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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 16TH DAY OF DECEMBER 2025/25TH AGRAHAYANA, 1947

CRL.A NO.16 OF 2019

AGAINST THE JUDGMENT DATED 30.11.2018 IN S.C.NO.497 OF 2011 OF ADDITIONAL SESSIONS COURT, THALASSERY
C.P.NO.16 OF 2011 OF JUDICIAL FIRST CLASS MAGISTRATE – I, KANNUR
CRIME NO.712 OF 2009 OF KANNUR TOWN POLICE STATION

APPELLANT/ACCUSED NOS.1, 3, 5, 6, 7, 10 & 12:

1 MANDEN BABINESH,
AGED 27 YEARS
S/O.JANARDHANAN @ BABU, KUNNUMMEL HOUSE, SAYOOJYAM, PALLIKUNNU AMSOM, CHILLIKKUNNU.

2 T.N. NIKHIL @ CHANNA
AGED 30 YEARS
S/O.SURENDRAN, THAYAMPALLI, PALLIKUNNU AMSOM, CHALAD, CHAKKATTUPEEDIKA.

3 T. RIJUL RAJ,
AGED 31 YEARS
S/O.RAJAN, THANDEN HOUSE, PALLIKUNNU AMSOM, CHALAD, PANJABI ROAD.

4 C. SHAHAN RAJ,
AGED 28 YEARS
S/O.SURENDRAN, 'SHANS' (H), PALLIKUNNU AMSOM, CHALAD.

5 V.K. VINEESH,
AGED 34 YEARS
S/O.PAVITHRAN, VAYALILKOROTH HOUSE, PALLIKUNNU AMSOM, CHALAD, THEKKANMANL.

6 VIMAL RAJ K.P.
AGED 34 YEARS
S/O.RAJAN, KUNNUMBRATH HOUSE, PALLIKUNNU AMSOM,

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CHILLIKUNNU.

7 TONY M.,
AGED 27 YEARS
S/O.MAHESH, SATHAR QUARTERS, CHALAD, CHILLIKUNNU.

BY ADV.SRI.P.VIJAYA BHANU (SR.)
BY ADV.SRI.VISHNU PRASAD NAIR
BY ADV.SRI.P.M.RAFIQ
BY ADV.SRI.M.REVIKRISHNAN
BY ADV.SRI.V.C.SARATH
BY ADV.SRI.VIPIN NARAYAN
BY ADV.SRI.THOMAS J.ANAKKALLUNKAL
BY ADV.SRI.AJEESH K.SASI
BY ADV.SMT.POOJA PANKAJ
BY ADV.SMT.SRUTHY N. BHAT

RESPONDENT/COMPLAINANT:

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

BY SRI.T.R.RENJITH, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11.12.2025, THE COURT ON 16.11.2025 DELIVERED THE FOLLOWING:

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"C.R."

J U D G M E N T

Dr. A.K.Jayasankaran Nambiar, J.

This appeal, that is preferred on behalf of the appellants who were arrayed as accused nos.1, 3, 5, 6, 7, 10 and 12 in Crime No.712 of 2009 of Kannur Town Police Station, impugns the judgment dated 30.11.2018 of the Additional Sessions Judge–I, Thalassery in S.C.No.497 of 2011.

2. The prosecution case was that, enraged by an altercation that took place between the 1st accused and the deceased at 8.00 p.m. on 28.09.2009 at a street food shop near Kavitha cinema theatre at Kannur, the 1st accused, together with others, formed an unlawful assembly and arrived at the road in front of a theatre complex named 'Savitha Talkies' at Kannur at about 11.00 p.m. on 28.09.2009 and committed rioting and attacked the deceased Jyothish and his friend PW1 Sarath when they came outside Savitha Talkies, after watching a second show movie. The unlawful assembly comprising of the 1st accused and others attacked the deceased Jyothish and PW1 Sarath when they came out of the theatre on a motorbike bearing Regn.No.KL.13A/1330, and in the course of the attack, the deceased was stabbed and beaten using swords and iron rods. The deceased died as a result of the injuries at the hospital where he was taken to immediately after the attack.

3. A crime was registered as Crime No.712 of 2009 of the Kannur Town Police Station based on the First Information Statement given by PW1. Thereafter, the investigation in the crime followed, and pursuant to that, a final report was filed against the accused, alleging commission of offences punishable under Sections 143, 147, 148 and 302 read with 149 of the Indian Penal Code [IPC]. The final report was thereafter filed before the Court of the Judicial First Class Magistrate-I, Kannur, wherein, it was numbered as C.P.No.16 of 2011. Thereafter, the committal court, after complying with the necessary procedure, committed the case to the Court of Sessions, Thalassery, which made over the case to the Additional Sessions Judge-I, Thalassery, for trial and disposal.

4. The accused appeared before the court where the charges framed against the accused were read over to them, and to which, they pleaded not guilty. In the trial that followed, the prosecution examined PW1 to PW19 and marked Exts.P1 to P22 documents. MO1 to MO7 were also identified. After the culmination of the prosecution evidence, the accused were examined under Section 313 of the Code of Criminal Procedure [Cr.P.C.], when they denied the incriminating circumstances appearing against them in the evidence led by the prosecution. Thereafter both sides were heard under Section 232 of the Cr.P.C. When on finding that there was no sufficient ground made out to acquit the accused at that stage, they were called upon to enter on their defence.

5. On the side of the accused, DW1 to DW4 were examined and Exts.D1 to D5 were marked. On the culmination of the evidence led by

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the defence, the learned counsel on both sides were heard and the judgment rendered by the trial court finding accused nos.1, 3, 5, 6, 7, 10 and 12 guilty of the charges laid against them and acquitted accused nos.2, 4, 8, 9 and 11 after finding them not guilty of the charges against them. Accused nos.1, 3, 5, 6, 7, 10 and 12 were thereafter sentenced to undergo imprisonment for life and to pay fine of Rs.1,00,000/- [Rupees One Lakh only] each under Section 302 IPC, in default of payment of fine to undergo rigorous imprisonment for 1 year each and to undergo rigorous imprisonment for 6 months each under Section 143 IPC and to undergo rigorous imprisonment for 2 years each under Section 147 IPC. Accused nos.3, 5, 6, 7 and 12 were further sentenced to undergo rigorous imprisonment for 3 years each under Section 148 of IPC. The period of detention already undergone by the accused was to be set off against the substantive term of imprisonment, in case the sentence of imprisonment for life was remitted or commuted by the appropriate Government.

6. In the appeal before us, we have heard Sri.P.Vijayabhanu, the learned senior counsel and Sri.Vishnu Prasad Nair, the learned counsel for the appellants and Sri.T.R.Renjith, the learned Public Prosecutor for the respondent State. We have also gone through the evidence on record with a view to re-appreciate it to determine the correctness of the findings rendered by the trial court against the appellants.

7. We note from a perusal of the impugned judgment that the trial court first considered the evidence available to establish the nature of death of the deceased, namely, whether the death was homicidal or not ?

Placing reliance on Ext.P2 wound certificate marked through PW7 Dr.Fami, Ext.P4 postmortem certificate marked through PW10 Dr.S.Gopalakrishnapillai, the testimony of PW18 P.P.Sadanandan, the Investigating Officer and the testimonies of PW1 Sarath, PW2 Aneesh and PW5 Mithun, the trial court found that the deceased had sustained injuries after he was attacked by the assailants by using dangerous weapons and the nature of the injuries inflicted upon him and the areas of his body where the injuries were inflicted, clearly pointed to the death being homicidal in nature, and the instant being a case of culpable homicide amounting to murder. On going through the wound certificate and postmortem certificate and considering the nature of the injuries and the places on the body of the deceased where those injuries were inflicted, we find ourselves in complete agreement with the finding of the trial court that the cause of death was homicidal and that the instant is a case of culpable homicide amounting to murder.

8. That said, we find ourselves at variance with the findings of the trial court on the identity of the persons who were responsible for the commission of the crime. We find that the trial court relied almost entirely on the testimonies of PW1 Sarath, PW2 Aneesh and PW5 Mithun with regard to their versions of the incident as seen by them, and mechanically brushed aside the objections pointed out by the defence as inconsequential, while ultimately holding that the charges levelled by the prosecution against accused nos.1, 3, 5, 6, 7, 10 and 12 under Section 149 IPC - that they had formed an unlawful assembly and committed rioting and murder of the deceased in pursuit of their common object,

stood proved against them. It is significant that, apart from the identification of the accused by the said witnesses, there is no other evidence in this case to connect the named accused with the crime alleged against them. The clothing articles belonging to the accused, that were allegedly recovered from their residences, although contained blood stains, the Forensic Science Laboratory [FSL] to which the said articles were sent for analysis, returned inconclusive test reports. Moreover the findings in the FSL report were not put to the accused when they were questioned under Section 313 Cr.P.C., and hence, the same cannot be used against the accused. Thus, the conviction of the accused hinged solely on the testimony of the aforementioned witnesses.

9. PW1 Sarath was the person who was apparently with the deceased Jyothish at the time of the attack. In his deposition before the court, he stated that he was with the deceased even prior to the time of incident, when the deceased Jyothish had an altercation with the 1st accused and slapped him in front of a *thattukada*. In his deposition, he also stated that the said incident was the reason for the retaliation by the 1st accused, who along with others came to the road in front of Savitha theatre and attacked the deceased as they were returning after watching the second show of a movie. He also gave a detailed and graphic description of the incident that took place by naming the various accused as the persons who were present on that day, and the nature of the weapons used by them and the injuries inflicted by them on the deceased. Although many of the said statements given by him in evidence have been shown to be omissions in his previous statement viz.

Ext.P1 FI Statement given by him, and the contradictions have been marked by the defence through PW18 Sadanandan, the Investigating Officer, the most crucial omission in his FI Statement is regarding the identity of the 1st accused. Although it is the case of PW1 that he was with the deceased at the time of the previous incident involving the 1st accused, which purportedly provided the motive for the latter to retaliate through the subsequent incident leading to the death of the deceased, in Ext.P1 FI Statement, the identity of the 1st accused is not disclosed. In our view this was a fatal omission on the part of PW1, and one that when read with the other proved contradictions, deprives his whole testimony of the sterling credibility required for safely relying on the evidence of an eye-witness. It is beyond the pale of ordinary human conduct that a person who was with his deceased friend at the time of his earlier altercation with the 1st accused, would not mention either the presence of the 1st accused or any details of the previous incident to the police authorities when he went to the police station to give the FI statement in relation to the incident that led to the death of his deceased friend. As is trite, while a court has to keep in mind that different witnesses react differently under different situations, and it cannot expect uniformity in human reaction, if the conduct of a witness is so unnatural, and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is liable to be discarded **[Lalu Kamlakar Patil & Anr. v. State of Maharashtra – [(2013) 6 SCC 417].**

10. Similar is the case with the deposition of PW5 Mithun. While

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the prosecution cited him as an eye-witness to the incident, being a person who had come out from the theatre after watching the same show of the movie that PW1 and the deceased had apparently watched, his presence at the scene of the crime was not corroborated by PW3 Sumith, the other witness cited by the prosecution as the person who went along with him to watch the movie. PW3 turned hostile to the case of the prosecution and hence the trial court had to consider the testimony of PW5 independently for its credibility. The strange part of PW5's testimony is that while he admits to knowing the deceased and being his friend, it was brought out in cross-examination that he did not go to the hospital where his friend, the deceased, was taken immediately after the incident. He also admits to having known about the death of his friend only the next morning. In a recent judgment in **Nimai Ghosh v. State of Bihar (now Jharkhand) – [2025 SCC Online SC 2337]**, the court observed that in cases where an eye-witness to an incident takes no steps whatsoever to save the life of the deceased and leaves the place of the incident without furnishing any information to the Police or intimating the relatives or friends of the deceased, then his conduct cannot be seen as that of a normal human being, and his conduct would be relevant fact while testing his evidence for credibility. It is also significant that PW5's testimony regarding the weapons allegedly used by the accused and the nature of the injuries inflicted by them on the deceased are proved to be gross improvements on his earlier statement given to the investigating authority, and they also do not match with the description of the ante-mortem injuries noticed in Ext.P4 post-mortem certificate. That apart, the extent of proved exaggeration in his deposition before the court also

casts doubts on the credibility to be attached to his testimony.

11. As for PW2 Aneesh, although he too deposed to being at the crime scene along with PW1 and the deceased, he admitted to not being able to identify the accused in court. His version of the incident reveals that there were around twelve persons who attacked the deceased and to that extent, he contradicts the version of PW1 and PW5. At any rate, his evidence only proves that an incident resulting in the death of the deceased occurred. It does not point to the identity of the persons who committed the crime.

12. A peculiar feature of the trial in the instant case, that was apparently not taken into account by the trial court, is that while the crime took place on 28.09.2009, the trial itself commenced only in 2011 and the prosecution evidence was let in only in 2018. The prosecution witnesses who identified the accused did so only in court, ie. more than 9 years after the crime. This ought to have cast some doubt as regards the identification of the accused by PW1 and PW5 especially when both these witnesses had no prior acquaintance with the accused. It is significant that there was no Test Identification parade conducted by the investigating agencies to confirm the identity of the accused in this case. Although it is trite that an identification in a TI parade is not substantive evidence and that the non-holding of a TI parade will not vitiate a dock identification **[Vinod alias Nasmulla v. State of Chattisgarh – [(2025) 4 SCC 312]**, considering the fact that the dock identification of the accused by the witnesses above was not free from doubt, a TI Parade

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would have proved useful to corroborate the dock identification done by PW1 and PW5 in the instant case. For our part, we are of the view that the non-conduct of a TI Parade, taken together with the other vitiating factors discussed above with regard to the conduct of the aforementioned witnesses, rendered their testimony as eye-witnesses to the incident suspect and unworthy of acceptance vis-a-vis the identification of the accused.

In the result, we are of the view that there was no reliable evidence on record to connect the named accused with the crime that was committed on the night of 28.09.2009. We therefore set aside the impugned judgment of the trial court and allow this appeal. The appellants shall be set at liberty forthwith unless their incarceration is required in connection with any other crime.

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

Sd/-
JOBIN SEBASTIAN
JUDGE

prp/

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APPENDIX OF CRL.A.NO.16 OF 2019

APPELLANTS ANNEXURES:

ANNEXURE 1	**THE DEATH CERTIFICATE OF APPLICANT'S MOTHER ISSUED FROM KANNUR CANTONMENT**
ANNEXURE 1	**TRUE COPY OF THE CERTIFICATE ISSUED FROM THE MUNICIPAL CORPORATION OF KANNUR CERTIFYING THE FACTUM OF DEATH**

//TRUE COPY//

P.S. TO JUDGE