent with their previous statements and there are significant contradictions and material omissions amounting to contradictions in their evidence. That apart, it was pointed out by the learned Senior Counsel that there are improvements and embellishments in their versions and that as a whole, the evidence tendered by the ocular witnesses became entirely muddled, from which the truth cannot be separated. According to the learned Senior Counsel, in a case of this nature, it is not safe to convict the first accused. The learned Senior Counsel relied on the judgment of the Apex Court in **Balaka Singh v. State of Punjab**, (1975) 4 SCC 511, in support of the said argument. There is no doubt to the proposition argued by the learned Senior Counsel that if truth cannot be separated from falsehood from the evidence tendered by witnesses, it may not be safe to convict the accused, even on the court finding that persons

arrayed as accused are involved in the occurrence. Let us, therefore, consider whether the case on hand is one where truth can be determined from the evidence tendered by the ocular witnesses.

29. Before proceeding to consider the said question, it is necessary to consider the argument advanced by the learned counsel for the second accused that the treatment records of the deceased at the Taluk Hospital, Cherthala were not made available by the prosecution. According to the learned counsel, had the treatment records been produced, they would have shown the nature of injuries suffered by the deceased and the same would have given a clear picture to the court as to whether the cause of death of the victim as alleged by the prosecution is correct. The submission of the learned counsel, therefore, was that non-production of the treatment records of the deceased at the Taluk Hospital, Cherthala is fatal to the prosecution case. There is nothing on record to indicate that the deceased was treated at Taluk Hospital, Cherthala and the only material available is that he was given only first aid at that hospital, as the injuries were serious. What is discernible

from the materials on record is that the deceased was referred to the Medical College Hospital, Kottayam, as the injuries sustained by him were found to be serious. Under such circumstances, the priority of all concerned would be to give preference to the treatment and not to find out the cause of injury. There is, therefore, no merit in this argument. Another argument advanced by the learned counsel for the second accused is that apart from the surgical wound, no other external injury corresponding to the evidence tendered by PWs 1 to 3 has been proved in this case, and the same would cast a serious doubt as to the genuineness of the prosecution case. We do not find any merit in this argument also. In cases where a patient is subjected to any immediate procedure as in the case on hand, there may not be any evidence as to the nature of injuries sustained, for the same would be superseded by surgical corrections, and in such cases, merely for the reason that there is no evidence of the original injury, the case of the prosecution cannot be suspected.

30. One of the contentions seriously pressed into service by the learned Senior Counsel for accused 5 and 6 is

that the presence of the said accused at the scene at the time of occurrence has not been satisfactorily established by the prosecution in the case. According to the learned Senior Counsel, the evidence tendered by the ocular witnesses in this regard are totally unreliable. Inasmuch as the accused were found guilty of offences punishable under Sections 143, 147, 148 and 149 of IPC, the contention aforesaid assumes importance and ought to be considered, before proceeding to decide the other points that arise for consideration. As regards the presence of the sixth accused, it was argued by the learned Senior Counsel that had the sixth accused been present there among the assailants and had he exhorted the remaining assailants as deposed by PW1, she would have certainly mentioned the presence of the sixth accused at the scene in the First Information Statement given by her, for the sixth accused being a prominent figure in the locality in his capacity as the Chairman of the Municipal Standing Committee, there was absolutely no reason for PW1 to omit to mention his name in the First Information Statement. It is all the more so since he had been to her house on the afternoon of the same day for the

sale of coir mats and there was a wordy altercation between him and her husband, namely PW2 in the Ward Council Meeting held on that day over the sale of the said coir mats. We find force in this argument. The ocular witnesses do not attribute any overt acts to the sixth accused, except the exhortation alleged to have been made by him. Similarly, the ocular witnesses do not have a case that the sixth accused went inside the house in the course of the occurrence. As rightly contended by the learned Senior Counsel for the sixth accused, had the sixth accused been present at the scene at the time of the occurrence and had he made the exhortation as deposed by PW1, he should have been the first person to be named by PW1 while giving the First Information Statement to PW15, the police official who recorded the statement of PW1. We take this view also for the reason that even though her additional statements were recorded by the investigating officers more than once, she had never disclosed the presence of the sixth accused at the scene at the time of occurrence and it is in the statement of PW1 recorded under Section 164 of the Code, for the first time, PW1 implicated the sixth accused as a person

who was present at the scene at the time of occurrence and attributed an overt act on to him also. Of course, PW1 has a case that even though she disclosed about the presence of the sixth accused in her statements to PW15, he did not record the same on account of the political influence of the sixth accused. We are not impressed by the said stand of PW1, for, in her previous statement recorded on 01.12.2009, her version was that an identical exhortation was made by the second accused. The relevant evidence reads as "അപ്പോൾ കണ്ണൻ അടിച്ചുകൊല്ലെടാഅയ്യാളെഎന്ന്വിളിച്ചുപറഞ്ഞു". In the dock, PW1 however, changed her stand and attributed the said overt act to the sixth accused. We are, therefore, inclined to hold that it is not safe to place reliance on the evidence tendered by PW1 as regards the presence of the sixth accused at the scene of occurrence on the relevant day, and if that be so, it has to be held that the prosecution has not proved satisfactorily, the presence of the sixth accused at the scene at the time of occurrence.

31. Let us now consider the question whether the presence of the fifth accused at the scene at the time of

occurrence, has been satisfactorily established in the case. The presence of the fifth accused was spoken to mainly by PW1 and PW3. The evidence tendered by PW1 in this regard was seriously attacked by the learned Senior Counsel for the fifth accused pointing out that had the fifth accused been present at the scene, he being a person previously known to her, PW1 ought to have mentioned his name as well in the First Information Statement given to PW15. It was also asserted by the learned Senior Counsel that immediately after the occurrence, an additional statement of PW1 was recorded by PW18 on 01.12.2009 and she did not mention about the involvement of the fifth accused in the said statement also. It has come out in evidence that the fifth accused is the husband of a friend of PW1 and she knew the name of the fifth accused even prior to the occurrence. In spite of the said fact, PW1 omitted to mention the name of the fifth accused in the First Information Statement and in the additional statements. Instead, she named two other persons who were known to her, in the First Information Statement. True, merely on account of that reason, it cannot be said that the fifth accused was not

present at the scene at the time of occurrence, as we cannot rule out the situation of PW1 being unable to recollect his name at the time of giving the First Information Statement, especially having regard to the background in which her statement was recorded by the police. As noted, the version of PW1 as regards the overt act of the fifth accused is that hearing an exhortation from outside the house, the fifth accused immediately thereupon barged into the house and gave a kick on the abdomen of the deceased. True, during the cross-examination of PW1, it was suggested to her by the Senior Counsel for the fifth accused that she had not mentioned the name of the fifth accused in her statement recorded on 01.12.2009 and her explanation was sought on the said aspect in compliance with the provision contained in Section 145 of the Indian Evidence Act. PW1 however denied the suggestion and asserted that she informed PW18 while recording that statement as regards the involvement of the fifth accused also. But, it is seen from the materials on record that PW18 refuted the said stand of PW1 and affirmed that the presence of the fifth accused was never spoken to by her in her statements recorded by him. In this

context, it is necessary to note that PW18 affirmed in his evidence that PW3 also had not stated to him anything as regards anyone giving a kick to the deceased. That apart, in the previous statement of PW1, which is marked as Ext.D6, what was stated by her was that only accused 1 to 4 entered inside the house at the time of attack. Even though PW1 denied having made such a statement, PW18 affirmed that she made such a statement. Ext.D6 statement of PW1 is not in sync with the evidence tendered by her in the case. We are, therefore, of the view that it is not safe to place reliance on the evidence tendered by PWs 1 and 3 as regards the presence of the fifth accused at the scene of occurrence. Of course, PW2 also stated in his evidence that he saw the fifth accused kicking the deceased and that the fifth accused was also present among the assailants who destroyed their house and the movables therein. PW2 was inside the room when the fifth accused allegedly stamped the deceased and it is thereafter, according to PW2, he destroyed some of the window glasses. Inasmuch as PW2 was inside the closed room, according to us, it is not safe to place reliance on the evidence tendered by PW2 as against

the fifth accused. Needless to say, it has to be held that the prosecution has not proved satisfactorily, the presence of the fifth accused also at the scene at the time of occurrence.

32. Let us now examine the complicity of the remaining accused. Before examining the complicity of the remaining accused, it is necessary to have a picture about the earliest version of PW1 as regards the occurrence as disclosed by her to PW15 immediately after the occurrence while she was undergoing treatment at the Taluk Hospital, Cherthala. The relevant portion of the First Information Statement as regards the occurrence reads thus :

> "എന്റെ വലതു കൈ തോളിന് ഉണ്ടായിട്ടുള്ള വേദന ഇന്ന് (29-11-09) വൈകി 7.30 മണിയോട് കൂടി മഞ്ജു, കണ്ണൻ തുടങ്ങി കണ്ടാൽ അറിയാവുന്ന നാലഞ്ചു പേർ ചേർന്ന് ഞങ്ങളുടെ വീട്ടിനുള്ളിൽ അതിക്രമിച്ചു കയറി തടിക്കഷണം കൊണ്ട് അടിച്ചതിൽ വച്ച് ഉണ്ടായതാണ്. xxxxxxxxxxxx കുറ്റിക്കാട്ട് കവലയിലെ ചുമട്ടു തൊഴിലാളികളായ മഞ്ജു, കണ്ണൻ തുടങ്ങി കണ്ടാൽ അറിയാവുന്ന മൂന്നു പേരും കൂടി വീട്ടിൽ കയറി വന്നിട്ട് മഞ്ജു ഒരു കാര്യം പറയാനുണ്ടെന്ന് പറഞ്ഞു ചേട്ടനെ പുറത്തേയ്ക്ക് വിളിച്ചു. അപ്പോൾ ചേട്ടൻ അവരോട് നമുക്ക് അകത്തിരുന്നു സംസാരിക്കാം എന്നു പറഞ്ഞു. ഉടനെ അവർ എല്ലാവരും കൂടി മുറിയിലേയ്ക്ക് കയറി. മുറിയിലേയ്ക്ക് കയറിയ ഉടൻ മഞ്ജു പുറകിൽ ഒളിപ്പിച്ചു പിടിച്ചിരുന്ന തടിക്കഷണം കൊണ്ട് ചേട്ടനെ പലപ്രാവശ്യം അടിച്ചു. ചേട്ടന്റെ മുഖത്തും, പുറത്തും മറ്റും പൊട്ടി ചോര വന്നു. അപ്പോൾ അച്ഛൻ

> ഒടി ചെന്ന് തടസ്സം പിടിച്ചു. എന്നിട്ട് ചേട്ടനെ അടുത്ത മുറിയിലേയ്ക്ക് തള്ളി കയറ്റി കതക് അടച്ചു. ഉടനെ തന്നെ അവർ എല്ലാവരും ചേർന്ന് അവരുടെ കൈവശം കരുതിയിരുന്ന തടിക്കഷണങ്ങൾ കൊണ്ട് അച്ഛനെ പലപ്രാവശ്യം അടിച്ചു. അച്ഛൻ അടികൊണ്ട് മറിഞ്ഞു താഴെ വീണു. വീണ്ടും അവർ അച്ഛനെ തല്ലുന്നത് കണ്ടു ഞാൻ തടസ്സം പിടിച്ചു. അപ്പോൾ മഞ്ജു അവന്റെ കൈയ്യിൽ ഇരുന്ന തടിക്കഷണം കൊണ്ട് എന്റെ വലതു തോളിലും, മുതുകത്തുമായി മൂന്നു നാല് അടിച്ചു. അടി കൊണ്ട് വേദനിച്ചു ഞാൻ ഉച്ചത്തിൽ നിലവിളിച്ചു. അപ്പോൾ അവർ എല്ലാവരും ചേർന്ന് ചേട്ടൻ കയറി ഇരുന്ന മുറിയുടെ കതകും, ജനലിന്റെ ചില്ലുകളും, വീട്ടു ഉപകരണങ്ങളും തല്ലിപ്പൊട്ടിച്ചു. സംഭവം കണ്ടു അയൽവാസികൾ ഓടിവരുന്നതുകണ്ടു അവർ പുറത്തിറങ്ങി തെക്കോട്ടു ഓടിപോയി.”

As already noticed, the evidence tendered by PWs 1 to 3 are not fully consistent with their previous statements recorded by the police. Of course, the evidence tendered by PWs 1 to 3 are consistent with their statements recorded by the Magistrate under Section 164 of the Code. But, as noted, the 164 statements of the witnesses were recorded much after the occurrence, on 07.01.2010. Inasmuch as the possibility of embellishments and improvements cannot be ruled out on account of the long lapse of time in between the occurrence and the date of recording of the 164 statements, the said statements cannot be treated at par with the First Information

Statement given by PW1. At the same time, it is necessary to consider carefully, the contentions raised by the accused as regards the omissions made by the said three witnesses in their previous statements recorded by the police under Section 161 of the Code, in the light of the specific case of the injured that their statements were not being recorded truly and correctly by the police. As already noticed, the law on the point is that in a case of this nature, the court must make an attempt to separate the grain from the chaff, *i.e.*, the truth from falsehood.

33. On a careful scrutiny of the evidence tendered by PWs 1 to 4 and 6, as stated in the preceding paragraphs, we find that the evidence tendered by PW2 that at about 7 p.m. on the relevant day, when he opened the door of the house on hearing his name being called out by someone from outside, he saw accused 2 and 4 there and when they required him to come out of the house, he invited them inside and proceeded back therein on the assumption that they would follow him and that, he noticed then through the door of the kitchen which was kept open, the shadow of a person on the side of the kitchen and as he sensed something wrong, he turned back and whilst

so, he saw the first accused attempting to beat him using MOI wooden log and when he turned his face then towards the left, the hit fell on his shoulder and cheek, can be accepted since the same is consistent with his previous statements. Similarly, the evidence tendered by PW2 that by the time he got into the room and attempted to close the room from inside in order to escape from the attack, the first accused banged on the door, is also consistent with his previous statements and can be accepted. The said parts of the evidence of PW2 is corroborated substantially by the oral evidence tendered by PWs 1 and 3 and the opinion evidence tendered by PW12, the doctor who examined PW2 at the Taluk Hospital, Cherthala within a few hours after the occurrence. Coming to the evidence tendered by PW1, as noted, she deposed that when her husband required accused 2 and 4 to come inside their house, accused 1 and 4 barged into the house and attempted to beat PW2 and when she attempted to ward off the attack on PW2, the assailants attacked her also; that when PW2 went inside the next room and closed the door from inside, the first accused started banging on the door of that room with a

wooden log; that in the meanwhile, the third accused caught hold of her two year old child and PW3 then intervened and took away the child from the third accused; that the deceased who was then watching television at that time in the adjoining room, came to the hall on hearing the noise and the first accused then beat the deceased on his head using MOI, wooden log carried by him and the blow fell on the right back of his head; that the first accused thereupon beat on the head of the deceased two more times using MOI wooden log; that in the meanwhile, the others who were present inside the house namely accused 1 and 4 also beat the deceased on his back and on his leg; that when the deceased sat down then by keeping his hand on his head on account of the beating, PW1 rushed towards him to hold him and the first accused then beat her also on her right shoulder and that in the meanwhile, the accused who remained inside the house damaged the movables therein and also broke the electrical fittings. The said evidence of PW1 is consistent with her previous statements and there are no contradictions in respect of the same, and we do not find any reason to doubt the veracity of the said part of the

evidence, especially when the same is corroborated substantially by the oral evidence tendered by PW3, the wife of the deceased and the opinion evidence given by PW12, the doctor who examined PW1 at Taluk Hospital, Cherthala immediately after the occurrence, even though PW12 noticed only tenderness on the right flank of PW1 and also movement restrictions on her right shoulder. The evidence is also corroborated by the opinion evidence of PW10, the doctor who conducted the autopsy examination of the body of the deceased as regards the ante-mortem injures. Coming to the evidence tendered by PW3, she gave a narration of the destruction of the various movables in the house. It was specifically deposed by PW3 that before leaving the house, the accused destroyed the movables in the house such as sewing machine, refrigerator etc., flipped the cot kept in the room and destroyed the tube light on the southern side of the house. The evidence tendered by PW3 as regards the various acts of destruction done by the accused have not even been challenged by the accused in their cross-examination. Coming to the evidence tendered by PW4, her evidence that when she

rushed to the house of the deceased on hearing hue and cry from there, she found the house of the deceased destroyed and saw the first accused there in a yellow t-shirt. There is absolutely no reason to disbelieve the said part of the evidence tendered by PW4. In the context of the evidence tendered by PW4, it is necessary to mention that this witness stated, when she was examined by the Public Prosecutor in terms of Section 154 of the Indian Evidence Act, that when the accused destroyed the movables inside the house of the deceased, there was a loud noise and nobody dared to go to that place then. As already noticed, PW4 is a witness who conceded in her evidence that she is unable to divulge the truth in her evidence as she is afraid of the accused. Coming to the evidence tendered by PW6, there is absolutely no reason to disbelieve the evidence tendered by the said witness that when he rushed to the house of the deceased on hearing hue and cry from there, he saw accused 1 and 2 standing outside the house of the deceased and accused 3 and 4 smashing the windows of the house.

34. True, there are a few inconsistencies in the evidence tendered by PWs 1 to 3 as regards the order in which accused 1 to 4 inflicted injuries on the deceased and the injured, as also the exact parts of their body where injures have been inflicted. According to us, the said minor inconsistencies shall not deter us from accepting the evidence tendered by PWs 1 to 3 as regards the core aspect of the prosecution case spoken to by them as discussed in the preceding paragraphs. The said evidence establishes beyond reasonable doubt that accused 1 to 4 trespassed into the residential compound of the deceased; that they barged into the residential building of the deceased thereupon, when PW2 did not come out of the house as required by them, and attacked PW2 using the wooden logs secured by them from there; that when PW2 retreated to one of the rooms and attempted to close the door to prevent the attack, the assailants not only attacked the deceased who intervened, but also PW1 with the wooden logs; that in the meanwhile they also vandalized the house of the deceased by destroying its doors, windows, lights and movables of the members of the family kept inside the house and that they

have even created a scene of terror by banging on windows, doors, gate, making loud noises and brandishing the wooden logs at neighbours who had rushed to the house upon hearing the commotion, conveying a message that they dared to commit such acts openly. The evidence tendered by the witnesses referred to in the preceding paragraphs would also establish that in the course of the attack, the first accused beat PW2 on his cheek and shoulder with MOI wooden log, caused hurt to PW1 and beat the deceased using MOI wooden log on his head. Point (i) is answered accordingly.

35. Point (ii): The essence of the offence of conspiracy lies not in doing the act or effecting the purpose for which the conspiracy has been hatched, but in forming the scheme or agreement between the parties. Generally, a conspiracy is hatched in secrecy, and it may be difficult to adduce direct evidence for the same. The law does not, therefore, enjoin a duty on the prosecution to lead evidence of such character, which is impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is only to lead such evidence which it is capable of leading, having

regard to the facts and circumstances of each case. Needless to say, the express agreement need not be proved. Nor is the actual meeting of two persons necessary. Nor is it necessary to prove the actual words of communication. On the other hand, the evidence as to transmission of thoughts sharing the unlawful design may be sufficient. In other words, it will suffice if there is a tacit understanding between conspirators as regards what should be done so long as the relative acts or conduct of the parties are conscientious and clear to mark their concurrence as to what should be done. Broadly stated, the circumstances in a case, when taken together at face value, should indicate the meeting of minds between the conspirators for the intended object of committing the offence, if circumstances existed prior in point of time than the actual commission of the offence, in furtherance of the alleged conspiracy. A man may join a conspiracy by word or by deed. It is however essential that the offence of conspiracy requires some kind of physical manifestation of agreement.

36. Section 10 of the Indian Evidence Act reads thus:

> "**10. Things said or done by conspirator in reference to common design**
>
> Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purposes of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

As evident from the extracted statutory provision, where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, proof of even acts done by any one of such persons in reference to the common intention, after the time when such intention was entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well as for the purposes of proving the existence of the conspiracy and also for the purpose of showing that any such person was a party to it. It was held by the Apex Court in **State v. Nalini**, (1999) 5 SCC 253 that if there is *prima facie* evidence to show that there was a criminal conspiracy as alleged by the prosecution, then anything done by the conspirators in reference to their

common intention, would become substantive evidence. Paragraph 107 of the judgment in the said case reads thus:

> "107. The first condition which is almost the opening lock of that provision is the existence of "reasonable ground to believe" that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement "in reference to their common intention". Under the corresponding provision in the English law the expression used is "in furtherance of the common object". No doubt, the words "in reference to their common intention" are wider than the words used in English law (vide Sardar Sardul Singh Caveeshar v. State of Maharashtra [AIR 1965 SC 682 : (1964) 2 SCR 378 sub nom Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra])."

The said principle has been reiterated by the Apex Court in **State of H.P. v. Satya Dev Sharma**, (2002) 10 SCC 601. It was clarified in **Satya Dev Sharma** that for the court to consider whether there is reasonable ground to believe that two or more persons have conspired together to commit an offence, as envisaged in Section 10 of the Indian Evidence Act, it is not necessary that the court should be satisfied that the prosecution has proved the case beyond reasonable doubt at that stage. Paragraph 7 of the said judgment reads thus:

> "7. After hearing the arguments of Mr Gopal Subramanium, learned Senior Counsel for the State of Himachal Pradesh and Mr Jaspal Singh, learned Senior Counsel for the officials/accused in some of the cases and also the other

> learned counsel, we feel that the learned Single Judge of the High Court has misdirected himself into believing that there was a valid demarcation even according to the prosecution case and that, therefore, demarcation will continue to hold good under law until set aside by subsequent proceedings. What we have understood properly from the prosecution case is that the accused officials have made a pretext by showing a fake demarcation pursuant to the conspiracy hatched by themselves with the co-accused with the avowed object of plundering the timber wealth from the government land. Therefore, the High Court should have first focussed on the question whether there were reasonable grounds to believe that all or any two or more of the accused have conspired together to commit the offence of plundering the timber wealth from government lands. This exercise could be made on a conspectus of the entire evidence. This is for the purpose of Section 10 of the Indian Evidence Act. This Court vide Rajiv Gandhi case [State v. Nalini, (1999) 5 SCC 253 : 1999 SCC (Cri) 691] has held that for the court to consider whether there is reasonable ground to believe, as envisaged in Section 10 of the Indian Evidence Act, it is not necessary that the court should be satisfied that the prosecution has proved the case beyond reasonable doubt at that stage. If the High Court found that there was reasonable ground to believe that there was a criminal conspiracy as between all or any two or more of the accused, it could have considered the next question whether the alleged demarcation was made by the accused as a follow-up of the said conspiracy. If the finding is that the alleged demarcation was a follow-up of the criminal conspiracy, it is an idle exercise to say that the said demarcation would remain valid under law until it is set aside in subsequent proceedings."

Keeping in mind the principles aforesaid, let us now consider the point.

37. Let us now analyse the evidence let in by the prosecution in this regard. The fact that the sixth accused went to the house of the deceased with a few others on the afternoon of the date of occurrence for the sale of coir mats is

not disputed by the sixth accused. The dispute raised by the accused relates only to the persons who accompanied the sixth accused on the afternoon of the relevant day. Similarly, the fact that the deceased was not prepared to purchase coir mats from the sixth accused is not disputed. The evidence tendered by PW2 shows that the conduct of the deceased in not purchasing coir mats from the sixth accused irritated the latter and he reacted to the deceased in an arrogant manner and threw MOVI coir mat onto him. Similarly, the evidence tendered by PW2 shows that he raised the issue over the compulsory sale of coir mats, as directed by the deceased, in the Ward Council Meeting held on that day before the official of the Cherthala Municipality and his query was answered immediately by the sixth accused who was present there in front of others in an arrogant manner stating that if PW2 does not require a coir mat, he can set it ablaze. The evidence tendered by PW2 in this regard has been corroborated by PW5, who was present in the Ward Council Meeting when PW2 raised the issue. The said evidence was also corroborated by PW13, the official of the Cherthala Municipality who attended the Ward Council Meeting held on that day, even

though PW13 did not say the manner in which the query of PW2 was answered by the sixth accused. The evidence on record as regards the manner in which the sixth accused reacted to the deceased when he refused to purchase coir mats from him and the manner in which the sixth accused reacted to PW2 when he raised the issue relating to the sale of coir mats in the Wad Council Meeting, establishes that the sixth accused entertained a grudge against the deceased and his son, PW2. The said circumstances, together with the fact that accused 1 to 4 are members of the political party to which the sixth accused was the leader, according to us, constitute reasonable grounds to believe that there was a criminal conspiracy among them to attack the deceased and PW2, as also their house. The question now, is whether there has been a physical manifestation of the conspiracy. In order to prove the physical manifestation of the conspiracy, the prosecution examined PW7, a neighbour of the deceased. As noted, he is a witness to Ext.P2 inquest and he deposed that on the date of occurrence, his mother was admitted in the Taluk Hospital, Cherthala and at about 7 p.m. on the said day, while he was proceeding to the

hospital with food for his mother, he saw all the six accused standing in front of the house of the fifth accused. It was also deposed by PW7 that the second accused then asked him where he was going and PW7 replied that he was going to the hospital and when he turned back after proceeding a little further, he noticed that they were discussing something. It was also deposed by PW7 that he informed PW2 at the hospital itself that he saw the accused together in front of the house of the fifth accused and he informed the said fact to PW3 also on the following day. It has come out in evidence that PW7 saw the accused together a few minutes before the occurrence, that too, in front of the house of the fifth accused. The evidence aforesaid of PW7, according to us, demonstrates the physical manifestation of the conspiracy hatched among accused 1 to 4 who were physically involved in the crime and the sixth accused who maintained a grudge against the deceased and PW2. We take this view for the reason that accused 1 to 4 and 6 are not persons who were residing near the place where they were found standing by PW7, namely in front of the house of the fifth accused. Of course, the fifth accused is a person

residing in the house in front of which accused 1 to 4 and 6 were found standing. The time and place they were found standing are also reasons for us to hold that their meeting demonstrates the physical manifestation of the conspiracy. The time was after the incident in the Ward Council Meeting and before the occurrence and the place was one near the residence of the deceased.

38. The learned counsel for the accused seriously challenged the evidence tendered by PW7. At the outset, it was argued by the learned counsel that PW7 had not mentioned to the police officer who held the inquest that he saw accused 1 to 4 and 6 together immediately prior to the occurrence in front of the house of the fifth accused. True, PW7 had not disclosed to the officer who held the inquest that he saw the said accused in front of the house of the fifth accused. But, according to us, merely on account of that reason, it cannot be held that the evidence tendered by PW7 is not reliable, for, it is not necessary that PW7 should have known then the relevance of what he had seen. Another argument advanced by the learned counsel in this regard is that PW7 is a person belonging to the

political party BJP; that he is an accused in a few cases, including a case registered at the instance of the sixth accused and that therefore, it is not safe to place any reliance on his evidence. We do not find any merit in this argument also. True, it has come out in evidence that PW7 belongs to the political party BJP and he was an accused in a few cases, including a case registered at the instance of the sixth accused. As regards the case registered at the instance of the sixth accused, PW7 clarified that the case registered against him at the instance of the sixth accused was settled between them and the accused have not challenged the correctness of that statement. That apart, the same cannot be a reason to reject the evidence tendered by PW7, for we find that the same is credible otherwise, inasmuch as the fact that PW7 could go to the hospital from his house only through the road in front of the house of the fifth accused and the fact that his mother was admitted in the hospital on that day, are not challenged by the accused in his cross-examination. Another argument advanced by the learned counsel is that the statement of PW7 was recorded by the police only on 24.03.2010. No doubt, the delay

on the part of important witnesses giving statements to the police would cast some doubt as to the veracity of their evidence. But, according to us, there is no reason to doubt the veracity of the evidence tendered by PW7 for that reason, for having regard to the common course of natural events, human conduct and public and private business, PW7 was not expected to go to the police and inform what he had seen. On the other hand, the police should have, in the course of investigation, found PW7 and recorded his statements. Be that as it may, as already noticed, when PW18 was questioned about the delay in recording the statement of PW7, even though PW18 admitted that the statement of PW7 was recorded only on 24.03.2010, he clarified that the delay may not be of much relevance since on 05.12.2009 itself, another witness questioned by PW18 had informed him of the said fact. The relevant evidence read thus:

> “05.12.2009 ലെ ചെല്ലപ്പന്റെ മൊഴിയിൽ സംഭവദിവസം 6 പ്രതികളും വൈകിട്ട് 7 മണിക്ക് A5 ന്റെ വീട്ടിൽ നിൽക്കുന്നത്കണ്ടു എന്ന്മൊഴി പറഞ്ഞു.”

It is seen that the said person was also cited as a witness in the case but he was not examined by the prosecution. Since he was not examined by the prosecution, he was examined on the side of the defence as DW1. DW1 deposed that he did not give any statement to the police as stated by PW18. It is thus clear that since the prosecution had doubts whether DW1 had been won over by the accused, that he was not examined. However, inasmuch as it has come out in evidence that others also have stated to the investigating officer that they saw the accused together immediately prior to the occurrence as disclosed by PW7, according to us, the belated recording of the statement of PW7 shall not deter us from accepting the evidence tendered by PW7, even though they have not come forward to give evidence in the case.

39. An argument seriously pressed into service by the learned Senior Counsel for the sixth accused in the context of the charge against the sixth accused for criminal conspiracy was that in light of Section 120A IPC which defines criminal conspiracy, a mere conspiracy to commit an illegal act or an act which is not illegal by illegal means is not culpable and it

becomes culpable only when a positive act is done by the parties to the conspiracy for the fruition of the conspiracy. According to the learned Senior Counsel, even assuming that the prosecution has succeeded in establishing the agreement between the sixth accused and the remaining accused, in the absence of any evidence to show that the sixth accused had done some act besides the agreement, the offence is not made out. Section 120A reads thus :

> "120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
>
> Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Section 43 IPC reads thus :

> 43. "illegal", "legally bound to do"
>
> The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit."

An illegal act, in the light of Section 43 IPC, includes not only offences but also acts which are prohibited by law as also acts which furnish grounds for civil actions. If one understands the definition of “criminal conspiracy” as contained in Section 120A in the above manner, it could be seen that not only agreements to do or cause to be done but also agreements to do or cause to be done acts which are prohibited by law or acts which furnish grounds for civil actions, would fall within the scope of the definition of criminal conspiracy. This aspect is clear from sub-section (2) of Section 120B which makes criminal conspiracies to commit acts which are not offences, also punishable. If the words used in the proviso to Section 120A is understood in the background of the scope of criminal conspiracy as defined in Section 120A, it is explicit that the requirement contained in the proviso that there shall be some act besides the agreement to constitute the offence applies only to conspiracies other than conspiracies to commit offences. The scope of the proviso has been clarified in the aforesaid manner by the Apex Court in **Suresh Chandra Bahri v. State of Bihar**, 1995 Supp (1) SCC 80 and in **Sushil Suri v.**

CBI, (2011) 5 SCC 708. The relevant portion in paragraph 96 of the judgment of the Apex Court in **Suresh Chandra Bahri** reads thus:

> "96. In the above context we may refer to the provisions of Section 120-A of the Indian Penal Code which defines criminal conspiracy. It provides that when two or more persons agree to do, or cause to be done, (1) an illegal act or (2) an act which is not illegal by illegal means, such agreement is designated a criminal conspiracy; provided that no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Thus, a cursory look to the provisions contained in Section 120-A reveals that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference

> giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn. ...." (underline supplied)

40. The next issue to be examined is whether there is satisfactory evidence to show that the fifth accused is a party to the conspiracy. No doubt, it has come out in evidence that the fifth accused was also an activist of the political party of which the sixth accused was a leader. As we have already found that even though it is alleged by the prosecution that the fifth accused was one among those who attacked the house of the deceased, the prosecution failed to adduce evidence in support of the same. No doubt, PW7 deposed that the fifth accused was also present along with the remaining accused when he saw them prior to the occurrence. The pointed question is whether the presence of the fifth accused along with other accused in front of his own house is suffice to hold that he is a party to the conspiracy. According to us, inasmuch as the prosecution failed to establish the involvement of the fifth accused in the occurrence and inasmuch as his presence was noticed by PW7 only in front of his house, it is doubtful whether he is a party to the conspiracy. We take this view also

for the reason that criminal responsibility for a conspiracy requires more, than a merely passive attitude towards an existing conspiracy. The fifth accused, in the circumstances, is entitled to the benefit of doubt in this regard. In the light of the discussion in the preceding paragraphs, we are inclined to hold that the prosecution has proved, beyond reasonable doubt, the case of criminal conspiracy between accused 1 to 4 and 6 to attack PW2 and the deceased as also to vandalise their house.

41. The next aspect to be considered relates to the object of the conspiracy. The specific case of the prosecution in this regard is that the conspiracy was for the purpose of assaulting PW2 and committing murder of the deceased. As noticed, the evidence tendered by the ocular witnesses would show that accused 2 and 4 called PW2 out of his house and it was since PW2 did not go out and instead, called the said accused inside the house, accused 1 and 4 followed PW2 inside the house and attacked him. The evidence of the witnesses would also show that the other residents in the house, namely PW1 and the deceased stood in the way while the assailants were attacking PW2 and vandalising the house

and they sustained injuries then. The assailants did not carry any lethal weapons and they committed the alleged acts with the wooden logs secured by them from the property of the deceased itself. We do not, therefore, find any satisfactory material to hold that accused 1 to 4 and 6 had the object of committing murder of the deceased. If the object of the conspiracy was to commit murder of the deceased, we are of the view that the assailants would have certainly carried some weapons with them. But at the same time, it has been established that accused 1 to 4 and 6 intended to commit house trespass and mischief. The doubt relates to the person on whom they intended to inflict injuries and the nature of injuries that they intended to inflict. To resolve this doubt, this court called for MOI and MOIII wooden logs with which the assailants had inflicted injuries on the deceased and others. MOI is a square wooden log having a length of 86 cm and a width of 6 cm and MOIII is a wooden log having a length of 130 cm with un-identical widths at its different parts. Inasmuch as the assailants used wooden logs of the sizes mentioned above to attack the deceased and the members of his family, we have

no doubt in our mind that the object of the conspiracy was at any rate, to cause grievous hurt by dangerous weapons or means. There is nothing on record to infer that accused 1 to 4 and 6 intended to inflict any bodily injury on PW1, the daughter-in-law of the deceased. As already noticed, in fact, they had called PW2 outside the house and it was since he did not go out, the accused barged inside the house and proceeded to attack PW2. It is thus evident that the common object of the conspiracy was to trespass into the house of PW2 to commit mischief there and cause grievous hurt to PW2 and not to commit murder of the deceased. Point (ii) is answered accordingly.

42. Point (iii): In order to attract the offences punishable under Sections 143, 147 and 148 of IPC, there should be an unlawful assembly. The essential condition of an unlawful assembly is that its membership must be five or more. The specific case of the prosecution is that accused 1 to 6 formed themselves into an unlawful assembly to commit the crime. We have found that the case of the prosecution that accused 5 and 6 were parties to the unlawful assembly, has not

been established beyond reasonable doubt. It is not a case where the prosecution alleges that a few named persons and a group of other unidentified persons exceeding five, committed the crime. On the other hand, it is a case where the prosecution specifically alleges that the accused, six in number formed themselves into an unlawful assembly to commit the crime. In a case of this nature, if the court finds that the presence of two or more persons is not established by the prosecution, the remaining accused cannot be found guilty with the aid of Section 149 IPC [See **Mahendra v. State of M.P.**, 2022 SCC OnLine SC 1348 and **Rohtas v. State of Haryana**, (2021) 19 SCC 465]. Needless to say, the conviction of the accused for the offences punishable under Sections 143, 147 and 148 IPC and the conviction of the accused for the remaining offences with the aid of Section 149 IPC, is liable to be set aside.

43. Although Sections 34 and 149 IPC are modes for apportioning vicarious liability on individual members of a group, the difference between the provisions is that Section 34 IPC requires active participation and a prior meeting of minds, whereas Section 149 IPC assigns liability merely by reason of

the membership in the unlawful assembly. In reality, the "common intention" required to bring a case under Section 34 IPC and the "common object" to form an unlawful assembly, are usually inferred from the conduct of the individuals. As noted, since Section 149 IPC is liable to be set aside, the question that arises now is whether the court can substitute Section 149 IPC with Section 34 IPC in a case of this nature. It is seen that the same has been answered succinctly by the Apex Court in **Chittarmal v. State of Rajasthan**, (2003) 2 SCC 266, in the following words:

> "14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be

> a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. ..... ”
>
> (underline supplied)

As is evident from the extracted passage, what is to be seen in such cases is whether the common object alleged in the case involves a common intention. If the common object does involve a common intention, substitution of Section 34 for Section 149 is only a formal matter. In other words, non-applicability of Section 149 IPC is no bar in convicting the accused with the aid of Section 34 IPC, if the evidence in the facts and circumstances of each case discloses commission of an offence in furtherance of the common intention of all of them. It has to be mentioned in this context that if the common object involves a common intention, in the light of the provision contained in Section 464 of the Code, the accused cannot be heard to contend that any prejudice has been caused to them and therefore, non-framing of charge under Section 34 IPC is also not of any consequence in the case on hand. In the light of the evidence let in by the prosecution as referred to above and

the various findings rendered, we are of the view that it can certainly be held that the common object alleged involves a common intention also. We, therefore, hold that accused 1 to 4 are liable to be punished for the offences committed by them with the aid of Section 34 IPC.

44. The next question is as regards the offences committed by accused 1 to 4. The learned counsel for accused 1 to 4 have not addressed any serious arguments as against the finding rendered by the Court of Session that the accused are guilty of the offences punishable under Sections 323, 324 and 427 IPC and there is no scope also to raise any argument against the said finding in the light of the overwhelming evidence in the case. The learned counsel for the second accused, however, argued that Section 449 IPC would get attracted only if house trespass is committed in order to commit an offence punishable with death. According to the learned counsel, in the case on hand, there is no material to indicate that the house trespass, if any, committed by the accused is for the purpose of committing an offence punishable with death. There is force in this contention. In the light of the

finding rendered by us that the object of the conspiracy was to cause grievous hurt by dangerous weapons or means, the offence punishable under Section 449 IPC is not attracted and the offence attracted is only the offence punishable under Section 450 IPC.

45. The question that survives is whether the finding of the Court of Session that the accused are guilty of the offence punishable under Section 302 IPC, is sustainable. As noted, the cause of death of the victim was the injury sustained by him on his head. Even though there is dispute as to the number of blows the deceased suffered on his head, the evidence on record establishes beyond reasonable doubt that in the course of the occurrence, the first accused beat the deceased on his head with MOI wooden log and the second accused beat on the body of the deceased with MOIII wooden log. We have already found that the accused never intended to cause the death of the father of PW2 or to cause any bodily injury to him, for the object of conspiracy was only to cause grievous hurt to PW2 and to commit mischief. As noticed, the evidence tendered by the ocular witnesses would show that

accused 2 and 4 called PW2 out of his house and it was since PW2 did not go out and instead walked back inside the house, accused 1 to 4 followed PW2 and attacked him inside the house. The evidence of the said witnesses would also show that PW1 and the deceased stood in the way of the assailants while they were attacking PW2 and vandalising the house and it was at that point of time, the assailants attacked them. We take this view also for the reason that, as already noticed, the version of PW1 in the First Information Statement is that accused 1 to 4 who had barged into their house were attacking PW2 and it was when the deceased intervened in the attack and pushed PW2 into a room so as to prevent the attack on PW2, the assailants attacked the deceased. In the absence of any satisfactory evidence to indicate that the assailants intended to cause the death of the deceased or bodily injury as is likely to cause his death, the only offence that is made out is the offence punishable under Section 304 Part II, for while doing the act found to have been committed, the accused should certainly be presumed to have had the knowledge that they are likely, by such act, to cause death, as provided for under the third limb of

Section 299 IPC, especially having regard to the nature of weapons used by them to attack the deceased, even though the act cannot be said to be so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, so as to bring the act within the definition of “murder” provided for under Section 300 IPC. We take this view also for the reason that the expression “knowledge” used therein is bare awareness and not the same thing as intention that such consequences should ensue. It is apposite in this context to refer to paragraphs 12 and 13 of **Jai Prakash v. State (Delhi Admn.)**, (1991) 2 SCC 32, which read thus :

> “12. Referring to these observations, Division Bench of this Court in Jagrup Singh case [(1981) 3 SCC 616 : 1981 SCC (Cri) 768] observed thus: (SCC p. 620, para 7)
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> > “These observations of Vivian Bose, J. have become locus classicus. The test laid down in Virsa Singh case [1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818] for the applicability of Clause Thirdly is now ingrained in our legal system and has become part of the rule of law.”
>
> The Division Bench also further held that the decision in Virsa Singh case [1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818] has throughout been followed as laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words Clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury

that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury. The language of Clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The ‘intention’ and ‘knowledge’ of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words ‘intention’ and ‘knowledge’ and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to ‘knowledge’, ‘intention’ requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.

13. Kenny in Outlines of Criminal Law (17th edition of page 31) has observed:

“Intention: To intend is to have in mind a fixed purpose to reach a desired objective; the noun ‘intention’ in the present connexion is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. Thus if one man throws another from a high tower or cuts off his head it would seem plain that he both foresees the victim's death and also desires it: the desire and the foresight will also be the same if a person knowingly leaves a helpless invalid or infant without nourishment or other necessary support until death supervenes. It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed.

Again, a man cannot intend to do a thing unless he desires to do it. It may well be a thing that he dislikes doing, but he dislikes still more the consequences of his not doing it.

That is to say he desires the lesser of two evils, and therefore has made up his mind to bring about that one."

Russell on Crime (12th edn. at page 41) has observed:

"In the present analysis of the mental element in crime the word 'intention' is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims."

It can thus be seen that the 'knowledge' as contrasted with 'intention' signify a state of mental realisation with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, 'intention' is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore in the case of 'intention' mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact. In Clause Thirdly the words "intended to be inflicted" are significant. As noted already, when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in Virsa Singh case [1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818] the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused. In some cases, an explanation may be there by the accused like exercise of right of private defence or the circumstances also may indicate the same. Likewise there may be circumstances in some cases

> which attract the first exception. In such cases different considerations arise and the court has to decide whether the accused is entitled to the benefit of the exception, though the prosecution established that one or the other clauses of Section 300 IPC is attracted. In the present enquiry we need not advert to that aspect since we are concerned only with scope of Clause Thirdly of Section 300 IPC."

Needless to say, accused 1 to 4 are guilty of the offences punishable under Sections 323, 324, 427, 450 and 304 Part II read with Sections 34 and 120B IPC. Section 111 IPC provides that when an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it, provided the act done was a probable consequence of the abetment and was committed with the aid of the conspiracy. In the case on hand, the act committed on the deceased can only be regarded as a probable consequence of the conspiracy. As such, the sixth accused is guilty of the offence punishable under Section 120B IPC, for the offences punishable under 323, 324, 427, 450 and 304 Part II IPC.

46. Let us now determine the sentences to be imposed on the accused for the offences for which they are found guilty. Accused 1 to 4 were sentenced to undergo

rigorous imprisonment for one month each for the offence punishable under Section 323 IPC, rigorous imprisonment for one year each for the offence punishable under Section 324 IPC, rigorous imprisonment for six months each for the offence punishable under Section 427 IPC. We do not find any reason to interfere with the sentences imposed on the accused for the said offences.

47. Coming to the offences committed by accused 1 to 4 under Sections 450 and Sections 304 Part II and the offence committed by the sixth accused under Section 120B, it is necessary to note that accused 1 to 4 had no personal animosity towards the deceased and the members of his family and there was absolutely no reason for them to cause grievous hurt to the deceased and the members of his family as also to vandalise his house. As found, accused 1 to 4 committed serious crimes for which they are found guilty at the behest of the sixth accused. It is seen from the evidence that the sixth accused is a person who maintains an inflated sense of self-importance and superiority and has a tendency to react aggressively to criticism and opposition, viewing any challenge

to his authority as a personal affront. His conduct which led to the crime exemplifies sheer intolerance and gross abuse of authority over trivial matters. Such behaviour undermines the democratic principles of peaceful political discourse and mutual respect. No individual, regardless of position, is above the law, and inciting violence for political gain, according to us, shall be met with utmost severity while imposing sentences in cases of this nature to preserve social harmony and justice, for harsh punishment would not only serve as a deterrent, but would also give a message to the society that instigators are equally, if not more, culpable than the individuals who carry out the crime. In the circumstances, according to us, the appropriate proportionate sentence to be awarded to accused 1 to 4 for the offence punishable under Section 450 IPC would be rigorous imprisonment for a period of five years each. Likewise, according to us, the appropriate proportionate sentence to be awarded to accused 1 to 4 for the offence punishable under Section 304 Part II IPC and to the sixth accused for the offence punishable under Section 120B IPC is rigorous imprisonment for a period of ten years each.

48. In the result, criminal appeals and the death sentence reference are disposed of on the following terms:

(a) The conviction of accused 1 to 4 for offences punishable under Sections 143, 147 and 148 IPC is set aside, their conviction for the offences punishable under Sections 323, 324 and 427 IPC read with Section 149 IPC is altered to conviction under Sections 323, 324 and 427 IPC read with Section 34 IPC, their conviction for the offence punishable under Section 449 IPC read with Section 149 IPC is altered to conviction under Section 450 IPC read with Section 34 IPC, their conviction for the offence punishable under Section 302 IPC read with Sections 149 IPC is altered to conviction under Section 304 Part II IPC read with Sections 34 IPC and their conviction under Section 120B IPC is affirmed.

(b) The conviction of the fifth accused for offences punishable under Sections 120B, 143, 147, 148, 323, 324, 427, 449 and 302 read with Section 149 IPC is set aside and he is acquitted of all the charges.

(c) The conviction of the sixth accused for offences punishable under Sections 143, 147, 323, 324, 427, 449 and 302 read with Section 149 is set aside and he is convicted under Section 120B for the offences punishable under Sections 323, 324, 427, 450 and 304 Part II IPC.

(d) The sentence passed against accused 1 to 4 for the offences punishable under Sections 323, 324 and 427 IPC is confirmed and they are sentenced to undergo rigorous imprisonment for 5 years each and to pay a fine of Rs.10,000/- each and in default of payment of fine to undergo simple imprisonment for 1 year for the offence punishable under Section 450 IPC. They are also sentenced to undergo rigorous imprisonment for 10 years each and to pay a fine of Rs.25,000/- each and in default of payment of fine to undergo simple imprisonment for 1 year for the offence punishable under Section 304 Part II IPC. They are imposed the same sentences for the offences committed by them under Section 120B IPC also.

(e) The sentence passed against the sixth accused for the offences punishable under Sections 323, 324 and 427 is confirmed. He is also sentenced under Section 120B for the offence punishable under Section 450 IPC to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for 1 year. He is also sentenced under Section 120B for the offence punishable under Section 304 Part II IPC to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.25,000/- and in default of payment of fine to undergo simple imprisonment for 1 year.

(f) The substantive sentences of imprisonment of the accused shall run concurrently.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

M.B.SNEHALATHA, JUDGE.

ds/Mn/YKB