

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

CRL.A.No. 52 of 2014 ()

AGAINST THE JUDGMENT IN SC 143/1998 of THE
COURT OF ADDL.SESIONS JUDGE,THALASSERY, DATED 19-12-2013
(CRIME NO. 66/1995 OF PANUR POLICE STATION, KANNUR).

APPELLANT(S)/ACCUSED NO.1:

KATTINDAVIDA SURESH
S/O. GOVINDAN, AGED 46 YEARS,
PUTHOOR AMSOM DESOM,
KAIVELIKKAL, KANNUR DISTRICT.

BY ADVS.SRI.C.K.SREEDHARAN
SRI.BABU S.NAIR
SMT.SMITHA BABU

RESPONDENT(S)/STATE AND COMPLAINANT:

1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031.
2. THE STATION HOUSE OFFICER,
PANOOR POLICE STATION, KANNUR DISTRICT - 670 692.

BY PUBLIC PROSECUTOR SRI.ROY THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19-06-2015 AND THE
COURT ON 25.6.2015, DELIVERED THE FOLLOWING:

ami/

V.K.MOHANAN & RAJA VIJAYARAGHAVAN V., JJ.

Crl.A.No.52 of 2014

Dated this the 25th day of June, 2015.

J U D G M E N T

Mohanan, J.

This is the second time that the appellant has approached this Court in an appeal challenging the conviction and sentence imposed on him vide judgment dated 9.1.2003 in S.C.No.143/98 by the court of Sessions Judge (Ad hoc-1), Thalassery, in Crime No.66/95 of Panoor Police Station.

2. Originally, the present appellant, who is accused no.1 in the above crime, faced trial along with 8 other accused for the offences punishable under sections 143, 147, 148, 324, 307, 302, r/w 149 of IPC and sections 3 and 5 of Explosive Substances Act, 1908, connected with an incident allegedly occurred at 9 p.m. on 10.3.1995 by which one Kelu was allegedly murdered and another prosecution witnesses sustained injury and it is alleged

that, accused 9 in numbers came to the house of CW1 in furtherance of their common object of committing murder of them, after forming themselves into an unlawful assembly, armed with deadly weapons, committed rioting and hurled bomb out of political enmity. When the accused appeared in the court of Additional Sessions Judge, Ad-hoc-1, Thalassery, a formal charge was framed and as the accused pleaded not guilty and denied the charge, trial was proceeded, during which, Pws.1 to 15 were examined and marked Exts.P1 to P14 and also identified and marked Mos.1 to 7 from the side of the prosecution. On completing the trial, initially the trial court convicted and sentenced all the accused for the offences under sections 143, 147, 148, 302 r/w 149 of IPC and sections 3 and 5 of the Explosive Substances Act. Accordingly, the 1st accused/the present appellant was sentenced to undergo rigorous imprisonment for life and also sentenced him to pay a fine of Rs.25,000/- and in default he was directed to undergo simple

imprisonment for one year, for the offence under section 302 of IPC. Accused nos.2 to 9 were convicted for the offence under section 302 r/w S.149 of IPC and sentenced them to undergo rigorous imprisonment for 10 years each and each of them were also sentenced to pay fine of Rs.10,000/- each and in default to undergo simple imprisonment for one year each. All the accused were further sentenced to undergo rigorous imprisonment for 5 years each for the offence under sections 3 and 5 of the Explosive Substances Act and each of them were sentenced to pay fine of Rs.5,000/- under each count and in default to undergo simple imprisonment for six months each. The accused were also sentenced to undergo simple imprisonment for 6 months each for the offence under section 148 of IPC. Against the above judgment of the trial court, the accused preferred Crl.A.No.182/03 (A) before this Court and thus while disposing the above appeal, this Court has held that, grave illegalities and infirmities were committed by the learned Sessions Judge (Ad hoc-1) during

the trial and accordingly the judgment dated 9.1.2003 of the trial court in S.C.No.143/98 has been set aside and remanded back the case for fresh disposal in accordance with law. While remanding the matter, this Court observed that it shall be open to the court below to alter the charge, if necessary and in that case, an opportunity shall be afforded to the accused to recall any witness which they may require.

3. Accordingly, the accused appeared before the court below on 7.10.2005 and the original court charge was altered and re-framed against the accused for the offences punishable under sections 143 r/w 149 of IPC, 147 r/w 149 of IPC, 148 r/w 149 of IPC, 324 r/w 149 of IPC, 307 r/w 149 of IPC and 302 r/w 149 of IPC and Section 3 of the Explosive Substances Act r/w 149 of IPC. When the altered charge was read over to the accused, they denied the same and thereafter the prosecution was permitted to examine two more witnesses and in marking two more documents from their side. After questioning the accused under

section 313(1)(b) of Cr.P.C. on the basis of the examination of Pws.16 and 17 and on recalling and re-examination of Pws.1, 2, 3, 8, 11 and 14, Exts.D4 and D5 were marked from the side of the defence, besides the earlier examination of Dws.1 to 3 and marking of Exts.D1 to D3. Thus, finally the trial court has found that the prosecution has succeeded in proving the offences punishable under sections 302, 307, 324 of IPC and section 3 of the Explosive Substances Act ; but the prosecution has not succeeded in proving the involvement of accused nos.2 to 9 in the crime. According to the learned Judge, the evidence adduced from the side of the prosecution is totally insufficient to convict the accused nos.2 to 9 and no evidence is forthcoming as to the sharing of the common object and perpetration of crime by accused nos.2 to 9 in furtherance of their common object and they were silent spectators at the scene of occurrence and they were unarmed and no overtact was seen alleged and proved against them by the prosecution. So, according to the learned Judge, in the absence of such

evidence, it will be unsafe to convict and sentence accused nos.2 to 9 under sections 143, 147, 148, 302 r/w 149 of Indian Penal Code. Consequent to the above findings, by the impugned judgment, the accused 2 to 9 were acquitted. On conviction of the appellant for the said offences, he was sentenced to undergo imprisonment for life and to pay a fine of Rs.3,50,000/- and in default of payment of fine, he was directed to undergo rigorous imprisonment for 2 years under section 302 of Indian Penal Code. He was also sentenced to undergo rigorous imprisonment for 7 years under section 307 of IPC. For the offence under section 324 of Indian Penal Code, he was sentenced to undergo rigorous imprisonment for one year. He was further sentenced to undergo rigorous imprisonment for 5 years for the offence under section 3 of the Explosive Substances Act. The appellant/accused was acquitted of all the charges under sections 143, 147, 148 r/w 149 of Indian Penal Code. While it was directed to run the sentences concurrently and set off was allowed under section 428 of

Cr.P.C., it was also ordered that if the fine amount is realised or paid, the same shall be disbursed to the legal representatives of the deceased Kelu. It is against the above findings, conviction and sentences, A1 in the above crime has come up in appeal again.

4. The prosecution allegation is that at about 9 p.m. on 10.3.1995 while CWs.1 to 3 and the deceased Kelu were sitting and talking in a concrete bench (ഇരുത്തി) in front of the house of CW1, the accused 9 in numbers, who have got political enmity towards the above referred persons, came in furtherance of their common object of committing murder of them, after forming themselves into an unlawful assembly armed with deadly weapons, committed rioting and hurled bomb and as a result of the same, CW2 and the deceased Kelu sustained injuries and subsequently the said Kelu succumbed to his injuries.

5. The Circle Inspector of Panoor Police Station, who was on patrol duty, reached at the spot and one Krishnan, the owner of the house wherein the alleged incident had

occurred, gave a statement before the said C.I. which is said to have been recorded from the house of one Kuvelickal Balan and according to the prosecution, the said statement was sent to Panoor Police Station and accordingly an FIR was registered as Crime No.66/95 of Panoor Police station for the offences punishable under sections 143, 147, 148, 324, 302, r/w 149 of IPC and sections 3 and 5 of the Explosive Substances Act. Accordingly, the then C.I. of Panoor Police station undertook the investigation. Accordingly, he entrusted the duty of scene guard with P.C.3875. When he came to know that the injured was dead, a report was filed before the court to add Section 302 instead of Section 307 of Indian Penal Code and he sent P.C.3657 to guard the dead body. Thereafter, at about 8.30 a.m., he went to the mortuary of Thalassery Government Hospital and prepared inquest report of the body of the deceased. During the inquest, he had seized certain material objects from the body of the deceased, namely shirt, kaili mundu (കൈലി മൂണ്ടു),

underwear, purse, currency notes and the currencies were released in favour of the relatives of the deceased Kelu upon receipt. Thereafter, he sent the body for postmortem examination with a specific requisition for the same. According to him, thereafter he proceeded to the place of occurrence and prepared the scene mahazar, during which, he had seized blood, soil as well as a pair of chappal and also seized some paper pieces, jute twine pieces and also pieces of threads etc. and he had also seized a country bomb tied with jute twine from the road near to the place of occurrence. During the course of investigation, he had questioned the witnesses and recorded their statement and continued the investigation and he had enquired about the accused and their houses were searched. He had also made request before the Forensic Authorities for report. Accused nos.1, 5 , 6 were arrested on 14.3.1995 near from the Chendayad U.P.School and as per the direction of the Investigating Officer, accused nos.2 and 4 were arrested by the ASI and they were produced before the C.I. Accused

nos.7 and 9 were arrested from Mokeri and they were produced before the Investigating Officer. Their statements were recorded on questioning and accused were produced before the court by filing a remand report. Again on 15.3.1995, a country bomb was seized from the place of occurrence and the same was diffused. The parts of such country bomb were seized as per Ext.P11 mahazar. The things that seized from the place of occurrence were taken into custody as per Ext.P6. The Investigating Officer has also filed report furnishing the name and address of the accused. The material objects that taken into custody were produced before the court and requested the court by filing a forwarding note for sending the same for chemical analysis. By making a request before the Village Officer, he got prepared the scene plan. Accused no.1 was arrested from the Thalassery Government Hospital after his discharge as he was undergoing treatment there. Connected with the injury sustained by A1, Crime No.88/95 was registered in the Panoor Police Station. The further

investigation was conducted by the successor of PW14, who obtained a report from the District Magistrate, granting permission and finally on completing the investigation, charge was laid before the court.

6. As we have indicated earlier, when all the accused entered appearance, a formal charge was framed against them for the offences punishable under sections 143, 147, 148, 324, 307, 302, r/w 149 of IPC and sections 3 and 5 of Explosive Substances Act. Subsequently, the charge was altered after the remand of the matter on the first appeal. As stated earlier, during the initial trial, Pws.1 to 15 were examined and Exts.P1 to P14 and Mos.1 to 7 were marked from the side of the prosecution. After the prosecution evidence, Exhibits D1 to D3 were marked from the side of the defence. On remand, after the alteration of the charge as stated above, from the side of the prosecution, Pws.16 and 17 were examined and Exts.P15 and P16 were produced as additional evidence from the side of the prosecution. From the side of the defence, Exts.D4 and D5

were marked. It is thereafter the learned Judge of the trial court, by the impugned judgment, while acquitting accused nos.2 to 9, found the appellant guilty for the aforesaid offences and convicted him thereunder and imposed the above sentences.

7. We heard Sri.C.K.Sreedharan, the learned counsel appearing for the appellant and Sri.Roy Thomas, the learned Public Prosecutor for the State.

8. Before going to the contentions advanced by the learned counsel for the appellant as well as the learned Public Prosecutor, we are of the view that, it will be worthwhile to refer to the memorandum of evidence available in the present case. As we have already referred, before registering a formal crime, the Investigating Officer, who conducted the major part of the investigation, reached the place of occurrence and he obtained a statement of the owner of the house at which the incident was allegedly occurred. It was on the basis of such statement, the crime was registered. It is seen recorded in the statement that,

the statement was given by one Krishnan, aged 42, S/o.Onakkan residing at Koovante Valappil, situating on the southern side of K.C.Mukku in Puthur amsom, Kootteri desom, and the statement has been given before the C.I., Panoor police station, (ie., Sri.C.S.Parameswaran Nair), at the verandah of the house of one Koovante Valappil Balan, situating on the back side of the house of the said Krishnan. It is also written on the top of the statement as, “10.3.1995 21.30 hrs.” According to the said Krishnan, he is a coolie worker and he is residing along with his wife Sarada and 3 children, namely Shyla, Shynu and Shaji. According to him, he used to go for work along with one Kelu, who is the husband of daughter of the younger brother of his father. According to the deponent, on that particular day (10.3.1995), at about 8.45 p.m., the said Kelu, along with whom he used to go for work, came to his house for asking him to join for the work of keeping firewood at Idayoth on the next day (11.3.1995) and at that time, Vannan Kandi Raveendran was also with him. According to the deponent,

himself, his wife and their two elder children and his nephew Gopi were present in the house. The deponent, the said Gopi and the deceased Kelu were discussing about the work, sitting near the steps provided for entering to the house. Kelu was sitting on the western side of the concrete bench (ഇരുത്തലി) and Gopi and Raveendran were sitting on the eastern side. At that point of time, 10-12 persons came in front of his house and due to the the light emanating from the 110 v. electric bulb and with the aid of Moon light, he could see Kaivelikkal Kattintavide Suresh, Chenakkalayil Balan, Thazhepurayil Asokan, Chenakkalayil Krishnan, Naveen of K.C.Mukku and his brother Sudhi, Koottiyeri Tailor Vinayan, Kunnothu Kandil Suku and Aneesh among the group of people. According to the deponent, when they reached in front of the stair, Kattintavide Suresh threw a bomb towards the stair uttering “throw it.....”. On seeing the same, he screamed and withdrew towards backside and according to him, the bomb exploded on hitting the right side of Kelu and there was heavy noise and

smoke. At that time, from among those group of people, the accused hurled two more bombs against his house and those bombs also exploded and shattered on hitting on the wall on the eastern side of the front door and one electric bulb placed in the front side of house also was damaged. As a result of the first bomb blast, pieces of flesh and blood from the right buttock and thigh of Kelu were scattered all around the place. At that time, Kelu fell on the top part of the steps and cried loudly. According to the deponent, his wife, Gopi and Ravi, who saw the occurrence by sitting on the verandah, screamed and cried aloud. By that time, the accused fled towards the eastern side of the road. According to the deponent, he panicked on seeing the incident and he was forced to sit in the house itself. The persons who assembled on hearing the hue and cry, brought an autorickshaw, and Ravi, Koovante Valappil Balan and others took the deceased Kelu to the hospital. In the said occurrence, Raveendran sustained injury on his hand when the shell fell on his hands at the time of blast.

According to the deponent, himself, Kelu and Raveendran were BJP sympathizers and the accused are CPM workers. According to him, he heard that, on 8.5.1995, the BJP workers attacked Aneesh and Ahammed who are CPM workers. So according to the deponent, to retaliate the above incident, the accused with a view to commit murder of Kelu, hurled bombs and inflicted injuries on Ravi and caused damage to the house also and the blood and flesh scattered from the body of Kelu and the remnants of bombs after its blast were lying in the place of occurrence. According to him, the time at which the occurrence had taken place was about 9 o' clock on 10.3.1995 and the distance towards the place of occurrence from Panoor Police Station is approximately 4 km. and it is in the east-west direction of the police station. It is also seen recorded in the statement by the C.I., Panoor Police station that, "Forwarded to SHO, Panoor, to register a case under sections 143, 147, 148, 324, 307 and 149 of IPC and sections 3 and 5 of the Explosive Substances Act and sent

the memorandum copy to me.”

9. The first witness examined by the prosecution is one Krishnan as PW1, who is the owner of the house at which the alleged incident had occurred. Thus when PW1 was examined, he deposed that he is residing at Puthoor amsom Kutteri desom. According to him, himself, his wife Sarada and their children, namely Shyla, Shynu and Shaji are residing together in the said house and he is a coolie worker. He deposed that, the incident had occurred on 10.3.1995 at 8.45 p.m. On that day, the deceased Kelu along with Vannan Kandi Raveendran came to PW1's house for discussing about their work. At that time, the nephew of PW1, Gopi was available in the house. The deceased Kelu called PW1 from the veranda and when PW1 stepped down to the veranda, Kelu was sitting on the western side of a concrete bench (ഇരുത്തി) situated near to the stair. Gopi and Raveendran were sitting on the eastern side and Kelu was sitting on the western side of the concrete bench (ഇരുത്തി) and PW1 was standing on the northern side of

Kelu. It is the further case of PW1 that, while they were talking, they saw 10-12 persons coming from the eastern side of the road. At that point of time, Gopi ran towards the back side of the house uttering "Suresh, Suresh...". As per PW1's version, Suresh (A1), Balan (A2), Naveen (A5), Krishnan (A4), Asokan (A3), Vinayan (A7), Sukumaran (A8), Aneesh (A9) and Sudheer (A6) were included in the gang. The court has recorded that PW1 identified the accused with their correct names. According to PW1, when the gang reached near Gopi, A1 threw something, at the instruction of others in the gang and that hit on the right buttock of the deceased Kelu and it exploded with a high sound and he sustained injury. At that time, PW1, his wife, Raveendran and Gopi cried loudly and thereafter, two more bombs were also hurled into the house which also exploded. When people in the surroundings gathered on hearing the scream, the accused fled towards the eastern side. It is the further case of PW1 that, the people who gathered there brought an autorickshaw and the deceased

Kelu and Raveendran who sustained injuries in the explosion, were taken to the hospital. According to PW1, he was available in the neighbouring house of one Balan when the Police came to his house on the date of the incident. Accordingly, he gave oral complaint to the Police, which was recorded by the Police and he put his signature in the statement. During the examination of PW1, he identified his signature and the said statement was marked as Ext.P1. According to him, the police came to his house for questioning and he had pointed out the place of occurrence. He came to know about the death of the said Kelu and also the hospitalisation of Raveendran by 11.30 at night. It is also his deposition that the incident was due to political animosity.

10. During the cross examination of PW1, he deposed that himself, the deceased Kelu, Ravi and Gopi were BJP workers. According to him, he saw the incident for 15 minutes. According to PW1, when the C.I. and party came for recording statement by 9.45 p.m. to his house, he was

in the neighbouring house belonging to one Balan and he had pointed out the place of occurrence. Thereafter, PW1 and the C.I. went to the said Balan's house by 9 o' clock, since there was no light in PW1's house, as it was damaged due to the bomb blast. As per the version of PW1, his house is facing towards south and the steps are situated after the courtyard and on both sides of the steps leading to the house, there were two concrete benches (ഇരുത്തി), in which 6-7 persons can sit. The stair is situated in between the two concrete benches, which have back rest and side rest of 1 ft. height. He deposed that, he was standing at a distance of one ft. from the deceased Kelu, and Raveendran and Gopi sat facing Kelu, who was sitting on the western side of the concrete bench (ഇരുത്തി). The stair, step down to a road and the road turns at a distance of 10 ft. on the eastern side. PW1 heard the sound of a gang of people coming towards his house much prior to shouting of "Suresh, Suresh...." by Gopi ; but he did not see the people. The said Gopi ran towards the back side of PW1's house

saying “Suresh, Suresh.....” and then PW1 saw the accused group, in which A1 was walking in front, ordering the gang to throw something. Though PW1 felt that, something wrong is going to happen, he did not think of escaping. According to PW1, he occasionally conducts get together in his house along with the deceased Kelu, who was his uncle, and Raveendran, who is not his relative. The deceased Kelu, was residing about 250 mtrs. away from his house. When A1 threw bomb, first, it hit on the right buttock of the deceased Kelu and exploded with smoke and he jerked to the path. When the accused group raised their hands for throwing the bomb, PW1 withdrew from there and Ravi was crying loudly at that time. When bomb blasted for the second time, PW1 screamed and those bombs hit on the architrave situated on the front wall of his house and exploded. There were remnants of bomb explosion in the courtyard. There was no mark of the blast on the concrete bench (ഇരുത്തി), but there are remnants in the concrete bench (ഇരുത്തി) and also on the path, which are jute twine,

glass piece, stone piece etc. According to PW1, on that day, Balan remained in the incomplete house of one Yusuf. When the bomb blasted, the flesh of deceased Kelu scattered in the stair and its surroundings. As per his version, he knew the accused who are Marxist party workers and he does not know whether A1 was a BJP worker earlier or not, but A2 to A9 were BJP workers and subsequently they changed their Party. He also does not know about the attack on A3 on that day, which occurred at the same place and time. According to PW1, A3 sustained injury and those who came back from the hospital, told him that the injury was sustained as a result of bomb blast. But he does not know whether the Police took case against the BJP workers. He had also deposed that he does not know about the registration of a case, as Crime No.81/95. He had categorically stated that he was an accused in one case and that was a murder case by which a Marxist worker was murdered, who is an accused in the present case. He admitted that he was also involved in a bomb hurling case.

The allegation in that case is that, bomb was hurled on one E.P.Jayarajan. During the cross examination, the defence has succeeded in bringing out certain improvements and according to him, when the Police questioned him, he told the police that A1 threw the bomb, while the others uttered the words “throw it.... throw it....”. He also deposed that he has not stated in Ext.P1 FI Statement that he went near to the steps as the deceased Kelu called him. According to PW1, he was residing at that house for the last 20 years and he was born and brought up at that place, but he does not know the death of people due to bomb blast. He does not know the death of one Chandran, an RSS worker, due to bomb blast in the house of Kizhakkumpurath Balan and he was not remembering the same. He was also not aware of the death of Potty Prasanthan, an RSS worker, due to bomb blast at Maavileri. Around his house and in the neighbourhood, there are dwelling houses and he gave the statement to C.I. at the house of Pookkantevalappil Balan. According to him, the explosive Expert came there after 2-3

days and at that time, the remnants of the blast were available there and he examined all the area. On the next day, PW1 was questioned by the Police and the Police examined the place as directed by the C.I. According to him, he pointed out the remnants of bomb blast and the blood stains on the concrete bench (ഇരുത്തലി) to the Police. As per his version, among the 10-12 persons who came there at the time of occurrence, 9 persons were the accused. According to him, A1 threw three bombs consecutively and the said fact has been stated to the Police at the time of questioning. He reiterated that, the version given before the Police, that the accused threw two bombs from the jeep, is correct. To a pointed question asked by the defence, PW1 said that he has not gone to the hospital. One Balan and Surendran went to the hospital. He has also deposed that he does not know any Marxist party worker, named Balan Master. According to him, there was injury on the inner side of the right hand of Raveendran and the same happened by the falling of shell

during the bomb blast. According to PW1, he witnessed the same and that blast occurred at the same place where the deceased Kelu sustained injuries. He denied the suggestion that the injury was sustained when the bomb was carelessly handled on the verandah of his house and the case was foisted against the accused out of political animosity. According to PW1, Gopi who ran towards the backside of the house, had come back when the people assembled there. He admitted that, each and every incident that occur in his house, could be seen from the house of Kallan Makul Balan situated in front of his house. According to him, the house of Poovante Valappil Balan is situated in the backside of his house. According to him, Kelu reached there at about 8.45 accompanied by Ravi, but he does not know from where they came together. It is not correct to say that, even prior to the arrival of Kelu, Ravi was available in his house and if it is seen stated to that effect in Ext.P1, the same is not correct. According to PW1, accused nos.5 and 6 are brothers and he does not

know their father namely Gopi Master, but he knew that there was a case against some RSS men on the allegation that they attempted to commit murder of said Gopi master. According to PW1, at the time of explosion, his wife was present in the courtyard and after the first explosion, she stepped up and came near to them. During the re-examination, he had stated that, he does not remember whether he had stated in Ext.P1 that, "A1 uttered, throw it, throw it.....".

11. When PW1 was recalled and further cross examined after the remand of the matter, he had deposed that immediately after the occurrence, neither himself nor his nephew Gopi informed the matter to the Panoor Police Station and neither of them took the injured for treatment to the hospital. He had also admitted that the deceased Kelu was the husband of his cousin. The house of Kelu was situated 100-115 mtrs. away from his house, but neither did he inform the matter to the house of Kelu nor did he arrange anybody to inform the matter to the inmates of

house of Kelu. According to him, Kunjikannan (CW7) is the brother of Tharamani, the wife of Kelu. The house of CW7, is situated 300 mtrs. away from the house of PW1. He had also deposed that on the night of the day of occurrence CW7 had not come to his house. According to PW1, immediately after the occurrence, the relatives of Kelu and some neighbours arrived at the place of occurrence and Kelu was taken to the hospital, but he did not discuss the incident with them. Though he denied the suggestion that, on hearing the hue and cry and sound of bomb blast, some people assembled there, he admits that, father of the said Gopi and 3-4 people from neighbourhood had come over there. According to PW1, he does not remember whether he had mentioned the names of persons surrounded, in Ext.P1 and also when he was subsequently questioned. According to PW1, when he gave Ext.P1 statement, he told the Police that, Gopi ran towards the backside of the house saying “Suresh, Suresh” and if it is not recorded so, he has nothing to say. He had also categorically deposed that

he did not mention in Ext.P1 and also when questioned by the Investigating Officer that, the injured were taken by one Surendran to the hospital. He had also deposed that he does not know as to who had taken the injured to the hospital. He denied the suggestion that he came to know about the attack by BJP people on one Aneesh and Ahammed, who are CPM sympathizers, on the next day of the incident in the present case. When it was put to PW1 as to whether the accused nos.2 to 9 in this case had inflicted injuries on Kelu and Raveendran, his answer was that he had seen only Suresh throwing the bomb and other accused had only accompanied him and he did not see A2-A9 either inflicting injury on anybody or causing damage to the house and besides A2-A9, he saw 3-4 persons at the road about whom he has no knowledge. It was again put to him that, whether he saw those persons before or after the incident, his answer was that he did not see them and therefore he could not say about them. According to PW1, he saw sword stick, small stick, some kind of weapons etc.

in the hands of A2-A9, and he does not remember as to whether he had given statement to that effect in Ext.P1 and whether he deposed the said fact before the Investigating Officer or not, but he had already deposed about the same on previous occasion and if it is not seen recorded, he has nothing to say. It is also deposed by PW1 that, as the incident had occurred 16 years back, he does not remember whether all the 3 bombs were thrown by A1. According to him, Gopi had witnessed the hurling of bombs and causing damage to the house. According to him, at the time of incident, Gopi was not sitting on the buttress of the house, but when the bomb was hurled for the first time, Gopi fled towards the backside of the house. Thus he was unable to say whether Gopi had seen the subsequent incidents that had occurred. According to PW1, he was not remembering whether he has given statement in Ext.P1 that, "His wife and Gopi, who were sitting on the buttress, cried aloud on seeing the incident." and if it is recorded in the FI statement as stated above, according to him, it could

have been told. That portion of Ext.P1 was marked as Ext.D4. According to PW1, none of the accused has got any personal animosity towards Kelu, Raveendran, Gopi and against himself. According to PW1, at the time of the incident, the accused were standing in the road on the southern side of his house and except A1, all the accused were residing about 50, 100, 150 and 1½ kms. away from his house. He had also deposed that there was no light in the area surrounding the stair that leads to his house and on the eastern and western side of the property, there were coconut trees and arecanut trees and on the southern and northern side, there were jack fruit trees and mango trees. According to PW1, he does not remember whether there was street light in the road lying in front of his house. PW1 has further deposed that the hurling of the first bomb and uttering of Gopi as, “Suresh, Suresh....” were at the same time and that bomb exploded after hitting on the right buttock of Kelu, who sat on the western side of the concrete bench (ഇരുത്തലി) and then Kelu fallen towards the

stair. The mark of bomb blast was there on the western side of the concrete bench (ഇരുത്തി), which have back rest and side rest of 1 ft. height . PW1 has also stated that no injury was sustained on his body and the remnants of bomb were not seen in the dress worn by him. His wife was very much present near to himself and Kelu at the time of the incident. According to PW1, when Suresh firstly raised his hand to throw bomb, he felt something wrong was going to happen and his wife, by holding his hand pulled him back to the courtyard. The courtyard is situated near to the concrete bench (ഇരുത്തി) and on the upper side of the stair. According to PW1, till the end of the incident, himself and wife were on the courtyard of their house, at a distance of 3-4 ft. away from the place at which Kelu sustained injuries. There was no injury for his wife. He had not seen any marks of bomb blast on the dress worn by his wife. He denied the suggestion that, at the time of occurrence, he was not available in the house and that he had not seen the incident as he reached the house only after half an hour

from the time of the incident and he has only a hear-say information about the incident. He also denied the suggestion that his wife and three children were available in the house, but Sarada, his wife, could not see the incident. It is also deposed by PW1 that, it is incorrect to say that Ext.P1 statement was artificially created on the next day of the incident, ie., on 11.3.1995 and after the preparation of the inquest, and that his signature on the above document was obtained by the Police subsequently. He also denied the suggestion that, Ext.P1 was not prepared at the time and place seen recorded in it. It is also deposed by PW1 that, the dead body of Kelu was brought from Thalassery to his house on the next day through a funeral procession and he had not participated in it. Till the preparation of the mahazar by the C.I., he did not see any country bomb lying in the road in front of his house. It is also stated by PW1 that, it is incorrect to say that, during the time of occurrence, Koovante Valappil Balan was not residing adjacent to his house and hence

Ext.P1 statement was not prepared at his house. According to PW1, he did not visit Raveendran in the hospital and he had only a hear-say knowledge about the injury sustained by A3. In the re-examination he had deposed that, his house is situated at a higher level of 5 steps from the road and by sitting in the verandah, he could see only a portion, just above the chest, of a person going through the road. He also deposed that, he was an accused in 2 other cases and the incidents in those cases had occurred after the present one.

12. PW2 is the wife of PW1 and she was examined as an eye witness to prove the occurrence. When she was examined, she has stated that she is the wife of PW1 and they were residing together and she has no particular job. The occurrence was at about 8.45 p.m. on 10.3.1995. According to her, the deceased Kelu called PW1 from near to the stair and thus he reached there and while talking about their work, some people came from the eastern side. Gopi is the nephew of PW1. Gopi was available on the

verandah of the house. On seeing A1 among the people, Gopi ran towards the backside of the house, by saying “Suresh, Suresh.....” and she saw A1, A3, A8, A7, A9, A4, A2, A5 and A6 in the group and besides the above persons, three more persons were also with them, but she could not identify them. She had also deposed that A1 threw something towards the stair and that was exploded on hitting the buttock of Kelu. On sustaining injury, he had fallen there. Thereafter, they hurled bombs twice and the same blasted on hitting on the front wall of the house. According to PW2, they screamed. It is also stated that injury was sustained on the right hand of Raveendran. According to her, Raveendran, and Gopi were sitting on the concrete bench (ഇരുത്തലി) opposite to Kelu. When the people assembled on hearing the cry, the accused ran away towards the eastern side. PW2 has deposed that Kelu and Raveendran were taken in an autorickshaw by Surendran and Balan. According to her, the incident was due to political reason and she was questioned by the Police on

the next day and she told them about the incident.

13. During the cross examination of PW2, she had deposed that the Police came at the place of occurrence on the night of the date of occurrence itself, at about 9.30, and also on the next day at about 12 o' clock in the noon and she did not remember the exact time. She had also deposed that, since the voltage was insufficient, they put a 110 v. bulb. It was Gopi who first saw A1 and Gopi was on the stair and not on the verandah. According to PW2, Kelu used to come there and he is a relative. She further says that Ravi and Kelu came together and Reveendran is not a relative. According to PW2, after the arrival of Kelu, PW1 was in the courtyard. The stair was very adjacent to her. The stair and verandah were also very near. According to her, she saw the accused while she was on the verandah and all the 12 persons came as a group. Though there was no light in the stair, there was good moon light. Among the people who arrived, A1 hurled a bomb and the same hit on the buttock of Kelu and exploded, and at that time, Kelu

was sitting on the concrete bench (ഇരുത്തി). The concrete bench (ഇരുത്തി) has rests on its three sides. PW1 was standing very near to Kelu. Ravi and Gopi sat on the opposite side of Kelu in the concrete bench (ഇരുത്തി). According to her, before the blast of bomb, Gopi ran away. She has also deposed that during the blast of bomb, Ravi was very near to Kelu and Ravi sustained injury in the same place. According to PW2, at the time of the bomb blast, she cried loudly from the courtyard. The other two bombs exploded at the verandah. At that time, she was watching the road and PW1 was also available in the courtyard then. At the time of the incident, the children were studying inside the house and she was present in the courtyard and she has not gone inside the house and she identified the 9th accused when she was in the courtyard. According to her, she saw the hurling of the first bomb and she realised subsequently the point at which the bomb had exploded. When she looked over, pieces of flesh of Kelu were blown

away and there was blood spread all over the place. She witnessed the splinters of shell from the bombs falling on Ravi, who sustained injury on the inner side of his right hand. The Police came on the same day night. The Police who came in the morning, reached the house of his neighbour Yusuf Ali and she knows the accused and she resides at Velikkal Thuvakkunnu. According to her, the accused are nearby residents and she often sees them. She has also stated that A2 and A7 are relatives and she used to see all the accused and they are Marxist party workers. She has not seen how A3 sustained injury and she came to know about the injury sustained by A3, only when the persons who visited him in the hospital told her about the splinters of the bomb falling on A3 and those facts were stated to the Police and if it is not written so, she has nothing to say. She came to know that A3's injury was on the chest. During that period, there were frequent conflicts between BJP and CPM parties and tensed circumstances exist in the locality and bomb blasts

occurred often due to rivalry. According to PW2, two bombs were blasted on the verandah and remnants were there and the same were taken by the Police on the next day.

14. During the cross examination, she has specifically stated that though there was no blood on the verandah, blood was seen in the stair. She has also stated that when PW1 pointed out the place of occurrence to the Police, she was available there. She denied the suggestion and deposed that it is not correct to say that bomb blast occurred when the same were handled carelessly at the verandah by the deceased Kelu and others. She has also stated that there were several dwelling houses adjacent to the place of occurrence. She has also deposed that in front of her house, there was the house of Kallante Valappil Balan, but he was not residing there during the relevant time. She deposed that it is not correct to say that it is a foisted case. There was no re-examination of PW2.

15. On remand, PW2 was recalled and further cross examined. During such cross examination, PW2 has stated that, among the persons who took Kelu and Raveendran to hospital, Surendran was also there. She knew Surendran for the past 10-15 years from the date of the incident. She specifically stated that Surendran was a BJP worker and his house is about ½ kms. away from her house. She has stated that he came to their house on hearing their cry. She does not know whether Surendran was an accused in any case. According to PW2, she came to know that after the incident, Surendran left the place. Against the suggestion put by the defence, she stated that it is not correct to say that Kelu sustained injury due to careless handling of bomb by Surendran, the deceased Kelu and others, in front of the house of PW2 and pursuant to the same, Surendran absconded. While they were sitting and talking together, she heard the sound of persons coming from the eastern side of the road. Gopi got up all of a sudden, uttering the name "Suresh, Suresh..." and at that

time, according to PW2, she looked at the road side. She has also stated that they threw the bomb from the road and she saw the bomb exploding on hitting the right buttock of Kelu. Herself and her husband (PW1) were available very close to Kelu when he sustained injuries. When the bomb blasted first, there was no snuff of dust. At that point of time, she was at a distance of 3-4 feet from the deceased Kelu. According to PW2, thereafter, two more bombs exploded and at that time, they stood by the side at a distance of 2-3 ft. away. Due to the bomb blast, herself and husband had not sustained any injury and no remnants of the bomb were fallen on their dresses. It was also deposed by PW2 that, the concrete bench (ഇരുത്തി), where Kelu was sitting, was not damaged due to the blast. According to her, it is not correct to say that at the time of occurrence, her husband was available in the house. But when it was suggested that the husband has not seen the incident, she answered that it is not correct. When it was further suggested that at the time when Kelu sustained injury,

whether herself and children were inside the house, her answer was in negative. According to her, it is incorrect to say that she was subsequently cited as a witness as she is a close relative of Kelu and belonged to the same political party. According to her, on hearing the blast sound and cry, 10-20 people rushed to the spot, but the names of such persons were not spoken to the C.I. She has also stated that, the road lying in front of their house leads to Sree Narayana Madham and Puthur Madhappura. PW2 deposed that she was not aware of the things held in the hands of A2-A9. But the defence has succeeded in bringing the said fact as an improvement made by her during her deposition before the court and she admitted that when the C.I. had questioned her, she had not stated that she had seen something in the hands of A2-A9. She also denied the suggestion that she had falsely deposed before the court and had stated as tutored by her husband and the Party persons. To a pointed question as to whether PW2 had seen the attack on Kelu by A2-A9 and causing damage to

the house, her answer was that she did not see it. She had further deposed that she also had not seen A2-A9 speaking anything to her husband or to Kelu or Raveendran or vice versa. Kunjikannan (CW7) had not come to her house during night after the occurrence and they went to the hospital. She had also deposed that CW7 did not come to her house to inform about the death of Kelu and she came to know about the death of Kelu after one hour of taking him to the hospital. She does not know to whom the information about the death was to be conveyed and she did not visit the house of Kelu on the next day of the incident but her husband did go when the dead body was brought from Thalassery. The body of Kelu was taken to his house, after bringing the same to the house of PW2. According to PW2, she saw a bag in the hands of A1. She has categorically deposed that no injury was sustained on Raveendran due to bomb blast. The suggestion that he sustained injury on falling, was denied by PW2. When she was questioned by the C.I., she deposed about the presence

of moon light, but she stated that, if it is not seen recorded, she has nothing to say. At the time of the incident, there was no street light in the road in front of their house, but there was a light in the verandah of their house. It is incorrect to say that no incident had occurred as deposed by her and that the injury was sustained when the bomb exploded due to careless handling of the same, while the bomb was manufactured in their house. She has also denied the suggestion that the case was foisted against the accused, who is a known party worker in the locality, after discussing with the party workers.

16. The third witness cited and examined in this case was also shown as an eye witness and injured. In his examination, he deposed that he is residing at Puthuramsom and Koodiyeri desom and he is a coolie worker. He is aware of the incident, which occurred on 10.3.1995. The incident was at about 9 o' clock in the night and he went to the house of PW1. At that time Kelu, PW1, PW2 and Gopi and the children of PW1 were present. He reached the

house of PW1 at about 8.45 hrs. According to him, himself and Kelu together went there for the purpose of talking about the work. According to him, they sat on the concrete bench in front of the house and Kelu sat on the western side and he sat on the eastern side of the bench and they were talking. At that time he saw with the help of a 110 v. bulb glowing on the verandah of the house and with the help of moon light, that 10-13 people were coming towards them from the eastern side of the road. Among them, A1, A3, A8, A6, A5, A2, A4, A7 and A9 were present. It is recorded in the deposition that PW3 identified the accused correctly. According to PW3, Gopi had also participated in the discussion. On seeing the people, Gopi by uttering the words "Suresh, Suresh...." fled towards the backside of the house. According to PW3, at that time, A1 threw the bag in hand at them. He realised that it was a bomb and the same hit against the right buttock of Kelu and had exploded with a heavy sound and everyone cried loudly. The buttock of Kelu scattered and he fell on the steps. Immediately

thereafter, A1 hurled another bomb and the same hit against the wall of the house and exploded. The bulb was damaged and A1 hurled bomb for the 3rd time and the same also exploded on hitting against the wall. According to PW3, he sustained injury on his right hand. People rushed to the place of occurrence and he explained the incident to them and one among them hired an autorickshaw and thus himself and one Balan and Surendran removed Kelu to Panoor hospital in the autorickshaw and on reaching there, they were advised to take him to Thalassery. According to PW3, the people who came to know about the incident, arrived there in jeep and thus they took Kelu to Thalassery Government Hospital in a jeep and while he was under medical examination, Kelu succumbed to his injuries. According to PW3, he was admitted in the said hospital and remained there for two days. He came to know that A3 had also sustained injury and admitted in the hospital. The reason for the incident was political rivalry. The intention

of the accused was to finish off PW3 and others in toto. PW3 has categorically stated that, himself and others are BJP workers and the accused are Marxist party workers.

17. During the cross examination, he deposed that the Police has not questioned him and his injury was on the outer side of right palm. When it was suggested that whether he is a distant relative of PW1, his answer was that he has no clear idea about it and he cannot say clearly as to whether PW1 is the uncle of his mother, but thereafter he changed his version and submitted that they are distant relatives. He had also deposed that he does not know about the alleged murder of one Ahammed that occurred on the next day of the present incident. He does not know whether there was a case connected thereto against RSS/BJP workers. He expressed his ignorance when it was suggested that there was communal clash after and before the present incident. According to PW3, he occasionally comes to the house of PW1. Kelu also occasionally went there. Kelu is his neighbour. As per his

version, on the next day of the incident, there was some work of making boxes and himself and others were talking about the same. The boxes were to be prepared for a Muslim at Edayur and the same was the subject matter of their talk. According to PW3, himself and Kelu together reached there and sat on the verandah of the stair. He has also deposed that Pws.1 and 2 were present on that day in the house and then Kelu called PW1. It is incorrect to say that when Kelu arrived, he was available in the house. According to PW3, at about 8.45 p.m., they reached the house of PW1 and sat on the concrete bench. He clarified that what he meant by 'house' are the steps, which were very close to each other. PW1 and Gopi were available there. According to him, they came to the steps and sat on the concrete bench and chatted with each other. He had also deposed that, in the property where the house of PW1 was situated, there were several other houses, but the same were not the houses of BJP workers. Congress sympathisers also reside there. Kunjukuttan is a Congress

worker. According to him, the area surrounding the place of occurrence is not that of BJP sympathisers and it is an area of CPM workers. He was outside the hospital when Kelu was examined and thereafter, the said Kelu died during the time of examination. When the inquest was prepared on the next day, he was not present, but he was available in the hospital. On that day, there were several BJP workers in the hospital. According to PW3, when the accused, who came as a group, reached in front of the steps, they hurled the bomb at them. Kelu and himself sustained injury at the same place. Before hurling of the bombs, Gopi ran away. He denied the suggestion that he had stated to the Police that, 'At the time of the incident, he sustained injury on his right hand and then Gopi ran away towards the backside of the house' and if the Police had written so, the same is not correct. When the Police questioned him, he had not made such a statement. In the concrete bench, Kelu was sitting with crossed legs and by the bomb blast, his flesh was blown away into pieces, but

PW3 did not see the factum of scattering of flesh. At the place of occurrence, there was blood but he did not see any mark as a result of the blast on the concrete bench. According to PW3, at the time of blast, PW1 was very near to Kelu. When the first bomb blasted, Kelu sustained injury and then A1 hurled two bombs immediately thereafter. According to PW3, he had deposed before the Police about the presence of moon light and if the same is not written by the police, he has nothing to say. He came to know about the injury sustained by A3, only when people present in the hospital told him. At the time of the blast, A3 was on the road. When it was put to him that, whether there was a case against BJP sympathisers on the allegation that bomb was hurled against A3, he expressed his ignorance. According to PW3, he went to Panoor Hospital and the doctor examined and had given First Aid and Glucose to the injured, but the injuries were not bandaged and they remained only for 2-3 minutes. According to PW3, there were several people at that time and Koovante Valappil

Balan, who is residing on the backside of the house of PW1, also arrived therein. According to PW3, he knew the house of Kallan Makkul Kumaran, who is residing on the front side of the road and the same was facing not to the northern side but it is on the eastern side. The house of Kallan Makkul Balan is near to it. The house of Yousuf is in front of the house of Balan and on the next day morning, the C.I. of Panoor Police station questioned him and recorded the statement. Kelu was admitted in the hospital and died thereafter, and it is not correct to say that he died after 2-3 hours of hospitalisation. It is also not correct to say that they directly came to Thalassery hospital in the autorickshaw. According to him, among the accused, there were three more persons who can be identified, but they had not seen again. It is not correct to say that Kelu sustained injury on handling explosive substance on the backside of the house of PW1. He had also denied the suggestion that, since no blast had occurred, there was no remnants on the concrete bench (ഇരുത്തി).

18. After remand, PW3 was recalled and again cross examined. During such cross examination, he had deposed that after one hour from the time of the incident, himself and Kelu were brought to Thalassery hospital. Firstly the doctor examined Kelu at the Casualty room. He had also deposed that Kelu was brought to the hospital by himself, Balan and one Surendran. He does not know as to whom the doctor passed the information of death of Kelu and as to whether the doctor had enquired about the name of the persons who brought Kelu to the hospital. He had also deposed that he does not know as to who had spoken to the doctor as to the cause of injuries sustained by Kelu and he admitted that it was not he who told about the same. PW3 further deposed that he was not aware as to who were present in the room when the doctor examined Kelu. According to him, it is incorrect to say that Kelu sustained injury in a bomb blast on 10.3.1995 at about 9.30 p.m. at Kaivelikkal of K.C.Mukku. If the doctor had recorded as suggested above, he has to say nothing. When it was put to

PW3 that, whether it was told to the doctor that the bomb blast was occurred at K.C.Mukku for screening the fact that injury was sustained during the making of bomb in front of the house of Krishnan, his answer was in negative. PW3 had sustained a simple injury on the outer side of his right hand. According to him, he met the doctor and got treatment and got examined and treated after the expiry of 45 minutes of examination of Kelu. According to him, they came to know that the said Kelu died, only after two hours of his death. He does not know whether there was Police Aid Post in Thalassery Government Hospital or not. His wife belonged to Illathazha tharavadu family and the house of A1 is adjacent to her house. He does not know Balan Master. When it was specifically asked whether he knew the local leader of CPM, Balan Master, he answered in negative. It was specifically asked that whether Balan Master was involved in the incident in which PW3 sustained injury, and his answer was 'no'. He had deposed further that he has not spoken to the doctor that injury was

sustained when bomb was hurled by a man, namely Balan Master, and if it is recorded so, he has nothing to say. When it was suggested to PW3 that he told the doctor about the three prominent local leaders of CPM including Porattu Balan Master, he admitted the same and deposed that he told the doctor as above. He deposed that he had not told the doctor that other persons were also involved in the incident other than the three persons. According to him, he had not seen any BJP workers in the hospital. He corrected by stating that while they were brought to the hospital 10-20 persons had come. No relatives had arrived. According to him, it is not correct to say that the persons who arrived there are BJP men and as directed by them, he mentioned three names to the doctor. At the time of preparation of inquest, he had not gone there. He had also deposed that he has not participated in the funeral procession. He had admitted that he is a distant relative of PW1. Kunji Kannan (CW7) did not come to the hospital. According to PW3, firstly the injured were taken to Panoor

hospital and from there to Thalassery hospital and on that night he did not see Kunji Kannan at the hospital. He does not know as to who hired the autorickshaw. It is also his case that among the persons who took them, Surendran was present and he is residing 150 mtrs. away from the house of Krishnan. When PW3 was asked whether he knew that Surendran was an accused in several cases including the case of unauthorised manufacturing of bomb, his answer was he does not know. According to him, after the incident, Surendran left the country. PW3 further deposed that it is not correct to say that Surendran quit the country out of his guilty conscience as Kelu succumbed to his injuries due to bomb blast when bomb was manufactured under the leadership of Surendran. In the same property, where the house of Krishnan is situated, there were other dwelling houses of Chirutha, Kunjikkutti, Ananthan Komaram, Kallathi Govindan etc. and those houses are situated 10-20 mtrs. away from the house of Krishnan and on the southern side of the house of Krishnan, after the

road there situates the houses of Balan, Ali Haji, Yusuf, Kumaran and Kunji Kannan. Besides the above, there are 5-6 houses on the backside also. According to PW3, accused no.5 was conducting a medical shop and A6 is his younger brother. But he does not know whether A9 is a TTI student at the time of occurrence. When a specific question was asked to PW3 as to whether A2-A9 inflicted injuries either on himself or on Kelu, his answer was that only one man hurled bomb and the others did not. A2-A9 did not cause any damage to the house. According to him, he did not hear anyone from among A2-A9 talking to A1. None of them talked anything to them also. He had also deposed that during that period, there was no street light in the road and there was moon light at the time of occurrence and a statement was given to that effect before the C.I. According to him, if it is not recorded, he has nothing to say. At the time of occurrence, no damage was noted in the concrete bench (ഇരുത്തലി) where Kelu sat. It is not correct to say that no incident had occurred as stated

in the chief examination and subsequently after deliberating with BJP sympathizers, a list of CPM men was prepared and foisted the case against them. In the re-examination, he had stated that the place of occurrence is known as K.C.Mukku and to the doctor, he said that Suresh, Naveen, Balan and others had attacked him.

19. PW4 is an attester to the inquest report prepared by the Investigating Officer and thus when he was examined, he deposed that his house is at Kaiveli and he is aware of the incident. According to him, he had seen the dead body of Kelu, the deceased in the above case, at Government Hospital, Thalassery and it was on 11.3.1995. According to him, he had seen the inquest report prepared at about 8 o' clock on 11.3.1995 by the C.I. According to him, the Police had seized shirt, dhoti from the dead body and along with him there was one Kunjikannan. The inquest report contains his signature, which he identified and accordingly the inquest report was marked as Ext.P2. In the cross examination, he said that he does not know

whether the police had questioned any other person. He reached the hospital on hearing the news of death. PW3 was available in the hospital at that time.

20. PW5 is an autorickshaw driver and he was examined to prove that the injured were taken to hospital in his autorickshaw. According to him, he was aware of the incident that occurred in this case. He deposed that the deceased Kelu and witness Raveendran were taken to the hospital in his autorickshaw. According to him, a passenger from Panoor hired his autorickshaw to Kaivelikkal and on the way, two persons gave hand signal to stop the autorickshaw when the same reached K.C.Mukku. Accordingly, the autorickshaw was stopped and he was informed that, the vehicle was stopped for taking the injured, who sustained injury due to bomb blast, to the hospital. Accordingly, the passenger in the vehicle was dropped and he took the injured in the autorickshaw and went to the hospital. According to him, among the persons who entered in the autorickshaw, there were one

Balan and another person. The police questioned him and he deposed that, his vehicle number is KL-13-1267. During the cross examination, he deposed that, he departed with the passengers from Panoor at about 8.45. He was not keeping trip sheet in the autorickshaw and he is not aware of such requirement. He claimed that he is having driving license and badge. The distance from Panoor to Kaiveli is about 2½ kms. According to him, he had gone 150 m. from the place at which the passengers had alighted to take the injured. The police questioned him on the next day and the C.I. questioned him at Panoor town and the statement was read over to him. He deposed that he did not state to the police that he was on the way to Kaiveli from Panur at 9.30 hours. He had also deposed that if the police had written so, the same is not correct and he went at 8.45 to Kaiveli. The police read over the time as 9.15 and according to him, he did not notice the time recorded and he deposed before the court that the time was 8.45. During the cross examination he deposed that including the injured Kelu,

three persons got inside the autorickshaw, out of which, one was Balan and he was injured. He had further stated that the other persons can be identified at sight. He remained in the hospital for 5 minutes and thereafter he left the hospital.

21. PW6 is an attester to the scene Mahazar. When he was examined, he deposed that he was residing at Puthur amsom and Puthur desom and he was a tailor. He deposed that, he knew the incident. The C.I. inspected the place of occurrence and he was present when the mahazar was prepared, in which he put his signature and he identified the signature and thus Ext.P3 scene mahazar was marked through him. According to PW6, from the place of occurrence, the Police had seized the remnants of bomb blast, paper, thread etc. and also seized a bomb which had not exploded.

22. During the cross examination, he deposed that he knew the place of occurrence. When he was asked as to whether there was a house situated 20 mtrs. away from the

place of occurrence on the north - western side, wherein Kallan Makkul Balan and family were residing, his answer was that though there was a house, nobody resides there. According to PW6, his house was also situating in the same property and altogether there were 7 houses and the house at which the incident occurred was near to his house and there were other houses also. The house of Kallan Makkul Kumaran situated in front of the house of PW1 and Kunji Kannan was residing on the opposite side of the road. According to him, Ali Haji's house situated about 15 mtrs. away and not in the above mentioned property. PW7 was the then Village Assistant of Puthoor village office who prepared the site plan. When he was examined, he deposed that, as per the direction of the police, he prepared the site plan of the place of occurrence and he identified the same, which contains his signature, as Ext.P4. During the cross examination, he admits that item no.1 in the plan was the house of Kallan Makkul Balan and not that of Koovante Valappil Balan. According to him, he

went to the place of occurrence and after enquiring about each house, he prepared the plan. It is not correct to say that the house of Kallan Makkul Balan situated on the opposite side of the road and he deposed that, probably Kallan Makkul Kumaran resides over there. He admits that the site plan was an eye sketch and it was not prepared on the basis of any scale. According to him, the houses of the persons mentioned in the scene mahazar had been shown in the plan. He had deposed that PW1 resides near to the place of occurrence, but the houses of PW1 and Koovante Valappil Balan were not shown in the plan. He had deposed specifically that he does not know on whose property the concrete benches (ഇരുത്തലി) were constructed. According to him, the place at which the concrete benches were constructed was having thick trees on both sides of the benches. According to him, the road is situated at a lower level of 2 mtrs. from the steps. During the relevant time, he worked there for 2 years.

23. PW8 is the Head Constable attached to Panoor Police station and according to the prosecution, it was PW8 who prepared the FIR in the above case. Thus when PW8 was examined, he deposed that he was in GD charge in the Station on 10.3.1995. On that day night, at 22-15 hrs. he received Ext.P1 complaint sent by Panoor C.I. through PC 3875. According to him, on the basis of the same, he registered Crime No.66/95 u/s. 143, 147, 148, 324, 307 and S.3 and 5 of Explosive Substances Act r/w 149 of IPC. He identified the FIR and marked the same as Ext.P5. According to him, the FIR was sent to the court and a copy was sent to the superior officers. During the cross examination, PW8 deposed that it is incorrect to say that Exts.P1 and P5 were prepared on the next day of the incident. The place of occurrence is situating on the north-east side and 4 kms. away from the Station. The examination of the said witnesses proceeded on 9.5.2011 and thus, he specifically deposed that the name of the Police official through whom the C.I. sent Ext.P1 was not

mentioned in Ext.P1 FIR. He deposed that the handwriting on Ext.P5 is his own and it is incorrect to say that it is not his handwriting. He had deposed that Ext.P1 is the first complaint received in the Panoor Police station. He had also admitted that in column no.4 of Ext.P5, the word, 'by document' has been scored and on a perusal of Ext.P5, it cannot be said whether Ext.P1 and P5 were sent to the Addl.C.J.M. of Thalasseri through a Police Constable or not, and the GD had to be perused for the same. He had also admitted that as per the endorsement of the Addl. CJM, the same was seen received at 10 p.m. on 11.3.1995 and it will take 45 mnts. to reach at Thalassery from Panoor by bus. During the cross examination PW8 deposed that, on 10.3.95 at 10.30 p.m., he entrusted Ext.P5 with the P.C. to produce the same before the Magistrate. According to him, he cannot explain the delay occurred in reaching the FIR before the Magistrate. He denied the suggestion that Ext.P1 was not recorded during the night at 9.30 by the C.I. and the FIR was not registered by him on the same day

night at 10.15. Ext.P1 statement was sent by the C.I. through PC 3875. After registration of the FIR, a copy of the same was sent to the C.I. through PC 3875. PW8 further stated that, it is incorrect to say that PC 3875 was doing duty of scene guard at the place of occurrence as directed by C.I. w.e.f. 9.30 p.m. on the date of occurrence. He had denied the suggestion as incorrect that, Exts.P1 and P5 were not real documents and those were prepared on the next day after the inquest, in deliberation with the relatives of the deceased person and BJP leaders. It was also suggested that it is for that reason, the delay occurred in reaching Ext.P5 before the Magistrate, but such suggestion was also stated as incorrect. The details of the persons, who rushed to the spot on hearing the hue and cry, were also not stated in Ext.P1. When it was suggested that, it was not recorded in Ext.P1 that one Sundaran had removed the injured Kelu and Raveendran to the hospital, the answer was that the investigation was not conducted by himself. When PW8 was asked as to at what time the

information about the death of Kelu was received in the Panoor Police Station, his answer was that, as per his memory, the information was furnished to the Panoor police station from Thalassery police station at about 22.30 hrs. and that fact can be seen from the GD. According to PW8, it was he who made the report to alter the section of offence. He identified the certified photocopy of the same and marked it as Ext.D6. He further admits that it is not recorded in Ext.D6 the time at which Kelu died and the time at which such information received in the Panoor police station and the source of such information. He added that the death intimation furnished to the police, was received later. On the same day night, that intimation was sent along with FIR. But he admits that the receipt of such report was not recorded in Ext.P5. He has nothing to say if the death intimation had not been forwarded to the court along with Ext.P5.

24. PW9 is the then C.I. of Panoor Police station. According to the prosecution, it was PW9 who arrested

accused nos.7 and 9. When he was examined, he deposed that, himself and party, while they were travelling as part of their patrol duty, had identified and arrested accused no.7 Vinayan and accused no.9 Aneesh in this case, at 16 hrs. at a place named Makul Peedika, and reached the Station and entrusted them with the C.I. PW10 was when examined, had deposed that during the relevant time he was working as Assistant S.I. of Panoor police Station. According to him, he put his signature as a witness in the seizure mahazar prepared by the C.I. at the place of occurrence at 11½ a.m. on 15.3.1995 and he identified the signature and thus the seizure mahazar was marked as Ext.P6. He had also deposed that accused nos.2 and 4 in the above case had been arrested from the road lying in front of Palathayi library on 25.3.1995 and they were produced before the C.I. No question was put to the witness in cross examination. However, PW10 was recalled and re-examined on 9.5.2011 and the prosecutor put to him that whether he was aware of the seizure of remnants of

the bomb by the C.I. prior to the preparation of Ext.P1, then his answer was that he does not know what the C.I. had seized.

25. PW11 was then working as Civil Surgeon in the Government hospital, Thalassery. According to the prosecution, it was PW11 who examined one Raveendran (PW3) at Govt. hospital, Thalassery on 10.3.1995 at 10.50 p.m. According to PW11, the injuries were noted as an abrasion in 2 cm. diameter with lacerated wound of 0.5 cm., 1 cm. deep over the right dorsum of hand. According to him, the alleged cause was that, on 10.3.1995 at 8.45 p.m. in the house of Krishnan at K.C.Mukku, one Suresh, Naveen and Balan master, hurled bomb and sustained injury. The patient was admitted with cause as alleged. The injury was simple and he had issued a certificate and the same was marked as Ext.P7. According to PW11, on the same day, he had examined the deceased Kelu, aged 56 and he had noted that, "the patient is not conscious, pulse feeble, BP not recordable, right gluteal muscles, right thigh

muscles, vessels and nerves crushed and destroyed due to blast injury, with irregular brownish black edge of skin, with profused bleeding". He noted the allegation as, on 10.3.1995 at 9.30 p.m., injury was sustained by the said Kelu due to bomb blast at Kaitherikkal K.C.Mukku and it was told to him by the person who accompanied the injured to the hospital. Accordingly, the patient was admitted in M.S. and the injury was grievous in nature and issued a certificate which was marked as Ext.P8. During the cross examination, he deposed that, both the injured were brought to the hospital. Before he examined them, glucose drip was given. In Ext.P7, the injury was on the dorsum part of right arm. In Ext.P8, the injury was noted as, it can be caused by falling on a bomb, since the buttock muscles were damaged. However, PW11 deposed that a person sitting in a cement platform, was not likely to sustain injury on buttock in a bomb blast. The witness was recalled and sworn again and examination proceeded on 9.6.2011 and during such examination, he deposed as follows :

"In the wound of Mr.Kelu, the name of the person who had brought the injured to the hospital was not noted. As per the history given, the time of occurrence was 9.30 p.m. There was no allegation that the bomb blast occurred at the residential house of one Krishnan. The names of assailants or the number of assailants were not mentioned by the informer. After examining Kelu he was admitted in the hospital. By looking into the wound certificate I can't say which Doctor rendered treatment to the patient and who had declared him dead. So I can't say the time of death. I can't say who had conveyed the information regarding the death of Kelu to the police by looking in to the certificate. If the assailants hurled a bomb at the victim while he was sitting on a cement platform, is it unlikely to cause the injury noted by me in Ext.P8. Yes (A). If the victim fall on a bomb or accidentally sitting on it while handling it and the bomb explode, this injury likely to occur.

In Ext.P7 the injury is a simple injury. There was symptom or sign to show that (not legible... xxxxxxxx) in a bomb blast. I can't say whether the injury was due to bomb blast. In Ext.P7 the history as alleged cause was furnished by injured himself. Injury noted in Ext.P7 is possible if the injured falls on a hard and rough surface and this part of the body come into contact with hard surface."

Witness was again recalled on 23.11.2011 and examination proceeded as per the order in Crl.M.P.No.2500/11 and accordingly questionnaires were prepared by the counsel appearing for the victim on the basis of direction of this Court in Crl.M.C.No.2506/11 and thus the learned Judge

has recorded in the deposition of PW11 as follows :

"Q. Have you examined Raveendran (PW3) and Kelu while doing night duty in casualty on 10/3/95 as per Ext.P7 and 8 (Q). Yes I had examined Raveendran at 10.50 p.m. and Kelu at 10.10 p.m. on 10/3/95 while doing night duty at the casualty section (A).

Q. Both of them were admitted in the hospital (Q)
Yes. Both of them were admitted in the hospital (A).

Q. Is it correct to say that, normally details of treatment given and other details of the patient will be recorded only in the case sheet.

Normally the name and address of the patient, history and alleged cause, wound noted etc. will be recorded in the wound certificate. If the patient is in a serious condition, the clinical treatment given also will be recorded in the wound certificate. Details regarding the treatment given will be recorded in the case sheet (A).

Q. The details such as the doctor who rendered treatment to a patient, the doctor who declared the patient dead, the doctor who intimated the Police about the death of the patient, the time of death of the patient etc. shall be recorded in the case sheet?

Yes. Such details will be recorded in the case sheet (A).

Q. You can depose such details pertaining to deceased Kelu and injured Raveendran only by seeing respective case sheet.

The details can be given by looking in the wound certificate and also by looking into the case sheet. The details available in the wound certificate can be deposed by perusing the wound certificate (A)

Q. Raveendran was discharged from the hospital only after two days?

That is not recorded in the would certificate.
That will be recorded in the case sheet (A).

- Q. The injury on the right hand of Raveendran can be caused by some splinter from a bomb blast hitting on his hand while trying to move away for rescue from the scene of blast?

That is possible (A).

- Q. When a bomb is hurled by an assailant aiming at the victim while he is sitting on a cemented platform, keeping his leg down on the floor below such platform and the victim on his reflex action stands upon on his seat to flee for rescue and the bomb hitting on his buttock on the right side, the injured similar in nature and gravely as appearing Ext.P8 can occur (Q)

If the Bomb blast these injury can occur in such an action (A).

- (Q) In such an eventuality, there will not be any damage to the cemental platform (Q)

I am not a scientific expert. Hence, I am not in a position to answer the question (A).

- Q) In case a person accidentally sits or falls on a bomb kept on the cemented platform and on the event of the bomb exploding, definitely there shall be damage to the cemental floor of this platform (Q).

That is possible depending upon the nature of the bomb exploded (A)."

26. After the answer given by PW11, based upon the questionnaires, the defence cross examined him again. During such cross, he deposed that normally treatment was given to a patient from IP ward as per the instruction given

by the doctor and the details regarding the compliance of the order will be entered in the case sheet by the nurses, but they may enter such details on the 'nurses report' if they were maintaining it. The defence when suggested that, whether the injury noted in Ext.P7 certificate with respect to Raveendran is only superficial injury, his answer was that it is not superficial injury but it is a simple injury. According to him, as per the history and alleged cause of injury furnished to him by Raveendran, he had sustained injury at 8.45 p.m. During the cross examination, he admitted that as per the history and alleged cause furnished by the person who brought the injured Kelu to the hospital, the time of occurrence was 9.30 p.m. and he had recorded the same in Ext.P8 - the wound certificate of Kelu. The name of the person who gave the history and alleged cause was not recorded by him in Ext.P8. According to him, by looking at Ext.P8 he cannot say the time of death and that will be recorded in the case sheet. He admitted the suggestion as correct that it is possible to

sustain the bomb blast injury noted, if the injured was in a standing position or was trying to run away. He had also deposed that there is also no chance to cause such injury if the person was sitting only at a platform.

27. PW12 is the then Civil Surgeon, Government hospital, Thalassery, who conducted autopsy on the body of deceased Kelu. When he was examined he deposed that the injuries were noted as follows :

- “1) Lacerated injury of right leg extending from upper 1/3rd of gluteal muscles to the upper part of right knee with brownish black colour exploring the cut edge of muscles, tendon, vessels, nerves and bones. Major part muscles and middle part of right thigh bone is seen.
 - 2) Irregular small lacerated injury below knee on both legs.
 - 3) Abrasion of 4x4 cm. Inner aspect of left upper arm just below axilla.
 - 4) Brownish burnt cut area all over the wounds noted.
 - 5) Lacerated injury 2x2 cm just below the inner aspect of left knee.
- Death was due to shock and hemorrhage.”

According to him, he issued the postmortem certificate and the same was marked as Ext.P9. During the cross examination, it is stated that all the injuries were blast injuries and it can be possible only by falling on a bomb and

it is also possible to sustain such an injury on a blast that occurred from the back side.

28. PW13 was working during the relevant time as Scientific Assistant Forensic Laboratory, Thiruvananthapuram. He deposed that he had inspected the place of occurrence at the request of C.I., Panoor police station, on 15.3.1995 and he had collected the remnants from the spot. According to him, the side wall of the steps leading to the front entrance were coated with brown coloured stain. On examination, grey colour material was found sticking on the surface of the steps and side walls. Torn pieces of paper, jute thread, granite stones and glass pieces were there all over the area and those were also found on the floor of the verandah and front door of the house. According to him, the materials would have been the result of explosion and he had noticed two hit marks on the northern wall of the open verandah at a height of 12 cm. and 27 cm. respectively from the floor. The said marks were coated with grey coloured materials and he had

collected those materials using cotton and forwarded it to the laboratory for detailed chemical examination and those materials were examined by another Scientific Assistant of the laboratory. The result of such examination was that, Potassium chloride, Aluminium Powder and Sulphur were detected in all the material objects. The report issued by him was identified and marked as Ext.P10 which contains his signature and office seal. As per his opinion, the explosion had occurred due to throwing of country bombs and he had also defused another country made bomb from the police station premises in the presence of C.I. During the cross examination, when it was suggested to him that the scene was not seen guarded, he gave an evasive answer that he did not notice. As per his version, the alleged scene of occurrence was the front ground of House No.7/95 at Puthoor village and he saw two hit marks on the wall and no other hit marks were seen. The defence asked, "If a country made bomb hit on the platform, will there be crash or hit mark ?", then he answered, "Will be".

The materials collected by him were not given to the police. After examination, the same were handed over to the police. The C.I. as well as the A.S.I. were also present and the spot was shown to him by the A.S.I. In the re-examination, he had stated that if the bomb hit on the body of a person, there will not be any hit mark on the platform. With permission, when he was cross examined, he deposed that the impression of blast marks on the platform depends upon the nature of sitting of the targeted person and whether the bomb hit below the body or not.

29. PW14 was the Investigating officer, who was then working as C.I. of Panoor police station between the period from January 1995 to 1996 February. When he was examined on 10.3.1995, at 21.30 hours, he had recorded Ext.P1 statement of PW1 from the house of Koovel Valappil Balan situated on the backside of the house at which the incident occurred and obtained his signature. The case was registered accordingly. It was sent to Panoor police station through PC 3726 who was with him at that time.

According to him, at that time, PC 1837 Mohandas, who was in charge of GD in the police station, registered Crime No.68/95 u/s.143, 147, 148, 324, 307 r/w 149 of IPC and Sections 3 and 5 of Explosive Substances Act and he received the copy which sent to him. Thus according to PW14, he took over the investigation. PC 3875 was entrusted with the duty of scene guard. According to him, when he came to know about the death of the injured person, S.307 was substituted with S.302 IPC and report was sent to that effect. PC 3657 was sent for guarding the deadbody. Thereafter, at 8.30 a.m., he conducted the inquest on the body of the deceased at the mortuary of Thalassery Government hospital and prepared the inquest report. At the time of preparing the inquest, he had seized MO1 shirt, MO2 kaili mundu (കൈലിമുണ്ട) and MO3 underwear worn by the deceased and also the currency notes found in the purse kept in the shirt and the same were released to the relatives of the deceased upon acknowledgment. Thereafter, he sent the body for

postmortem with requisition. He inspected the place of occurrence at 12.30 and prepared scene mahazar, during which, the blood stained soil (MO4) was seized. Besides the same, one pair of chappal was also seized from the place of occurrence and the same was marked as MO5. According to him, pieces of paper, jute thread, ordinary thread etc. were also seized, which were marked as MO6 series. He had also seized hawai chappals and the same was marked as MO7. According to him, in Ext.P2 scene mahazar, witnesses put their signatures. A country made bomb tied up of jute thread was also seized from the road lying near to the place of occurrence. According to him, he had questioned the witnesses and recorded the statement, and enquiry was also conducted to trace out the accused and their houses were searched. After the inspection of the place of occurrence, it was reported to the Forensic and a Police Constable was deputed to scene guard the place of occurrence. According to PW14, on 14.3.95, accused nos.1, 5 and 6 were arrested from a place near to

Chendayadu U.P.School and as per his direction, the A.S.I. had arrested accused nos.2 and 4 and produced before him. The Panoor S.I., as per the direction, arrested accused nos.7 and 9 from Mukayari and produced before him. Thus the accused were questioned and their statements were recorded and thereafter they were produced before the court with the remand report. On 15.3.95, PW13 inspected the place of occurrence and the country bomb seized from the place of occurrence was diffused by PW13. The remnants of the same were taken into custody as per Ext.P11 mahazar and the remnants seized by PW13 from the place of occurrence were taken into custody as per Ext.P6. He had also furnished a report to the court showing the name and details of the accused. To send the seized material objects for chemical examination, a request was made to the court by preparing a forwarding note and a copy of the same was marked as Ext.P12. According to him, he made a request to the Village officer to prepare the site plan. A1 who sustained

injury and who was undergoing treatment was arrested on his discharge on 14.3.95 from Thalassery hospital. A3 has not sustained any injury. According to him, a crime was registered as Crime No.81/95 in Panoor police station and he realized that in that crime, they sustained injury. Therefore that case was not considered as a counter case.

30. In cross examination, he deposed that Crime No.81/95 was registered for the offences u/s.143, 147, 148, 324 r/w 149 IPC and S.3 and S.5 of Explosive Substances Act and that the offences registered under the Explosive Substances Act can be investigated by the S.I. and the same need not be examined by the C.I. He found that a separate investigation was necessary in Crime No.66/95, since in that case, the accused sustained injury on hands while hurling bombs. According to him, the injury was due to hit of splinter. Bomb was hurled on the deceased Kelu and against the house. The stair was 2 mtrs. in height. The concrete bench has got 45 cm. height and except towards the pathway, on three sides, there were back rests.

The details in Crime No.81/95 were recorded in the CD dated 14.3.95. According to him, even before that he knew that it was Crime No.81/95 and he was convinced with that. The names of the persons who registered that crime can be stated only on perusal of the GD. When he reached at the place of occurrence, while conducting patrol duty, and on knowing the incident, he enquired about the inmates of the house and came to know that they were in the neighbouring house and therefore they reached there and obtained the statement of PW1. He moved through the place of occurrence and went to the house of Balan and he does not remember through which way he had gone. It is recorded in the CD that the place of occurrence was guarded without disturbing the spot. The CD can be perused by the court. It is incorrect to say that nobody was deputed for guard duty. He went to the place of occurrence on knowing that a scene guard was arranged at the spot and it was after 11 o' clock. The case was investigated after receiving the copy of the FIR at 11p.m.

According to him, he did not inspect inside the house of PW1, but he examined on the outer portion. The copy of FIR was in his possession at the time of inquest. Inquest witness was questioned and their statements were recorded but they were not eye witnesses. The witness namely Raveendran was in the same hospital for treatment. At the time of inquest, their details were recorded. According to him, in column no.10 of inquest report, it is recorded that the injured Ravi has been admitted and has undergone treatment, and it was recorded in the same statement that, injury was sustained due to the explosion of bomb, blasted at the time of occurrence and was undergoing treatment. In the inquest report, the names of the accused were mentioned and the same were realized from the statement of Balan, who was not an eye witness. The names of the accused were in column no.1 of the inquest report, but the name of A9 was not shown among them. According to PW14, S.307 of IPC was incorporated when IPC offences were added. The Head Constable sent

report to the court on the same date but he did not conduct any investigation in this case. No investigation was conducted after deleting of s.307 and adding of s.302 IPC. After adding s.302, a report was filed. The parts of bomb which had not exploded and diffused by PW13, were also seized. He had also deposed that the remnants of the blast were seized from the surrounding place of the police station. He had inspected the concrete benches where deceased Kelu sat and he could find some substance beneath the benches, but could not find anything above the benches. He denied the suggestion that, FIR was prepared on deliberation with BJP men and that the investigation was conducted after incorporating the names furnished by them and finally made the charge. When it was suggested that though he came to know about the bomb blast, without going to the place of occurrence on the same day night, he went there on the next day after planning the incident in favour of BJP men, he denied the same as incorrect. He had also deposed that it is incorrect to say that during the

night on the date of occurrence, there was no police in and around the house of PW1. He put signature in the wound certificate of the injured and he received the wound certificate of Kelu. He examined the wound certificate of Raveendran, wherein it was not separately recorded that, the injured sat on the concrete bench at the relevant time. In Ext.P6, though the name of Balan master (A2), a local committee member, was mentioned, it was not specifically pointed towards the said name and it was not separately recorded that no investigation was conducted in that direction. According to him, during the relevant time, a tensed situation prevailing in that locality. There was another incident, occurred within the jurisdiction of Panoor S.I., but he does not remember about such incident whereby bomb was hurled on a Poilur Madhapura festival on the same night of the alleged incident. He was also not aware whether an FIR of the incident was registered in the Kolavannur police station. He denied the suggestion that, on the same day night of the present case, a bomb was

hurled against one Kakkoth Assu when he was coming out of Mosque after offering his prayer. He had deposed that when PW3 was questioned, he stated that at the time of occurrence there was moon light. He had admitted that in the copy given to the accused it was seen recorded about the presence of "Moon light". At the time of giving 161 statement, he had stated that Gopi ran towards the backside of the house. He denied the suggestion that the bomb blast was occurred when the explosive substances were handled carelessly. The witness was again called and further cross examination was conducted. According to him, he reached at the place of occurrence at 9.30 p.m. on 10.3.1995 and he realized on reaching there that bomb was blasted in that locality. At that time itself, he deputed PC 3875 for scene guard. Then accordingly he corrected that, as he was in the scene of occurrence, he had not deputed the Police Constable for scene guard and PC 3875 was deputed for scene guard after receiving copy of FIR by him. When it was suggested that Ext.P1 was sent to Panoor

police station through PC 3726, at that time he denied the same and said that it was incorrect. He admitted as correct that, if it was stated that PC 3875 was deputed for scene guard. Ext.P1 statement was not recorded at the place of occurrence but it was done at a nearby house. When he arrived at the place of occurrence, among the police party, PCs.3875 and 3726 were available and it is not specifically recorded as to who had accompanied him. When he went to the nearby house to record Ext.P1 statement, PC was not deputed for scene guard. When it was suggested that he deposed before the court, after screening the true facts so as to make it appear in par with the statement of PW8, his answer was that he was not aware of the factom of giving deposition by PW8. During cross examination he had admitted that in Ext.P3 scene mahazar, there was description about the house of Koovante Valappil Balan as a house near to the place of occurrence. Ext.P1 statement was recorded from the house of Koovante Valappil Balan. He had admitted that he

saw Ext.P4 site plan. In Ext.P4 site plan, the house of Koovante Valappil Balan was not marked. When it was suggested that on the night of the date of occurrence, he has not gone to the house of Koovante Valappil Balan and Ext.P1 was not recorded there, he said that it was incorrect to say so. He had admitted that it was not recorded in Ext.P1 that through which Police Constable the copy of FIR was sent. According to him, when he received the copy of Ext.P5, it was recorded therein that, the original of FIR was sent to the Magistrate and therefore he did not correctly inquire about the same. It is seen recorded in the copy of Ext.P5 that, the original of the same was received by the Magistrate at about 10 p.m. on 11.3.95 and as the same came to his notice, no investigation was conducted as to that aspect. When the defence asked PW14 as to whether he can furnish the details of the Police Constable, through whom Ext.P5 was sent to the Magistrate, his answer was that it was PC 3577 who produced Ext.P5 before the Magistrate. He did not question that PC and no statement

was recorded. When it was suggested to PW14 that Exts.P1 and P5 were not prepared at the place and time mentioned therein but prepared on the next day after the inquest and the funeral of deceased Kelu, after deliberation with the relatives of the deceased and BJP people, he said it was incorrect. It is also incorrect to say that Koothuparambu C.I., Sri.T.J.Joy, was in charge of Panoor C.I. and that on the basis of the statement recorded by the said person, PW8 had registered the FIR. But according to him, at that point of time, Koothuparambu C.I. was one P.Radhakrishnan Nair. It was not born out from Ext.P3 that the photographs of the place of occurrence were taken either before or after preparation of the mahazar and the said fact is not discernible from the CD. K.C.Mukku is a junction on the public road from Panoor to Kaivelikkal. The house of PW1, is situated on the northern side of the Panchayat road leading from Puthur Madhappura and Sreenarayana Madham from K.C.Mukku. The place of occurrence in this case, according to PW14, is the concrete

bench situated on the western side of the stair for entering into that house. In the concrete bench, on three sides, there were back rests and there was no description or marks present on the concrete benches due to bomb blast. He saw a red coloured mat on the verandah but the same was not seized. In Ext.P3, presence of any electric bulb other than the one fitted in a long light holder situated on the upper side of the architrave on the front side of the house was not recorded. It is also not recorded in Ext.P3 that there was street light in the Panchayat road lying in front of the house and the houses situated adjacent to the place of occurrence were recorded in Ext.P3. He admitted that in column nos. 3 and 4 of Ext.P2 inquest, there was an endorsement that, it was one Kallavintavide Kunjikannan who saw the deceased Kelu lastly at the Thalassery Govt. hospital and he was the person who witnessed the death of the said Kelu for the first time. He did not conduct any investigation as to when the said Kelu died after admitting him in the Thalassery hospital and which doctor had

certified his death and that doctor was not examined and no statement was recorded. Though he deposed that the doctor was questioned and it was one Dr.Varghese, he has not stated that he had declared the death. When it was asked to PW14, as to whether he had conducted investigation as to who brought Kelu to the hospital and who furnished the history of the assault, his answer was that, it was revealed that an autorickshaw driver took the injured. He also admits that no investigation was conducted as to who had narrated the doctor about the incident. He has not questioned one Sundaran as to who brought Kelu to the hospital. When it was suggested that Sundaran is a person who is an active worker of BJP, he said that he does not know about it. It was also put to PW14 that, the said Sundaran brought the deceased Kelu to the hospital and when he came to know about the death of Kelu, he shifted the residence and PW14 answered evasively to that point.

31. When it was put to him that whether he was aware that it was one Sundaran, who is a BJP worker, brought the said Kelu to the hospital, his answer was in positive and he said that the said fact was realised from the statement. He could not examine Sundaran. It is incorrect to say that Kelu sustained injury due to bomb blast when himself and Surendran were handling bomb carelessly on the verandah of the house of PW1- Krishnan. It is incorrect to say that the said Surendran left the place out of guilty conscious and fear that he was likely to be implicated in the case, particularly after realising the fact of death of Kelu. He recorded the statement of Sarada on 11.3.95 and he admitted that he did not question Surendran as to whom Sarada had deposed as the person who took Kelu to the hospital. It is further answered that as he had realised that the said Surendran had not seen the incident, he did not question Surendran. He had not seen the document, which shows A3 had sustained injury. He realised that he had not reported in the hospital. The dresses worn by

PWs.1 and 3 on the date of incident were not seized. When it was put to him that, without conducting proper investigation and at the persuasion of the party men of the deceased, the case was taken against the known and active workers of CPM, PW14 submitted it as incorrect. According to him, Ext.P1 was recorded as that of Ext.D4. PW14 was again summoned and his examination continued on the strength of the order in Crl.M.C.No.2500/11 and also as per the direction of this Court vide order dated 16.8.2011 in Crl.M.C.No.2506/11 and questionnaires were put to him. The first question put to him was that, whether PW1 gave a statement in Ext.P1 FIS to the effect that himself and wife Sarada and children Shyla, Shyma and Shaji were residing together, the answer was that statement was given accordingly, but the name mentioned was not Shyma but it was Shyna. In the statement given to him, it was deposed that Kelu was sitting on the western side of the stair, and Gopi (CW3) and Ravi (CW2/PW2) were sitting near to the side of eastern wall. The next question

put to him was that, whether it was realised during investigation that Shyla - daughter of PW1 was only an 18 year old girl, the answer was that, what he understood was that she was at the age of 17 years at the relevant point of time. It was put to PW14 that, PW1 has given in FIS that, out of the light emanating from the 110v. electric bulb, situated in front of his house and with the help of moon light he could identify Kaivelikkal Kattintavida Suresh, Chenakkallil Balan, Thazhepurayil Asokan, Chenakkalil Krishnan etc. from among the group of people gathered in front of his house, the answer was that, in addition to the above version, he had also given a statement that, he identified Naveen and his younger brother Sudhi from K.C.Mukku, one Kuttiyeri tailor Vinayan, Kuthonam Kandil Suku and Aneesh also. It was also put to him that a statement was given to the effect that a bulb which was lighting in front of the verandah was also damaged, he answered that he had stated to the effect that, out of the bulbs lighting in front of the verandah, one bulb was

broken. It was also put to him that whether he was aware that there was a tensed situation, the answer was in positive. It was also put to him that, at the time of giving FIS, whether it was recorded the time and date of occurrence as, 'on 10.3.95 at 9.30', he answered that such a statement was given. During the cross examination, he submitted that when PW2 was questioned and recorded the statement, he has not given a statement to the effect that there were something in the hands of A2 – A9 and that he had not seen the same.

32. PW15, the then C.I. of Panoor police station, was when examined, he deposed that, on 23.11.1997, he incorporated S.307 in the above case and a report to that effect was filed and he identified the same and marked as Ext.P13. He obtained sanction from the District Magistrate, Kannur and the same was marked as Ext.P14. After verification of the investigation in this case, he laid charge against the accused before the court on 20.12.1997. PW16 was then working as Joint Chemical Examiner, Chemical

Examination Lab at Calicut and according to him, he issued certificate dated 9.5.96 bearing his signature and the same was marked as Ext.P15. PW17 was then working as Assistant Director, Chemistry FSL, Thiruvananthapuram. According to him, he was working as Scientific Assistant Chemistry, FSL, Thiruvananthapuram, on 27.9.1995. According to him, in connection with Crime No.66/95 of Panoor police station, 7 sealed packets were received at F.S.L. on 18.7.1995 and the mode of parcel was that, 7 sealed parcels sealed with the impression of a seal corresponding with the seal impression forwarded and the seals were intact. The label of the parcels and the description of the articles found inside the parcels was described in his report and the result of such examination was that, Potassium Chlorate, Aluminium powder and Sulphur were detected on all the material objects in items 1 to 7 and the report which contains his signature and seal was marked as Ext.P16. In the cross examination, he deposed that the packets contain glass pieces, granite,

stone and literate stone and those items can be used as missile in a country bomb. When it was put to him that, whether an explosion with these materials would generate light, sound, heat and smoke, he answered that those were secondary effects. As a result of explosion, burning sensation may occur. Sulphur and Aluminium powder may be used as fuels in the explosive mixture. When it was suggested that as a result of explosion, whether there would be injury or damages to the person and property nearby, he stated that, it depends upon the direction of explosion and the strength of the explosive charge and also depends upon the impact caused by explosive device. The Forensic expert was ascertaining the gravity of explosion based on the site inspection and the examination of the materials forwarded along with. As a result of explosion, the charge blast effects produced, had destroyed everything in its path upto a distance of 4 mtrs. and the missile would cause damage at the point where it fall and that may extend upto 10 mtrs. It was suggested to him

that, was it correct to say that a person standing in front of the wall or other vertical surface is subjected to added effects of reflected pressure also, the answer was that a reflected pressure can also occur, but it is a secondary effect of explosion. More often this can happen in the case of high explosive like gelatine sticks, potassium chloride and it cannot be used carelessly because it can cause explosion on heat shock or friction and it is sensitive. Aluminium powder can be used as a fuel. Depending on the quantity of explosive charge and the gravity of explosion, smoke produced may vary. According to him, he has no idea about the nature of injury sustained on a human body as a result of such explosion.

33. The defence has examined DW1. In chief examination, he deposed that he was residing adjacent to the house of Kelu, the deceased in this case. According to him, he was engaged in teaching profession and his name is T.P.Balan Master. He was a member of Puthoor local committee. Kaivelikkal is coming within Puthur local

committee. The 2nd accused Balan is an agricultural labour. He was not known as Balan Master. During the cross examination, he submitted that he was teaching in Panoor Higher Secondary School and he was an active worker of CPM and A2 was also a CPM worker. He deposed that it was not correct to say that A2 was known as Balan Master.

34. The 2nd witness examined by the defence was the then Addl. S.I. of Panoor police station and he was examined with a purpose to produce the GD pertained to the same police station. He produced the GD in two volumes which were marked as Exts.D1 and D2. According to him, the FIR in Crime No.66/95 of this case was registered on 10.3.95 at 22.44 hrs. and that was incorporated in the GD. It was recorded that Crime No.66/95 was registered at 22.15 hrs. for the offences u/s 143, 147, 148, 324, 307 r/w 149 IPC and S.3 and S.5 of the Explosive Substances Act. It was seen referred as, Crime No.66/95 was registered at 22.45 hrs. On that day itself, on

getting information about the death of Kelu, S.307 was substituted with S.302 and it was recorded that, a report was sent to that effect. The crime which was registered at 18.15 hrs. was Crime No.55/95. Crime No.81/95 was seen recorded as registered at 19 hrs. The de facto complainant was shown as A3. The sections of offences incorporated therein are, S.143, 147, 148, 324 r/w 149 and Sections 3 and 5 of the Explosive Substances Act. No details can be seen from the GD as to whom had conducted investigation therein and it was also not seen that with whom the investigation was entrusted with. During the cross examination, he deposed that it was not discernible from the GD as on 14.3.95 that, the C.I. conducted investigation in Crime No.81/95 and that can be seen in the CD. It can be seen from the CD that the same was cleared by filing a report.

35. The 3rd witness examined by the defence was the then ASI of Kolavannur police station to produce the GD of that police station. Accordingly, DW3 produced the GD

kept therein during March 1995 and the same was marked as Ext.D3. According to him, he knew PW1 of Kaivelikkal and the same was adjacent to the boundary of their station limit. As per the GD, the time of occurrence in Crime No.26/95 was at 12o' clock on 10.3.95 and that was registered on the basis of statement of one Kunjabdulla. Crime No.27/95 was registered and the time was at 13 hrs. It was at about 10 o'clock, the cases in Crime Nos.25/95, 26/95 were confirmed. Crime No.24/95 was changed and that was with respect to a communal clash. The above are the evidence and materials referred to by the learned Judge in support of his findings to convict the appellant while acquitting accused nos.2 to 9 in the above sessions case. It is against the findings of the learned Sessions Judge in favour of the prosecution as well as against the appellant/ 1st accused, he has come up in appeal.

36. We have heard Sri.C.K.Sreedharan, the learned counsel appearing for the appellant and Sri.Roy Thomas, the learned Public Prosecutor appearing for

the State in extention.

37. Sri.C.K.Sreedharan, the learned counsel for the appellant in his fervent plea for an acquittal of the appellant, advanced several arguments, based upon the factual inputs and the question of law involved in the above appeal. According to him, though initially the trial court had convicted all the accused in the above crime, after the remand, accused nos.2 to 9 were acquitted and thereby the substratum of the prosecution case has gone and in such a circumstance, it is highly illegal to convict A1 alone, especially when A1 and the acquitted accused had faced the prosecution on the same set of facts constituting the allegation and the charge. It is pointed out by the learned counsel that, the very allegation of the prosecution is that accused 9 in numbers, who were the members of an unlawful assembly, pursuant to their common object to inflict injuries and commit murder of the persons, who were present at the place of occurrence, came in front of the stair of the house of PW1 and hurled three country

made bombs and the accused were possessing deadly weapons at the time of the incident and the members had actively involved in throwing the country bombs. But as per the impugned judgment, the court below has found that accused nos.2 to 9 had not used any deadly weapon and there were no overt acts on their part. Thus according to the learned counsel, in the absence of evidence to prove and establish the entire allegation of the prosecution, it is unwarranted and arbitrary to single out A1 from the alleged unlawful assembly and convicting him for the offence u/s.302 similiter. So, according to the learned counsel, on that count alone, the appellant is entitled to get a clear acquittal. The alternative contention of the learned counsel for the appellant is that, there is no clinching, cogent and impartial evidence to justify the findings of the learned Judge of the trial court against the appellant/accused. According to the learned counsel, PWs.1, 2 and 3 are the witnesses cited and examined by the prosecution as ocular witnesses, but due to several contradictions and

infirmities in their evidence and because of their partisan and interested versions, the trial court is wrong in relying on the evidence of such witnesses who were relatives of the deceased and since the witnesses belong to the same political party of the deceased, who are inimical to the accused because of their political alliance with a prominent party which is a rival political party to the party to which these witnesses are highly interested. According to the learned counsel, in the absence of any independent witnesses or independent evidence to corroborate the evidence of PWs.1 to 3, it is unsafe to convict the appellant based upon their evidence. It is also the contention of the learned counsel that, the medical evidence available in this case falsifies the evidence of the ocular version of PWs.1 to 3, particularly in the light of the evidence of PW11 and PW12 and Ext.P8 and P9 documents. It is also the contention of the learned counsel that the prosecution has deliberately suppressed evidence by non examination of certain persons connected with the alleged incident, even

that of persons those who were cited as charge witnesses and thereby screened that evidence from the scrutiny of the court. Another point stressed by the learned counsel during his argument is about the inordinate delay of reaching the FIR in the court and according to him, it was a result of deliberation to foist a case against the accused at the instance of their political rivals and no legal sanctity can be attached to Ext.P5 FIR, which is a vital document in all criminal cases, as the same in this case is a concocted one. In support of the above argument, the learned counsel has pointed out several infirmities and irregularities in the preparation of Ext.P5 FIR and the defect occurred, and the facts contributing to the delay occurred in reaching the FIR in the court. So according to the learned counsel, the findings of the court below against the appellant are no way sustainable and liable to be set aside and the appellant is entitled to get an acquittal. In support of the argument of the learned counsel for the appellant, he placed reliance upon the decisions reported

in **Mani Ram and others vs. State of U.P. (1994 (SCC) (Crl.)1242)**, **Arjun Marik vs. State of Bihar (1994 KHC 244)** and **Vijayakumar and others vs. State (1994 (2) KLJ page 903)**.

38. Per contra, Sri.Roy Thomas, the learned Public Prosecutor appearing for the State, vehemently submitted after taking us through the judgment dated 6.9.2005 in Crl.A.No.182/03 of this Court, that when this Court considered the appeals of all the accused who were convicted by the judgment dated 9.1.2003 of the trial court in S.C.No.143/98, it was of the opinion that the conviction of all the accused was correct, for which, this Court on an earlier occasion had referred to the evidence and materials on record, which fact according to the learned Public Prosecutor is evident from the observation contained in paragraph 29 of the above referred judgment, which reads as, "But at the same time, the appellants are not entitled to an acquittal on that sole ground". It is also the contention of the learned Public Prosecutor that, the evidence

recorded by the trial court after the remand, other than with respect to Section 149 of IPC, has to be eschewed, particularly when the case was remanded on the basis of the illegalities and infirmities committed by the court below and pointed out by this Court in the aforesaid remand order to rectify that defect. Thus according to the learned Public Prosecutor, the court below recorded the evidence subsequently which was beyond the purview of the remand order and as, such evidence if excluded, this Court has to see whether the evidence recorded, when PWs.1 to 3 were examined during the initial trial, are sufficient or not, to justify the findings of the court below. So, according to the learned Public Prosecutor, while appreciating the evidence on record, this Court has to confine to the evidence adduced by the prosecution during the initial trial of the above case. In such a case, according to the learned Public Prosecutor, there is ample evidence to connect the appellant herein with the crime. According to the learned Public Prosecutor, there is no illegality in convicting the

appellant alone on the basis of the available evidence, even though accused nos.2 to 9, who faced the prosecution along with A1, were acquitted. The contention of the learned Public Prosecutor is that the case of the prosecution is to the effect that though the mob came in front of the house of PW1, it was A1 who hurled bombs towards the deceased and against the house of PW1 and therefore there is no illegality or arbitrariness in convicting A1 even though the other accused were acquitted, especially when it is shown that the deceased Kelu and PW3 sustained injuries as a result of the bomb hurled by the present appellant/A1. It is the further contention of the learned Public prosecutor that the evidence of PWs.1 to 3, simply for the reason that they are relatives or interested or partisan witnesses, need not be rejected, particularly when they are natural witnesses. It is also the submission of the learned Public Prosecutor that, PW3 is an injured person who sustained injury in the same incident in which the deceased Kelu died. Therefore, the presence of PW3 cannot be questioned and hence more

probative value has to be given to the evidence of such an injured witness. So according to the learned Public Prosecutor, the defence has failed to bring out anything to disbelieve the evidence of PWs.1 to 3 and if that be so, the ocular evidence of PWs.1 to 3 can be safely acted upon as rightly done by the learned Judge of the trial court and in such a case, the findings of the court below against the appellant warrant no interference and therefore the appeal is devoid of any merit and the same is liable to be dismissed. To fortify his arguments, the learned Public Prosecutor placed reliance upon the following decisions.

Masalti vs. State of U.P. (AIR 1965 SC 202), Myladimmal Surendran and Ors. vs. State of Kerala [(2010)11 SCC 129], Abdul Sayeed vs. State of Madhya Pradesh (2010(10)SCC 259), State of Kerala vs. Narayanan (1991(2) KLT 217), Nallabothu Venkalah vs. State of Andhra Pradesh (AIR 2002 SC 2945), Manilal vs. State of Kerala (2014(2)KLT 800) and State of West Bengal and anr. vs. Laisal Haque

and ors. (1989 SC 129).

39. We have carefully considered the arguments advanced by the learned counsel for the appellant and the learned Public Prosecutor, and thoroughly scrutinized the evidence and materials on record and also perused the authorities cited.

40. In the light of the rival contentions and in view of the evidence and materials on record, the question to be considered is whether the trial court is justified in its findings and convicting the appellant for the offences u/s 302, 307 and 324 of IPC and u/s.3 of the Explosive Substances Act.

41. At the outset, it is to be noted that, after remand, as born out from the impugned judgment itself, all the accused including A1/the appellant faced the altered charge for the offence punishable under sections 143 r/w 149 of IPC, 147 r/w 149 of IPC, 148 r/w 149 of IPC, 324 r/w 149 of IPC, 307 r/w 149 of IPC and 302 r/w 149 of IPC and S.3 of the Explosive Substances Act r/w 149 of IPC. The

charge against each accused on each count was read with S.149 of IPC. Thus it need not be stressed that the appellant has also faced a charge for the substantial sentences u/s.143, 147, 148, 324, 307 and 302 of IPC, and S.3 of the Explosive Substances Act r/w S.149 of IPC along with other accused. But the learned Judge of the trial court has found that accused nos.2 to 9 are not guilty of any of such offence charged against them and that too read with S.149 of IPC. The framing of the aforesaid charge against the accused, according to us, is correct in view of the police charge; particularly in the light of the direction issued by this Court as per the above referred remand order. So, the prosecution case as well as the court charge against all the accused is that, in furtherance of their common object of inflicting injuries and attempt to commit murder of the persons available on the concrete bench at the place of occurrence and its surrounding, the accused 9 in numbers, armed with deadly weapons, had came in front of the house of PW1 and unlawfully assembled and A1

hurled bomb towards the materialization of such unlawful object of the unlawful assembly. By the impugned judgment, after considering the evidence including the evidence of ocular witnesses, the trial court has found that the prosecution has miserably failed to prove the above case of prosecution and the charge against all the accused and accordingly A2 to A9 were acquitted. Thereby the case of the prosecution, that inflicting injuries on the persons by the accused was in prosecution of the common object, was found as incorrect or not proved. We have no doubt in our mind that the above analysis shows that the substratum of the prosecution case had gone or demolished due to absence of sufficient evidence and materials. Suffice to say, the prosecution has not challenged, either at the stage of recording evidence after the remand or the recording of evidence as done by the trial court in the present case, even though the Prosecutor has argued that such recovery of evidence is beyond scope of evidence and the prosecution has also not filed any appeal against the

impugned judgment particularly against the acquittal of accused nos.2 to 9. So, in the absence of any appeal challenging the acquittal of accused nos.2 to 9, the prosecutor cannot be heard to argue that the acquittal of accused nos.2 to 9 is improper or illegal and therefore the substratum of the prosecution case remains intact. So, we are of the view that the learned counsel for the appellant is correct in his submission that the substratum of prosecution case has gone. Still then, we are of the opinion that, if there were ample evidence and materials to prove any of the offence alleged against the 1st accused/appellant, no doubt the court below would have been justified in entering upon a finding of guilt and in convicting A1. Therefore, the next question to be considered is, whether there are sufficient evidence and materials in singling out the 1st accused from the prosecution case and convicting him for the aforesaid offences.

42. At this juncture, it is apposite to once again consider the prosecution allegation and also to consider the specific plea taken by the accused. As we have already indicated, the prosecution allegation is that out of political animosity of the accused towards the injured and others, who belonged to BJP - a rival political party of the Marxist party to which the accused have alliance, had come in front of the house of PW1 possessing deadly weapons and towards materialization of their common object, hurled country bombs against the deceased Kelu, PW3, PW1 and PW2, and one Gopi, who were present and available at the concrete bench (ഇറുത്തി) in the stair of the house belonged to PW1. In such an incident, the deceased Kelu and PW3 sustained injury and as a result of hit of two country bombs hurled against the house of PW1, the property of PW1 was also damaged and thus the accused committed the aforesaid offences. Whereas, the specific case pleaded by the accused is that the deceased Kelu and PW3 had sustained injuries as a result of an accidental explosion of

country bomb while they carelessly handled it at the time of manufacturing the same or while handling it, at some other place. It is true that the defence has not adduced any separate evidence to substantiate such pleading of the accused. It is under the above backdrop, we have to examine the prosecution case as well as the evidence and materials on record and the findings of the court below.

43. As already pointed out, the prosecution sought to establish its case against the accused mainly on the basis of evidence of PWs.1 to 3 who are cited and examined as ocular witnesses. Admittedly, PWs.1 to 3 are sympathizers or workers of BJP, a rival to Marxist party, to which the accused belonged. The learned Public Prosecutor is absolutely correct in his submission that, the evidence of PWs.1 to 3 as a whole need not be rejected or discarded since they are partisan or interested witnesses. We have no doubt about the correctness and legalities of the propositions argued by the learned Public Prosecutor on the strength of the decisions cited supra relied upon by him

and also the arguments of the learned counsel for the appellant on the authorities cited by him. In the decision reported in **State of Kerala vs. Narayanan (1991(2) KLT 217)**, particularly in paragraphs 6 and 7, by relying upon the decision of the Honourable Apex court reported in **State of Uttar Pradesh vs. Ballab Das and Ors. (AIR 1985 SC 1384)**, it is held as follows : "An interested witness is not always an unreliable witness. The evidence has to be assessed, like any other piece of evidence". In the decision reported in **Masalti Vs. State of UP (AIR 1965 SC 202)**, in paragraph 14, the Apex court has held as follows : "There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested witnesses, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence ; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account." In the very same decision it is held as follows :

“But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where fractions prevail in villages and murders are committed as a result of enmity between such fractions, the criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

Similarly in the decision reported in **Nallabothu Venkalah vs. State of Andhra Pradesh (AIR 2002 SC 2945)**, the Apex court has held in paragraph 13 as follows :

“The witnesses are inimically deposed to the accused alone would be no ground to throw away their otherwise reliable, natural and credit worthy statement. The test, in such circumstances, as correctly adopted by the Trial Court, is that if the witnesses are interested, the same must be scrutinized with due care and caution in the light of the medical evidence and other surrounding circumstances. Animosity is double edged sword and it can cut both sides. It can be a ground for false implication. It can also be a ground for assault”.

We stand enlightened by the above authorities cited. In the matter of appreciation of evidence of partisan or interested

witnesses, the court must scrutinise it with due care and caution and while evaluating the same, it has to be taken into consideration all the surrounding circumstances and other evidence including medical evidence, since animosity is a double edged weapon, which can cut both sides, particularly the prosecution as well as the defence. There is a possibility of false implication as of whim of truth for assault. Now we will proceed to examine the evidence of PWs.1 to 3 in the light of the above settled legal position and the aforesaid prosecution allegations and plea of the accused. Before considering the evidence of PWs.1 to 3, it is to be noted that through the evidence of PWs.1 to 3 and PW14, and also in the light of the evidence of PW7, the Village Assistant who prepared Ext.P5 Site plan, and in view of Ext.P6 scene mahazar, it is crystal clear that there are several dwelling houses adjacent to the house of PW1, where the alleged incident was taken place. But PW14, the Investigating Officer has not examined any of such inhabitant and no evidence has been adduced through such

persons residing within the vicinity of the place of occurrence, ie., the house of PW1. As such, there is no independent evidence to corroborate the evidence of PWs.1 to 3. Of course, if the evidence of ocular witnesses is reliable and trustworthy, normally the court will not search for corroboration of their evidence from independent source. In the case in hand, as stated earlier, the prosecution witnesses namely, PWs.1 to 3 and defence witnesses and the accused belonged to two rival political parties and the allegation itself is that the incident occurred due to political animosity. In such circumstances, it was incumbent upon PW14, the C.I., who conducted the investigation, to collect independent evidence, particularly when there were dwelling houses very adjacent to the place of occurrence. But he had miserably failed in collecting such independent evidence. At this juncture, the submission made by the learned Public Prosecutor becomes relevant. According to him, the prosecution has suppressed material evidence from the scrutiny of the

court. It is pointed out that one Sundaran and Surendran were involved in rescuing the injured, but they were not examined. As per the evidence of PWs.1 to 3, while the deceased and PW3 were sitting on the concrete bench (ഇരുത്തലി) at the house of PW1, the nephew of PW1-Gopi was present there and he was cited as CW3 in the charge. Similarly, according to PW14 and PW1, PW14 recorded Ext.P1 FIS from the house of one Koovantevalappil Balan, who was cited as CW8. As claimed by PWs.1 and 14, the house of CW8 is also situated very adjacent to the house of PW1. But neither CW3 nor CW8 were examined as prosecution witnesses. It is also relevant to note that during the initial cross examination of PW1, it has stated that, one Balan and Surendran had gone to the hospital, but he had admitted that when he gave statement to the police, he did not mention the name of Surendran as the person who took the injured to the hospital and it was also not stated in Ext.P1 FIS. Similarly, PW2 was when examined, has mentioned in the chief examination itself

that the injured Kelu and Raveendran (PW3) were taken to the hospital in an autorickshaw by one Surendran and Balan. Pws.2 and 3 had deposed before the court that after the incident, the said Surendran absconded from the locality. It is also relevant to note that, in Ext.P2 inquest it is seen recorded that the body of the deceased was pointed out by one Kunjikannan who found a place in the list of charge witness as CW7, but he was also not examined. The above discussions show that the prosecution has suppressed material evidence by the non examination of CW3 (Gopi), CW7(Kunjikannan), CW8 (Balan) and also of Surendran and one Sundaran, who were having direct knowledge regarding the first phase of the incident as well as the subsequent facts after the blasting of bombs and taking the injured to the hospital, and also the facts even at the time of preparation of Ext.P2 inquest. So, the non examination of material witnesses, as far as this case is concerned, is a vital defect on the side of the prosecution, which will go against the credibility of the

prosecution case.

44. Now, let us see the evidence of PWs.1 to 3. PW1 is the owner of the house and PW2 is his wife and PW3 is his distant relative. PW1 and PW3 had admitted that they are BJP activists. As per the case of the prosecution, the first bomb was hurled against the deceased Kelu while himself, PW3, CW3 Gopi and Pws.1 and 2 were present at the concrete bench (ഇരുത്തി) of the house of PW1. PW1 has deposed that while the deceased Kelu was sitting on the western side of the concrete bench (ഇരുത്തി), CW3 Gopi and PW3 Raveendran were sitting on the eastern side of the concrete bench (ഇരുത്തി). According to PW1, he was standing very close to the deceased Kelu on his northern side. Thus according to him, the incident had occurred when they were engaged in a conversation. PW2, the wife of PW1, also stated that at the time when Kelu sustained injury, herself and her husband were standing very near to the deceased Kelu and she further deposed that at the time

of bomb blast, the distance between herself and the deceased Kelu was only 3-4 ft. Thus from the above referred evidence of Pws.1 and 2, it is crystal clear that Pws.1 and 2 were standing very close and adjacent to Kelu when he sustained injury due to the alleged hurling of bomb. But it is very strange to note that neither PW1 nor PW2 sustained injury due to the said bomb blast, even though the prosecution has got a case that PW3 who was sitting facing the deceased Kelu had sustained injury on his right hand. If truly, Pws.1 and 2 were standing very near to Kelu while he sustained injury as in the case of PW3, there would have been some injury on Pws.1 and 2. In the present case, though they were standing very adjacent to Kelu, not only did they not sustain any injury but their dresses were not damaged nor any remnants of bomb blast were found in their clothes. No prudent man will believe the version of Pws.1 and 2 that though they were standing within a breathing distance from Kelu, they did not sustain any injuries or that their dresses were not damaged when

even PW3 sitting farther away sustained injury in the very same incident. So, their version that they were present along with the deceased Kelu at the time of the incident, can only be believed with a pinch of salt. It is also relevant to note that the case of the prosecution, particularly the evidence of Pws.1 and 2 is to the effect that, A1 hurled bomb against the deceased Kelu while he was sitting in the concrete bench (ഇരുത്തി). But absolutely there were no marks of an explosion on the said concrete bench (ഇരുത്തി). If their version that the bomb was hurled when Kelu was sitting on the concrete bench (ഇരുത്തി) is correct, there would have been some indication as a result of such bomb explosion. So, it is crystal clear that the place of occurrence is not the one as suggested by the prosecution and the presence of Pws.1 and 2 in the alleged assault, cannot be believed for the aforesaid reasons. When the deceased Kelu and the injured were brought to the hospital, PW11-the Doctor who examined PW3 and the

deceased Kelu, had recorded in Ext.P7 that, the injury can be caused only by falling on a bomb, since the buttock muscles were damaged. He had categorically deposed that, a person sitting on a cement platform is not likely to sustain injury on buttock in a bomb blast. He had also deposed that in Ext.P7, the injury is a simple injury and there was no symptom or sign to show that the injury is due to bomb blast. He had categorically stated that, “I cannot say that whether the injury was due to bomb blast”. The same doctor has also deposed that the injury noted in Ext.P7 is possible if the injured fell on a hard and rough surface and that part of the body come into contact with hard surface. From the above evidence of PW11, it is crystal clear that, had the deceased been sitting on a cement platform, as claimed by Pws.1 and 2, there is no likelihood of him sustaining injury on the buttock in a bomb blast. Similarly, PW11 has ruled out that the injury noted on PW3 is an injury due to bomb blast. Thus, the above medical evidence renders the ocular version of PWs.1 to 3

as unbelievable and is liable to be rejected, especially in the light of the decision reported in **Mani Ram and others vs. State of U.P. (1994 SCC (Crl.)1242)** relied on by the learned counsel for the appellant. In paragraph 9 of the above decision, the Apex court has held as follows,

“Neither the doctor who first examined the injured Basdeo nor the doctor who performed the postmortem found any injury on the back or back portion of the shoulder to lend support to the evidence of the sole eyewitness Prabhoo Nath. It is well settled by long series of decisions of this Court that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case”.

It is also relevant to note that PW13, the Scientific Assistant who inspected the place of occurrence has deposed in the chief examination itself that, on examination, grey coloured materials were found sticking on the surface of the steps and on the side walls. Torn

pieces of paper, jute thread, granite stones and glass pieces were present on all over the floor of the verandah and on the front ground of the house. In the cross examination, he deposed that the scene was not seen guarded. He has categorically deposed that, “The scene is the front ground of house No.7/95 of Puthoor village”. So, according to PW13, who examined the place of occurrence immediately after the incident, has found that the scene is the ground in front of the house at Puthoor village and that means, the place of occurrence is the courtyard of the house ; because, immediately after the steps, there is the panchayat road and as per the Ext.P6 scene mahazar, there is a courtyard between the concrete bench (ഇരുത്തി) and the verandah of the house. So, in the light of the above referred evidence and materials and in view of the above discussion, and in the absence of any signs of bomb explosion on the concrete bench (ഇരുത്തി), where allegedly the deceased was sitting, and in the absence of any injury on PWs.1 and 2 who claimed to have been standing very

close to the deceased at the time of bomb blast, and particularly when PW3 claimed to have sustained injury in the same bomb blast and in the absence of any remnants or any marks of damage on the dresses worn by PWs.1 and 2 at the time of the incident, we refuse to believe the version of PWs.1 to 3 that the incident had occurred in their presence or they had occasion to witness the same. The medical evidence, as pointed out earlier, falsify the evidence of PWs.1 to 3. However, the learned Judge of the trial court in the impugned judgment, in paragraph 59, on conjecture and on surmise and on unfounded presumption, has held as follows,

“ Ext.P8 Wound certificate coupled with the evidence of PW11, doctor, makes it clear that deceased Kelu died of blast injury on his back. PW11 Doctor was recalled after remand of the case from the Hon'ble High Court of Kerala. When PW11 was recalled, he would depose that if bomb was hurled by the assailants against the victim while he was sitting on a cemented platform, keeping his leg down on the floor below such platform and the victim by his reflex action stands up on his seat to flee for rescue and the bomb hitting on his buttock on the right side, the injuries similar in nature and grossly as appearing in Ext.P8 can occur. PW11 further

opined that such injury could be possible if the victim was in a standing position while he was running away.”

At this juncture, it is relevant to note that neither PW1 nor PW2 or PW3 has got a case that, at the time of hurling the bomb, the deceased Kelu was in a standing position or he was in a running position. The findings and observation of the learned Judge on the basis of evidence of PW11 will be justified, in case Pws.1 to 3 had got a case that when the bomb hurled on the victim, by his reflex action stood up in the scene to flee for saving his life and at that time, the bomb hit on his buttock. But in the present case, Pws.1 to 3 had no such a case. So, the observation and the findings of the court below, are only figments of his imagination. So, from the evidence of the expert and the absence of any mark of bomb blast on the concrete bench (ഇരുത്തലി) and also, the absence of any injury on Pws.1 and 2, and the evidence of the doctor about the injury on PW3, particularly in the evidence of PW13 that the scene of

occurrence is the courtyard, the prosecution case renders as unbelievable and the above factors point towards the correctness of the plea of defence that the deceased Kelu sustained injury while he was handling the country bomb carelessly and that too in some other place other than the place of occurrence fixed by the prosecution. At this juncture, it is relevant to note that, according to PW1, the deceased Kelu and himself were activists of BJP. PW1 has also deposed that he is an accused in a murder case and also yet in another case. Though he claimed that he was an activist of BJP and claimed to born and brought up in that locality, he said that he does not know the death of anybody due to bomb blast in that locality. He also expressed his ignorance about the death of one Chandran, who was an RSS man, due to bomb blast occurred in the house of one Kizhakkumpurath Balan. He was also not aware of the death of one Potty Prasanthan, an RSS activist, due to bomb blast in Maavileri. It is relevant to note that during the further cross examination, after the remand of the

matter, he deposed that after the incident, neither himself nor his nephew Gopi had informed the matter to the police station though the incident was occurred in his house and there was serious injury on the deceased Kelu. It is also quite strange to note that he did not accompany Kelu to the hospital and he did not send his nephew along with Kelu for accompanying to the hospital, even though the said Kelu was the husband of the daughter of his mother's younger sister. It is also strange enough to note that though the house of deceased was situated 100-150 mtrs. near to the house of PW1, he did not inform the incident to anyone in the house of Kelu and he has also not made arrangement to inform the matter to the inmates of the house of Kelu through any other person. The above approach of PW1, is quite against the natural human conduct especially when the injured in the present case is his close relative and who is also a BJP co-activist of PW1. So, the approach of PW2, who is a lady, in not informing the matter to the inmates of the house of the deceased Kelu or at least sending Gopi -

the nephew of PW1 along with the injured are quite strange. So, we are of the definite view that, the evidence of PWs.1 to 3 is totally unreliable under the above circumstances and for the aforesaid reasons, it cannot be said that they are natural witnesses, especially when there is no reliable evidence to show that the first bomb blast was occurred at the place suggested by them. PW11, the doctor who examined PW3 has categorically stated that the injury sustained over the dorsum of his right hand cannot be said to had caused as a result of bomb blast. He also admitted the suggestion of PW3 that, such an injury can be occurred by falling on a hard surface. He being an activist of BJP, particularly in view of the medical evidence which goes against him, there is no inbuilt guarantee in his evidence to treat the same as true and genuine, particularly when Pws.1 and 2 did not sustain any injury in the same incident, by which he claimed to have sustained injury on his right hand. So, the evidence of PWs.1 to 3 cannot be believed, so as to fix a criminal liability upon the

appellant connected with the alleged incident. Another contention advanced by the learned counsel for the appellant is about the inordinate delay in reaching Ext.P5 FIR in the court. We have considered the above contention and also the reply argument of the learned Public Prosecutor on the above aspect. As per the prosecution allegation, the exact time of the bomb blast was at about 8.45 p.m. on 10.3.1995. As we have indicated earlier and admitted by PWs.1 to 3, that, they were activists of BJP and were BJP sympathizers. Even though such crime was occurred and the relative of PW1 sustained serious injury, neither PW1 nor his wife PW2 or the nephew of PW1 - Gopi (CW3) who, according to PW1 and 2, was initially present when the accused came and hurled the bomb, has not chosen to inform the matter to Panoor police station situated within 4 kms. from the house of PW1. The above conduct is not in par with normal human conduct. However, PW14 claimed that he arrived at the place of occurrence by 9.30 on the same day night and recorded

Ext.P1 statement of PW1. The only explanation given by PW14 to arrive at the place of occurrence is that he was on patrol duty, but there is no evidence adduced by PW14 as to at what point of time he received the information and also as to the source of such information. It is true that, the police is not expected to disclose the exact source of information, but in the present case, he was on patrol duty and if that be so, the information received by him may not be secret in nature, or, in the way somebody might have told to him. But PW14 has no such case as to who conveyed the information about the incident and at what point of time and at what place he received such an information. Thus the arrival of PW14 at the place of occurrence itself is under shadow of doubt, especially when Pws.1 to 3 or the said CW3 has no claim that either of them had informed the matter to the police. It is at this juncture, the plea of the accused have got some relevance. If actually the bomb had accidentally exploded when it was carelessly handled or at the time of using explosive substance for manufacturing

the country bomb, nobody will dare to inform the matter and the person responsible for the same will not undertake the responsibility to inform the matter to the police. In this connection, it is relevant to note that as deposed by PW11 and as disclosed from Ext.P7 wound certificate, the history of the assault seen recorded as, 'as a result of sustaining injury due to bomb blast at Kaivelikkal K.C.Mukku by 9.30 p.m. on 10.3.1995.' and it is also relevant to note that PW11 has deposed that the above version was told by the person who accompanied him. From the evidence of PWs.1 to 3, it is crystal clear that the injured was taken to the hospital by Balan and one Surendran, but they were not prepared to inform PW11 as to how the deceased Kelu sustained injuries. It is come out in evidence that the said Surendran is a BJP activist and he absconded immediately after the incident. Balan is also an activist of BJP. If truly the incident had occurred as alleged by Pws.1 to 3, the said fact could have been brought to the notice of PW11 either by PW3 or by the said Surendran, but nobody has

mentioned to the doctor about the incident and names of any of the accused had been mentioned to the doctor and there is no allegation that the bomb blast occurred when the bomb was hurled against the injured. It is also relevant to note that the time mentioned was at 9.30 p.m. on 10.3.1995, whereas the claim of Pws.1 to 3 was that the incident was occurred at 8.45 p.m. If actually the bomb was blasted as suggested by the defence, nobody would come and say it was happened accidentally and that is why the persons namely Surendran and Balan, who took Kelu to the hospital, had withdrawn themselves from disclosing the details of the incident and names of the accused to the doctor. The above circumstances, shrouded with doubt, point towards the correctness of the defence plea. But it is relevant to note that within 30 minutes, when PW3 was examined, he discloses the name of certain persons who are the known local leaders of Marxist party and he himself deposed before the court that Balan Master was not involved in the incident. He further deposed that he has

not spoken to the doctor that he sustained injury when Balan master hurled the bomb. When it was suggested to him that, he had given the names of three prominent local CPM leaders, including that of Balan Master, to the doctor, his answer was in the affirmative and deposed that besides the names of above 3 persons, the involvement of any other person was not spoken to the doctor. So, from the above discussion, it is clear that, when the deceased Kelu was admitted in the hospital and given the details of the incident, the names of the accused were not mentioned by the person who had brought him to the hospital, whereas at the time of examination of PW3, he falsely implicated 3 known local leaders of CPM as the accused responsible for inflicting injury on PW3. So, the above circumstances create doubt in our mind about the genuineness of the prosecution case at its inception itself.

45. PW14 says that after preparation of Ext.P1 FIS, he sent the same to Panoor police station through PC 3726 who was with him at that point of time. He had also

deposed that the police constable 3875, who was with him during the relevant time, was entrusted with the duty of scene guard ; but in Ext.P1, on its reverse side it is recorded by PW8 - the H.C. of Panoor police station, who was in GD charge, that copy of the FIR was sent to C.I., Panoor police station, through PC 3875. Had Ext.P1 been sent through PC 3726, as claimed by PW14, the same could have been sent back to the C.I. through PC 3726 himself. It is also relevant to note that according to PW14, PC 3875 was deputed to guard the scene of crime. If the same is correct, we are unable to understand how PW8 recorded in Ext.P1 that copy of FIR was sent through PC 3875 who was deputed for scene guard. So, the above transaction is shrouded with suspicion. As per the endorsement in Ext.P1, it is reached in the court of the Magistrate only at 10 p.m. on 11.3.1995, though the FIR was registered at 10.15 p.m. on 10.3.95. As per the endorsement contained in Ext.P1, the Magistrate signed in it at 10 p.m. on 11.3.95. So, after the registration of the crime, 24 hrs. had taken to

reach the FIR before the Magistrate. The learned counsel for the appellant submitted that, there is an inordinate delay ; whereas the learned Public Prosecutor submitted that the FIR reached within 24 hrs. from the time of incident and therefore there is no delay. We find some substance in the submission of the learned counsel for the appellant in the backdrop of the entire prosecution case.

46. As we have already noticed, the C.I. - PW14, reached at the place of occurrence at 9.30 p.m. on 10.3.1995 and for his arrival at that point of time at that locality, there is no cogent evidence. There is also no specific and clear evidence as to who had taken Ext.P1 FIS to the Panoor police station and who brought the copy of Ext.P5 FIR to PW14 so as to start the investigation. The evidence of PW14 and PW18 are not consistent on the above aspect. When PW8 was examined, he has categorically deposed that, it will take 45 minutes to reach at Thalassery from Panoor by bus. According to him, at about 10.30 p.m. itself, he arranged the Police Constable to

submit Ext.P5 before the Magistrate. He had also deposed that he cannot say anything about the delay for receipt of the FIR by the Magistrate. It is also relevant to note, according to PW8, it is incorrect to say that PC 3875 was on scene guard at the place of occurrence at 9.30 onwards as directed by the C.I. It is on the basis of the above data, the learned counsel for the appellant submitted that the delay for reaching Ext.P5 FIR before the Magistrate is that the police was in deliberation with the BJP leaders and their men, to concoct a story so as to implicate the accused in the present case and hence no value can be attached to Ext.P5 FIR and therefore, the entire prosecution case is a fabricated one. According to us, the above contentions cannot be repelled in view of the decisions reported in **Arjun Marik vs. State of Bihar (1994 KHC 244)**, as well as in **Vijayakumar and others vs. State (1994 (2) KLJ 903)**. In the above referred decision of this Court in 1994 KHC 244, in paragraphs 24 and 25, it has held as follows :

“24. The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the Trial Court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e. on the 3rd day of the occurrence. S.157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under S.156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. S.157, Cr.PC thus in other words directs the sending of the report forthwith i.e. without any delay and immediately, Further, S.159 Cr.PC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word “forthwith” occurring in S.157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of S.157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.

25. But in the present case, admittedly, the report as alleged is said to have been despatched to the Magistrate concerned on 22-7-1985 by a special messenger, vide Ext.2. It is, thus, clear that the report was not sent forthwith, in other words immediately and without delay as the incident had occurred in the intervening night of 19/20-7-1985 and according to Doman, PW10 the officer in charge of the police station, the FIR was already recorded in the morning of 20-7-1985. If in fact the FIR was already recorded in the morning of 20-7-1985 there was no reason not to despatch the same to the Magistrate concerned till 22-7-1985. Though there is no material on record to show as to why delayed report was sent to the Magistrate on 22-7-1985 but the learned counsel appearing for the respondent State submitted at the Bar that the investigating officer remained busy in the investigation on 20-7-1985 which was Saturday and since 21-7-1985 was Sunday the report was sent on Monday, 22-7-1985. He submitted that in Bihar State even in murder cases FIR is never sent to the residence of a Magistrate on Sundays and holidays. If that be so, we are afraid such a practice can never be said to be healthy practice which renders the mandatory provision nugatory. If such a practice is prevalent it must be deprecated and it is high time that the authorities concerned should wake up and see that the provisions of S.157 CrPC are complied with in letter and spirit."

47. On examination of the facts related to the despatch of FIR and the circumstances under which the same is said to have been registered in the Panoor police station, we are of the view that, the same are not beyond

reasonable doubt. It is true, PW14 was when examined, gave an explanation that PC 3875 was deputed for scene guard after sending him to the police station with Ext.P1. But the evidence of PW8 in this respect is inconsistent with the evidence of PW14 and it is incorrect to say that PC 3875 was on scene guard. Even otherwise, PW14 has stated that copy of Ext.P1 was sent in the hands of PC 3726 to the Panoor police station and hence the explanation offered by PW14 cannot be accepted so as to clear the doubt of sending of FIR to the police station. Had Ext.P1 been recorded at 9.30 hrs. on 10.3.95 as claimed by PW14 and sent the same to the police station and registered Ext.P5 FIR at 10.15 on 10.3.95 itself and entrusted copy of Ext.P5 with PC 3875 to produce before the Magistrate, we fail to understand the delay that has occurred in reaching the court on the next day at 10 p.m., especially when PW8 says that only 45 minutes is required to reach Thalassery from Panoor police station even by bus. Thus according to us, even though the delay is only 24 hrs., the PC with whom

allegedly the copy of Ext.P5 was entrusted by PW8, was not examined. PW8 has no explanation for the delay. PW14 was when examined, had deposed that he was not aware of the delay occurred and therefore no investigation was conducted to that effect. As we have already pointed out, it is a case where the defence had a case that, bomb blast occurred when it was carelessly handled by the deceased and other BJP men, and when Kelu was admitted in the hospital, no case of hurling of bomb by the accused was deposed before the doctor - PW11, but when PW3 conveyed the history of assault, he mentioned the names of three other local leaders of CPM deliberately, instead of the names of the present accused. It is also relevant to note that Ext.P5 FIR reached the court with a delay of 24 hrs. and therefore we cannot rule out the possibility of false implication of the accused persons in the given facts and circumstances of the case, and therefore the only conclusion that can be arrived is that Ext.P5 is a concocted document and no legal sanctity can be given to it.

48. In the light of the aforesaid discussions and in the absence of cogent, concrete and reliable evidence, and because of the defect and infirmities in the investigation conducted in this case, we are of the view that, the learned Judge is not justified in his findings, especially when the substratum of prosecution case has been demolished due to want of evidence. Thus, the findings recorded against the appellant/1st accused are liable to be interfered with and consequently, we are unable to confirm the conviction. Accordingly, the conviction and sentence recorded against the appellant, who is the 1st accused in (Crime No.66/95 of Panoor Police Station) S.C.No.143/98 of the court of Sessions Judge (Ad hoc-1), Thalassery, are set aside.

In the result, this appeal is allowed, setting aside the judgment dated 9.1.2003 in S.C.No.143/98 of the court of Sessions Judge (Ad hoc-1), Thalassery, in Crime No.66/95 of Panoor Police Station and the appellant is acquitted of all the charges leveled against him.

As the appeal is allowed and the appellant is acquitted of all the charges levelled against him, the appellant is entitled to get released from the jail forthwith, if he is not required in any other case. Accordingly, the Registry is directed to forward a gist of this judgment to the Superintendent, Central Prison, Kannur, for his appropriate speedy action.

Sd/-
V.K.MOHANAN,
Judge.

Sd/-
RAJA VIJAYARAGHAVAN V.,
Judge.

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P.A. to Judge