

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

CRL.A.No. 31 of 2011 (D)

AGAINST THE JUDGMENT IN SC 210/2010 of ADDITIONAL SESSIONS JUDGE,
FAST TRACK COURT-1, TRIVANDRUM, DATED 30-09-2010

APPELLANT(S)/ACCUSED:

AMEER, C.NO.5534

CENTRAL PRISON, THIRUVANANTHAPURAM.

BY ADV.SRI.ANANDAN PILLAI [STATE BRIEF]

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ami/

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

Crl.A.No.31 of 2011

Dated this the 3rd day of July, 2015.

J U D G M E N T

Mohanan, J.

The above appeal is preferred by the sole accused in S.C.No.210/10 of the court of the Additional Sessions Judge, Fast Track court-1, Thiruvananthapuram, challenging his conviction and sentence imposed under sections 302 and 324 of IPC.

2. The prosecution case is that, the deceased in this case named Raphy @ Babukka, while residing along with his sister namely Aleema at Pullimada house in Rathickal desom in Vettoor village, there occurred an altercation in the evening of 29.1.2004 near Arivalam Mosque between himself and the accused, who was in inimical terms with the deceased, consequent to an earlier incident which occurred on 27.5.2002, by which the deceased and some other persons inflicted injury upon one Shaji, S/o.Abdul Sammad,

who is the cousin of the accused in this case ; but at the intervention of the cousin of the said Babukka, he was brought and as they reached at the steps towards the house of the said cousin, at about 8.40 p.m. on 29.1.2004 itself, in retaliation, the accused again came with a sword and exhorted at the deceased to meet his challenge. Though the deceased tried to evade from the scene, the accused attacked the deceased with the sword with the sole intention of causing his death and thus the deceased sustained injury on his left leg pursuant to which he fell down and thereafter the accused inflicted several injuries on the deceased and he chopped off the right leg and right hand of the deceased and threw the same into the nearby canal and thereafter the accused left the place with the weapon and the deceased succumbed to his injuries though he was taken to the Medical College Hospital, Thiruvananthapuram.

3. The cousin of the deceased, namely Alsham, went to the Anchuthengu Police station and launched the

information about the incident and the death of the deceased Babukka, on the basis of which Crime No.7/04 was registered in the Anchuthengu police station for the offence punishable under sections 302 and 324 of IPC. As the C.I. of Kadakkavur police station was on leave, upon the direction of the Dy.S.P., Attingal, investigation was undertaken by the then C.I. of Attingal Police Station. Thus he proceeded to the Anchuthengu police station and the S.I. of Anchuthengu police station was directed to prepare the inquest on the deceased Babukka. The Investigating Officer proceeded to the place of occurrence and thereafter prepared scene mahazar and from the place of occurrence, he had seized a pair of Quovadis chappals and blood stained soil by preparing separate seizure mahazars. He also seized the chopped part of hand of the deceased from the bush on the western side of the canal and chopped human body parts and those were sent for post mortem examination to the Medical College Hospital. Thereafter he sent the inquest report prepared by the S.I.

to the court and he continued the investigation during which, he had questioned the witnesses and recorded their statements. As to the material objects collected at the time of preparing the scene mahazar, a property list was sent to the court. Thereafter, during the early morning of 30.1.2004, the accused was arrested from the bus stand located in front of the Chirackal railway station after preparing the arrest memo. According to the Investigating Officer, on his questioning the accused after the arrest, he made a confessional statement by which it was revealed that the weapon used in this case was concealed under the ash pit, beneath the coconut tree standing on the western side of the latrine which was situated on the back side of his house and as led by the accused, proceeded to the place disclosed by him and as pointed out by him, a sword stick was taken by the accused and it was taken into custody in the presence of the witnesses as per the mahazar. Thereafter, as per the disclosure statement made by the accused, the dress worn by the accused at the

time of the incident was also seized from the verandah of the house of one Jameela at Arivaalam and the shirt and dhothi were seized. Thereafter, the accused was produced before the court with a remand report. The material objects so seized were produced before the court and he produced the weapon also with a forwarding note to send the same for forensic examination. The site plan of the scene of crime was got prepared through the Village Officer. The further investigation was continued by PW16 and finally on verification of the report, he laid the charge against the accused before the committal court for the offence punishable under sections 302 and 324 of IPC.

4. The learned Magistrate of the court of Judicial First Class Magistrate-Varkala, by his proceedings dated 13.5.2005 in C.P.No.7/05 committed the case to the Sessions court wherein S.C.No.210/10 was instituted and subsequently the said case was made over to the present trial court. When the accused entered appearance, after hearing the prosecution as well as the defence a formal

charge was framed against him for the offences punishable under sections 302 and 324 of IPC which when read over to the accused and explained to him he denied the charge and pleaded not guilty, pursuant to which the trial was proceeded further and PWs.1 to 16 were examined and Exts.P1 to P19 documents were produced from the side of the prosecution and besides, MOs.1 to 6 were also identified and marked. No evidence was adduced from the side of the defence. On completing the prosecution evidence, the accused was questioned under section 313 Cr.P.C. and when the incriminating evidence and circumstances which were brought out during the prosecution evidence, were put to him, he denied the same. As there was no scope for an acquittal under section 232 of Cr.P.C., the trial court asked the accused to enter the defence evidence but no such evidence was adduced. Thereafter, the trial court has found that the prosecution has succeeded in proving its case against the accused beyond reasonable doubt and accordingly the accused was found guilty of the offences

under sections 302 and 324 of IPC and he was convicted thereunder. After hearing the accused in the matter of sentence, the court below sentenced the accused to undergo imprisonment for life and to pay fine of Rs.2 lakhs under section 302 of IPC and in default of payment of fine, he was directed to undergo rigorous imprisonment for a further period of 2 years. He was also sentenced to undergo rigorous imprisonment for one year under section 324 of IPC and while the sentences are ordered to run concurrently, set off was allowed under section 428 of Cr.P.C. and it was also ordered that on realisation of the fine amount, the same shall be given to PW2, the sister of the deceased, as compensation under section 357(1)(b) of Cr.P.C.

5. It is against the above findings and order of conviction and sentence, the accused has come up in appeal by filing a jail appeal. While admitting the above appeal, by order dated 20.1.2011, this Court directed the Registry to appoint a legal aid counsel as State Brief for

prosecuting this appeal on behalf of the appellant. Thus the Registry has appointed Adv.Anandan Pillai as State Brief. We heard Sri.Anandan Pillai, the learned counsel appearing for the appellant and Smt.Bindu Gopinath, the learned Public Prosecutor appearing for the State.

6. Before considering the merits of the contentions advanced by both the counsel for the appellant as well as learned Public Prosecutor, we are of the view that, it is beneficial to refer the evidence and materials on record for proper disposal of this appeal.

7. As we have already noticed, the investigation was set in motion by registering Crime No.7/04 of Anchuthengu police station when one Alsham, the cousin of the deceased launched an information about the incident before the S.I. of Anchuthengu police station at about 11.15 p.m. on 29.1.2004. In the statement so furnished by the said Alsham, it is stated that he has studied upto SSLC and at the time of giving the statement he was unemployed. It is stated that, on 29.1.2004 at 8.30 p.m., while he was

watching T.V. in his house, one Faruq-the son of his uncle, rushed towards him and told that, the deponent's cousin Mohammad Raphie @ Babukka and one Ameer, who was residing near Arivaalam mosque, were quarrelling with each other. Thus himself and the said Faruq had gone near to the said mosque, but they could not find the accused there. Thereafter, they brought the deceased Babukka to the deponent's house and when they reached near the steps of the house, Faruq went to call the elder sister of the deponent's mother. Thus while himself and the deceased Babukka were standing in front of the steps, the accused (Ameer) vociferously challenging the deceased, came from the side of the mosque with a sword and approached them. According to the deponent, at that point of time, the deceased Babukka went towards western side of the road and the accused rushed towards deceased Babukka and slashed him with the sword that was kept on his right hand, by which the said Babukka sustained injury on the left thigh and fell down. Thereafter, the accused again

inflicted 2-3 cut injuries on his left thigh and amputated his leg at the right knee and also severed the portion of the hand just above the right elbow and the accused threw away the amputated hand and leg portions to a nearby canal. According to the deponent, when the accused again attempted to inflict injury on the deceased Babukka, he interrupted and at that point of time, the accused by using the same sword slashed on him also, but as he withdrew from the position, he sustained only an abrasion with the pointed end of the sword just above the side of his left hand. According to him, when he ran to his house screaming, the local people and neighbours assembled there on seeing the incident and hearing his cry and at that time, the accused escaped with the sword through the reclaimed bund adjacent to the canal towards Arivaalam seashore. Immediately thereafter, himself and the people gathered there, called a car and took the injured Babukka to Chirayinkeezhu hospital, from where, after examination, the doctor advised them to remove the injured forthwith to

the Medical College Hospital, Thiruvananthapuram. Thus in the same car the injured was taken to the Medical College Hospital, Thiruvananthapuram, but the doctor who examined him declared him as dead and the body of the deceased Babukka was kept in the mortuary of the Medical College. The deponent had also stated before the Police that when the injured Babukka was taken to the hospital, his amputated leg was also taken along with them to the Hospital but the severed part of his hand could not be found out from the place of occurrence. It was also deposed by the informant that connected with an incident that occurred two years back, by which the deceased and some other persons assaulted one Shaji, who is the cousin of the accused Ameer, a case was pending at Varkala court and connected with the said incident, the accused was inimical towards the deceased Babukka. It was out of that animosity, the accused committed murder of Babukka. According to the deponent, he could identify the thick sword stick used by the accused, which has a length of $\frac{1}{2}$

mtrs. having a handle with a hook. As per his version, the incident had occurred at 8.40 p.m. on 29.1.2004 and at that time, there was sufficient light in the locality that emanated from the electric post, from the mosque and also from the neighbouring houses, and thus the incident was seen by the persons who rushed to the place of occurrence, which was located on the north-east direction, at 5 kms. away from the Anchuthengu police station. Towards the bottom portion of the FIS, the body note of the informant is recorded and it is stated that, on examination of the body it could be seen that, the deponent sustained an abrasion across, just above the side of his right hand and he was wearing a white pants and blue coloured T-shirt.

8. The above referred informant was examined as PW1. During the chief examination, he deposed that the deceased in this case named Mohammad Raphie @ Babukka was his cousin and the incident had occurred at 8.30 p.m. on 29.1.2004 near Arivaalam mosque. According to PW1, while he was watching T.V. in his house on that

particular day, one Faruq, the son of his uncle, informed him that an altercation had occurred between the accused Ameer and the deceased Babukka near the Mosque, and PW1 and the said Faruq brought back the deceased Babukka. When they reached near the steps of his house, Faruq had gone to call his mother's sister and PW1 and the deceased Babukka were standing by the steps of the house and at that time, the accused came over there challenging the deceased Babukka to come forward if he was dared. According to PW1, the deceased had tried to evade from the situation, but the accused rushed to him and slashed him with the sword stick in his hand, as a result of which, the deceased sustained injury on the left leg and he fell down and the accused slashed him several times and amputated his leg at the right knee and also severed the right hand, just above the right elbow and the accused threw away the amputated hand and leg portions to a nearby canal. When he intervened, the accused with the same sword slashed at him as well, by which he sustained

an abrasion just above the side of his left hand. When he made hue and cry and people rushed to the place of occurrence, the accused escaped with the weapon through the reclaimed bund towards seashore. The deceased Babukka was immediately taken to Chirayinkeezhu hospital and his amputated leg, which was taken from the side of the canal, was also carried along with him to the hospital, but the amputated hand could not be located. According to PW1, on reaching Chirayinkeezhu hospital, at the instruction of the doctor who examined the injured, the said Babukka was taken to the Medical College Hospital, Thiruvananthapuram, where his death was declared by the doctor. Thereafter, according to PW1, he reached the Police station and gave statement and he identified his signature contained therein and thus FIS was marked as Ext.P1. According to him, the injury sustained by him was also shown to the Police. The deceased was residing in his house at the relevant time and there was a mosque, situated about 10-15 mtrs. away from his house and in front of his house, there lies the

Kadakkavur-Varkala road, which is at a distance of 3 mtrs. from his house. The incident had occurred in the road side beneath an electric post and there was light emanating from it. PW1 identified the accused as the person who assaulted the deceased Babukka. As per PW1's version, at the relevant time, he was at the age of 25 and he knew the accused from his childhood, who was residing ½ kms. away from the Mosque near to his house. According to him, there was some issues between the deceased Babukka and his friends on one side and the accused and his cousin on the other, and connected with those issues, the deceased was arrayed as an accused in a case and the incident in this case had occurred when the accused, in retaliation, attacked the deceased. PW1 identified the sword stick, having a handle, used by the accused, as MO1. He also identified the shirt and dhoti (മുണ്ട) worn by the deceased on the date of incident as MO2 series and the chappals worn by him as MO3 series and he also identified the shirt

and dhothi (കൈലിമുണ്ട) worn by the accused as MO4 series. As per his version, the inmates of his house were his grandmother, uncle, aunt and her children, Aleema - the sister of the deceased and the deceased Babukka.

9. During the cross examination, it was put to him that whether the sister of the deceased - Aleema was available at the time of occurrence and whether PW1 was supporting the accused or the deceased and he answered that he was the younger brother of the deceased. When it was asked that, if his intention was to take the deceased to his house why they stopped at the stairs, he answered that, while they were about to enter his house, the accused approached and challenged them. PW1 has deposed that, he neither tried to stop the assault by catching on the sword nor did he hold around the accused, instead, his attempt was to prevent an altercation. To the question as to whether MO1 was in the hands of the deceased, he answered in the negative. It was also put to him that, he sustained injury while the accused withdrew from the

attack of the deceased, but he denied the suggestion. PW1 has deposed that, the incident had occurred at the road in between his house and the Mosque. According to him, the deceased occasionally took drinks and on that particular date also, he had consumed liquor. As per his version, the house in question was their family house, where the deceased Babukka was also residing and he was a bachelor. To a question mooted by the court below, that whether the deceased was accused in several cases in Varkala court, he answered that the deceased was an accused in one case and PW1 denied the suggestions that he was an accused in a case of scuffle and that when the altercation occurred near the Mosque, he was not present there. According to him, while giving statement to the police, the brother-in-law of his uncle, named Khaleefa was also with him and he denied the suggestion that, the statement was given after deliberating between them. When he was asked as to whether his statement, that he initially brought back the deceased Babukka and then the accused came with the sword to

attack etc., was at the instruction of anybody, he answered negatively and his deposition were not as a result of an afterthought, instead what he told was what actually occurred. He denied the suggestion that, he gave statement on the same day night itself, to protect him from any harm and according to him, he came to the police station from the hospital with a view to give the statement. When it was suggested that there was an idea in his mind as to how the incident should be deposed before the police, his answer was in negative. According to PW1, as he got an opportunity to disclose the facts, he had utilised it and he had not omitted anything. He deposed that, nobody asked him as to whether any other person had seen the incident. When he was asked as to whether he had stated that the persons rushed to the place of occurrence had seen the incident, he answered positively and said that, he did not remember the persons who had assembled there and therefore he could not mention their names. According to him, he had not mentioned the name of

Aleema, since she did not come to the place of occurrence. He also denied the suggestion that, he deposed falsely before the court for screening the fact that himself and the deceased Babukka had tried to assault the accused Ameer with MO1 sword. During re-examination, PW1 deposed that what he meant by the place of occurrence was the place at which the deceased Babukka fell down after sustaining cut injury. According to him, at the time of the incident, Aleema-the sister of the deceased, was inside his house and the distance between the place of occurrence and the house was 10 mtrs.

10. The next witness examined by the prosecution is one Aleema who is the sister of the deceased Babukka and she is an eye witness. During the chief examination, PW2 has deposed that the deceased Babukka is her brother. According to her, at 8.30 p.m. on 29.1.2004, while herself and grandmother were sitting and talking in their house, they heard a vociferous sound from the road shouting at the deceased to meet his challenge and she came out of

the house. At that time, PW1 and her brother - the deceased Babukka were standing in the road. When the said Babukka was about to leave, the accused slashed at him with a sword which hit on his left leg and he fell down. Thereafter, the accused chopped him continuously and on seeing that, PW1 rushed to the spot and the accused slashed him also. The right hand and the right leg of the deceased were amputated by the accused and he threw it to the nearby canal. At that time, PW2 cried aloud and said nothing be done to her brother and after the assault, the accused fled towards the seashore. She had identified MO1 as the sword used by the accused for the assault. She deposed that, people rushed towards the place of occurrence on hearing her hue and cry and they could see the incident in the light emanating from the electric post. According to her, while giving the deposition, she was at the age of 29. Her father and mother, who were not in good terms, resided at vilabhagam (വിളഭഗം) and herself and

her brother resided in the house of their mother's sister from their childhood onwards, in front of which the incident occurred.

11. During the cross examination, she admitted that she is the sister of deceased Babukka and she was in cordial relationship with him. According to her, it was intolerable for her to see the heartbreaking assault, in which her brother's leg and hand were amputated, but she did not intervene in the matter, since she was scared that she also would be assaulted and hence she watched the incident keeping away from the place of occurrence. At the relevant time, they were residing in the house of their grandmother and her mother was residing separately at a distance of 1 km. from there and her father abandoned them during their tender age and she does not know the residence of her father at the time of his death and the deceased Babukka was looking after the affairs of their mother. She has also deposed that the deceased used to take drink occasionally and long back, he was in gulf and

he was engaged in the business of giving car on hire and his uncle was a partner in that business. According to her, the deceased was not an accused in scuffle cases and she was also not aware whether the deceased was involved in any case pending in Varkala court in connection with unlawful possession of country made revolver. She deposed that, she is also not aware of his friends' circle. On the next day of the burial when the Police came and asked her to give statement, she did so and she was not remembering whether she had gone to the Police Station or not. When it was put to her as to whether the police had insisted her to give statement to the effect that she saw the accused amputating the leg and hand of the deceased Babukka, she answered in negative. At the time of incident, she had not gone to the place of occurrence due to fear. The place of occurrence was at the road in between her house and the Mosque at Arivaalam. It will take 5 minutes to reach her house by foot. She got out of the house on hearing the shout and there was light

emanating from the chimney lamp and there was electric supply outside the house. Arivaalam Mosque and the road could be seen from the verandah itself. She deposed that she had not seen the origin of the incident. She affirmed that, prior to the incident in this case, she never noticed the sword at the hands of accused Ameer. When she was asked, whether the incident had occurred when her brother Babukka went with the sword to assault the accused, she answered negatively. When it was suggested that, as there was no witness for the occurrence in which her brother died, she herself volunteered to become as a witness, she said 'no'. She denied the suggestions that, when she got out of her house, she saw her brother lying injured and that the place of occurrence was the steps leading to the road and she also denied the suggestion that, she saw the altercation at the steps. According to her, the road was behind her house. There were doors in front and back side of the house. She came out of the house through the backdoor. She deposed that, the

courtyard lies about 1-1½ feet from the backdoor and there were 10 steps leading to the road. When she was asked as to whether she had reached at the verandah or courtyard or at the steps or at the road on seeing the incident, she positively answered and made it clear that she witnessed the amputation from the road. She deposed that she saw PW1 and the deceased standing near the steps and the accused was seen approaching them to the steps, but he did not step on the stairs. When it was put to her that at this point of time whether the deceased entered the house or had gone to the road, she answered that, he had gone towards the accused Ameer, and PW1 did not follow them but remained at the steps itself. When it was suggested that, PW1 had subsequently gone towards them, she deposed that PW1 did so and at that time the accused slashed him also. When it was put to her, whether she heard PW1 requesting the deceased not to quarrel with the accused, she evasively answered that she did not notice. She deposed that it is incorrect to say that the

deceased approached the accused with MO1 sword and she did not see Shaji and Faruq at the place of occurrence. According to her, on hearing the shout, she came down to the road and she witnessed the incident at the road itself. When it was again put to the witness that the incident was seen from the western side of the courtyard, she said 'no'. She was not remembering whether she gave statement to the effect that she saw the incident from the western side of the courtyard. She was asked as to whether there is any reason for not stating before the Police that the incident was seen from the road, she said she has nothing to say. She also made it clear that she was not deposing as an eye witness in an unseen incident. According to her, the accused Ameer was a relative of her father. She denied the suggestion that the accused had supported her father in the issue between her parents. It was also put to her that, whether it was for that reason, the deceased Babukka tried to commit murder of the accused, she said, the deceased had not attempted to do so.

12. PW3, though cited as an eye witness to the incident, turned hostile towards the prosecution. During the chief examination, he deposed that he is a taxi driver by profession at Varkala. According to him, about 5-6 years back to the giving of his deposition in the court, at about 8.30 p.m., while he was returning in a motor cycle along with CW4 - Unni, after meeting his friends at Nedumkanda, when they reached near Arivaalam Mosque, he saw the incident at a distance of 7 mtrs. with the aid of light emanating from the electric post and he understood that it was an altercation and he left the place. When it was suggested that whether he saw the incident on 29.1.2004, he answered that, it was likely to be on that day. He deposed that the police has not questioned him. When he was asked, whether he had given a statement to the Police that, he had seen a person amputating another, he answered negatively. As PW3 was declared as hostile, the learned Public Prosecutor was permitted to put leading questions to him. During the cross examination, he

admitted that himself and his friend had withdrawn from the spot as the people gathered there. He had not seen anyone lying down and on the next day, they came to know that one man died of slashing by a person. According to him, he was residing 5 kms. away from the place of occurrence. He had explained about the incident to his friends also. The statement of PW3 recorded under section 161 Cr.P.C. was marked as Exts.P2 and when it was put to him that whether he had deposed that, he saw the person who amputated the deceased and he knew the weapon used by the accused, he answered negatively and the relevant portion was marked as Ext.P2(a).

13. PW4 is also cited and examined as an eye witness, but he too turned hostile to the prosecution. PW4 deposed during chief examination that PW3 - Noushad is his friend. He had deposed that, at about 8.30 p.m., while he was riding along with PW3 - Noushad, in a bike, he saw the incident when they reached near Arivaalam Mosque and there were two men and one was flashing something in his

hand. According to him, apprehending that they are also likely to be assaulted, Pws.3 and 4 had left the locality ; since somebody had noted down the registration number of the bike, the Police called them and recorded their statements. During the cross examination conducted by the learned Public Prosecutor, after declaring PW4 as hostile, he had deposed that he saw a man standing with a weapon of arms length and that person was engaged in the altercation and he had not seen the accused on the particular day. Thus Exts.P3 and P3(a) were marked as the CD contradictions of PW4.

14. PW5 is a lady, who is a loyal witness of the prosecution. During the chief examination, she deposed that she knew the accused Ameer and the deceased Babukka. She was residing on the eastern side of Arivaalam Mosque and after offering prayer at about 8.30 p.m., she came out of the house on hearing the hue and cry and she saw the injured Babukka lying on the road. According to her, she saw the accused Ameer leaving the

place of occurrence towards the western side, with the sword stick. She identified the accused in the box and she deposed that the weapon was like that of MO1. During the cross examination, she deposed that the deceased Babukka was noway related to her. According to her, she saw the accused with the sword only at a distance at the night hours and the accused had left the place by raising the sword in his hand and she was not aware at that time that it was a sword.

15. PW6 was cited by the prosecution and was examined to prove the incident that taken place 2 years back of the date of occurrence of the present case. During the chief examination, he had deposed that, the accused is his distant relative. There was a case connected with an attack on him and Babukka @ Mohammad Raphie, the deceased in this case, was the 2nd accused in that case and as a result of that attack, he was hospitalised in the Medical College. Thus he identified his statement in the

FIS in that case, which was marked as Ext.P4. He also deposed that the accused is the son of his mother's elder sister.

16. During the cross examination of PW6 he had deposed that, he knew the accused from his childhood, who was a coolie worker aged 28 years at the relevant time and he knew the residence of the accused and he was not having bad habits like consumption of liquor, involving in fights etc. The house of the accused is situated at Arivaalam and at the time of death of the deceased Babukka also, the accused was residing there and he had never been an accused in any case. According to him, the accused was residing along with his three aunts and his two sisters and he was maintaining the family alone, since his parents died when he was at about 10-18 years of age. After showing MO1 to PW6, it was asked as to whether he had seen the sword at the hands or at the house of accused Ameer, he said 'no'. As per his version, he was residing just ½ kms. away from the Arivaalam Juma-ath, where he

and the accused used to go and they were daily offering prayer there. According to PW6, he knew the deceased Babukka much prior to his death and he was residing in the vilabhagam (വിളഭാഗം) - ½ kms. away from the Mosque and the deceased had no reason for coming to the Mosque on that day and he did not see him at that night at the Mosque. He does not know whether the deceased had any job. He admits that Ext.P4 statement was given from the Medical College Hospital. The names mentioned in Ext.P4 were friends of the deceased Babukka and he affirmed that, the deceased and the said friends were gundas. When it was put to him that whether the accused mentioned in Ext.P4 were looters and drunkards, he positively answered. To the suggestion that the four accused mentioned in Ext.P4 are persons who always held weapons in their hands, he confirmed it, since according to him, four of them had attacked together with weapons and therefore he knew the said fact. As per his version, on the

date of death of Babu, PW6, the accused Ameer and Faruq (the son of PW1's uncle) were in the Mosque and they together had come out after offering prayer and the accused was with him, but at that time he did not see MO1 weapon in his hand. PW6 has further deposed that, when they came out of the Mosque, the deceased Babukka came there in an autorickshaw. It was asked to PW6 that whether the deceased was conscious at that time, he answered negatively. According to PW6, the deceased Babukka by catching hold of the accused Ameer's shirt, slapped on him and challenged him. He identified MO1 sword as the weapon possessed by the deceased at the time of scuffle. PW1 also joined the scene and he along with the deceased Babukka assaulted PW6. Thereafter, certain leading questions were put to PW6, to which he positively answered. When it was put to him that whether PW6, the deceased Babukka, Faruq, PW1 and the accused Ameer are the persons who knew the details of the incident, he confirmed the same. When he was asked as to

who had initiated the attack first, he answered that it was the deceased Babukka. During re-examination, he deposed that after offering prayers in the Mosque, he went to his house. At that point of time, the learned Public Prosecutor requested the court to declare PW6 as hostile and accordingly, it was allowed and permitted the Prosecutor to cross examine PW6. Thus during such cross examination, PW6 had deposed that, he knew PW2 Aleema, who was residing at vilabhagam (വിളഭഗം) side. According to him, he knew PW5 also and after the house of PW5, the house of CW12 - who is the uncle of deceased Babukka, is situated. He had also deposed that the deceased Babukka sustained injuries near the Mosque but he had not witnessed the same. When it was put to PW6 that whether he had gone when Alsham - PW1 came over there, he answered that he left the place after the occurrence. PW6 further deposed that, he was not aware as to where PW1 sustained injury, since by that time, he fled from the

scene. He came to know about the death of the said Babukka on next day at noon and he was also aware of the arrest of the accused on the next day. He deposed that, he did not disclose to anybody about the incident that occurred on previous day night and he does not know that, in whose autorickshaw, the deceased Babukka came over to that place.

17. PW7 is an attestor to the inquest prepared by the police. He had deposed that during 2004, he was Member of 8th Ward of Vettoor grama panchayat. He identified Ext.P5 inquest report with respect to the body of the deceased, in which he put his signature at the Medical College. There was no serious cross examination on PW7.

18. PW8 is an autorickshaw driver, in which the accused went to his house at Chirayinkeezhu after the incident. Thus during the chief examination, he deposed that, he is a driver by profession. During 2004, he was an autorickshaw driver and he knew the accused. According

to PW8, on the date of occurrence after 8.45 hours at night, the accused Ameer got in his autorickshaw from the vilabhagam (വിളഭഗം) side and he was taken to his house at Chirayinkeezhu. During cross examination, he deposed that the accused Ameer was residing adjacent to his house and he knew him for the past 2-3 years, who according to him, was a gentleman. When it was suggested to him that, the deceased Babukka was a criminal, he expressed his ignorance.

19. PW9 was then working as Civil Surgeon at Taluk Hospital, Chirayinkeezhu, who examined PW1 Alsham. During his examination, he deposed that he had issued wound certificate of PW1, which bears his signature and it was marked as Ext.P6. According to him, on examination he had noticed superficial abrasion of 8 cm length across the left deltoid in the lower half and no other external injuries were noted. He recorded the alleged cause as, "as a result of amputation by a sword at 8.45 p.m. on 29.1.04 near Arivaalam." During the cross examination he had

deposed that the patient did not tell him as to who had caused the injury. According to him, generally an abrasion can be caused when that portion of the body comes into contact with a rough object, like sword, which is a sharp cutting weapon and it will cause incised wound. When it was put to him that, whether the said type of abrasion could be caused during a scuffle between two groups of persons, he answered positively. He also confirmed when he was asked, whether an abrasion with sword would make it probable that the deceased could have been involved in a scuffle. During the re-examination, with permission, MO1 was shown to the witness and when he was asked, whether the injury mentioned in Ext.P6 could be caused while in contact with the tip of a sword, he said 'yes'.

20. PW10 was then working as Assistant Director in Serology Division at F.S.L., Thiruvananthapuram. During her examination she had deposed that, 8 sealed packets containing material objects were received from the Judicial First Class Magistrate court-Varkala, in connection with

Crime No.7/04 of Anchuthengu Police Station. According to her, after examining the items received, to detect the presence of blood, its origin and group, she issued the certificate which contains her signature, which was marked as Ext.P7. As per Ext.P7, the result of examination, particularly in item nos.1, 2, 3, 5, 6, 7 and 8 contain human blood belonging to 'O group'. Item No.4 was unsuitable for examination. Item Nos.1, 2, 3, 6, 7 and 8 are identified and item no.5 is a blood stained soil, which was identified and marked as MO5. Item No.4 "clotted blood" was identified and marked as MO6. No serious cross examination was conducted on PW10.

21. PW11 is an attester to the Mahazar prepared on 30.1.2004 for the seizure of MO4 series. However, he turned hostile to the prosecution. In the chief examination, he admitted that he was a resident of Arivaalam and the signature contained in the mahazar dated 30.1.2004 was his signature and it was marked as Ext.P8. He had also deposed that he put his signature in the mahazar prepared

by the Police on their arrival at the place of occurrence. The mahazar dated 31.1.2004 was shown to PW11 and he identified his signature therein also, which was marked as Ext.P9. When it was put to him as to whether he put his signature in those documents when he was standing near to the house of one Jameela, he answered positively and deposed that C.I. was also present there at that time. To the question as to whether the accused was present when Ext.P9 was prepared, he answered negatively. When MO4 series were shown to the witness and asked, whether he had seen the same, his answer was that he saw it in the house of deceased Babukka. Thereafter at the request of the Public Prosecutor, the witness was declared as hostile and he was permitted to cross examine him and during such cross examination, PW11 had deposed that he does not know the relationship between the said Jameela and the accused. According to him, the signatures in the documents were put by him at 11 p.m. on the date of occurrence and also on the next day at the Police Station,

but he did not see the incident. He deposed that the burial was on the next day of the incident. According to him, on the next day of the incident, he handed over to the Police the amputated hand of the deceased which he found near the canal at 11 o' clock and then put his signatures in some documents and he put his subsequent signature at the Police Station. To the question as to whether he put his signatures in Ext.P9 on 31.1.2004 at 11.30 a.m. near the house of one Jameela, he confirmed it as correct. When it was put to him that, whether he was lying that he put his signature at the Station, he answered that he put two signatures. During the cross examination of the defence, it was put to him that the signatures seen in Exts.P8 and P9 were different and then he clarified that it was because he put the same in a hurry. He answered positively to the question as to whether he had gone to the place of occurrence on the same day at night. He confirmed that he hadn't seen anyone who had witnessed the incident. When it was asked as to whether there was anybody to explain

the details regarding the origin and culmination of the incident, he said nobody was there.

22. PW12, Dr.Sasikala who was then the Assistant Professor of Forensic Medicine, Medical College Hospital, Thiruvananthapuram, had conducted the postmortem on the body of Mohammad Raphie @ Babukka on 30.1.2004, who was the deceased in Crime No.7/04 of Anchuthengu police station and issued the postmortem certificate, which contains her signature and Ext.P10 postmortem certificate was marked through PW12. She had also conducted postmortem examination of the amputated portion of right forearm with wrist and hand, that was sent to her by the C.I. of Attingal Police Station, stating that amputated portion belonged to Muhammad Raphie @ Babu (aged 29), the deceased in Crime No.7/04 of Anchuthengu Police Station and she issued Ext.P11 certificate which contains her signature, by which, it was found that the amputated portion of right upper limb appeared complimentary with the amputated portion of injury no.6 as noted in

postmortem certificate 255/04 and that the same could belong to Muhammad Raphie @ Babu, the deceased in Crime No.7/04 of Anchuthengu Police Station. During her chief examination, she had deposed that there were 23 antemortem injuries noted on the body of the deceased Babu and the same are as follows :

- "1. Incised wound 6.5x1.5 cm., bone deep sagittal on the top of head, the front end 9.5 cm above the inner end of right eyebrow.
2. Incised wound 6x0.5 to 1 cm. superficial to bone deep, obliquely placed on the left side of head and adjoining part of forehead, the lower inner end 7 cm outer to midline and 0.5 cm above eyebrow.
3. Lacerated wound 3.5x0.5 to 1.3 cm through and through at the middle for a length of 1.5 cm, on the outer aspect of right side of lower lip, the inner end just outer to midline.
4. Contusion 1.5x1.5x0.3 cm on the inner aspect of right side of upper lip 0.8 cm inner to the angle of mouth at the gum margin.
5. Graze abrasion 1.5x1.5 cm on the right side of face 1.5 cm outer to midline and 1.5 cm below the lip margin.
6. Incised amputation wound 12x12 cm oblique on the right forearm 4.5 cm below elbow. The cut edge showed multiple stepping and side cuts. The amputated forearm brought separately could be approximated and it appeared complimentary also.
7. Incised wound 9x2x2 cm to bone deep horizontally placed on the back of right forearm, 3 cm below elbow with

a tailing, 1.5 cm long extending inwards from the inner end.

8. Incised wound 3.5x0.4x0.2 cm, obliquely placed on the front of right forearm, its upper outer end 3 cm below elbow and the lower end merging with the cut edge of the forearm skin.

9. Abrasion 1x1 cm on the front of right thigh 10 cm above knee.

10. Incised amputation wound 14x14 cm amputating the right knee at the level of tibial condyles separating the leg. Semilunar cartilages, and condyles of femur and tibia showed clean cut with fragmentation of the edges.

11. Two graze abrasion 2.5x2 cm and 4.5x2.5cmx2cm apart in the same horizontal line on the front of left knee.

12. Incised wound 6.5x1.8 cm entering the elbow joint cavity, obliquely placed on the back of left forearm the upper back end 3.5 cm below elbow with a tailing 2.5 cm extending outwards underneath ulna and radius and medial condyle of humerus were found cut cleanly with fragmentation of the edges.

13. Incised wound 3x0.6x0.5 cm obliquely placed on the left side of back of trunk, the upper inner end 7 cm outer to midline and 12 cm below the top of shoulder.

14. Incised wound 4.5 cm long, linear, extending obliquely upwards on the left side of back the outer end 1.2 cm behind the back end of injury No.(13).

15. Superficial incised wound 1x0.3 cm, oblique, on the left side of back trunk with a linear incised wound 12.8 cm long extending obliquely upwards to the right from the upper inner end, the lower outer end 1.2 cm inner to injury No.(14).

Injury Nos.(13), (14) and (15) were in the same oblique line.

16. Incised wound 14x3x3 to 3.5 cm horizontal on the left side of back, with a tailing 8 cm long linear extending to the right and another tailing 2.5 cm long linear extending outwards the right inner end 15 cm below the root of neck.

17. Incised wound 8.3x2x5 cm horizontal on the upper outer quadrant of right buttock, the inner end 8.5 cm outer to natal cleft.

18. Incised wound 3.3x1x2 cm, horizontal on the upper inner quadrant of right buttock, the outer end 0.4 cm inner to injury No.17 and it showed a linear incised wound 4 cm long extending inwards from the inner end.

Injury Nos.(17) and (18) were in the same horizontal line.

19. Incised wound 14.5x3x6 cm horizontally placed on the gluteal fold the inner end 5.5cm outer to the natal cleft.

20. Incised wound 3x0.5x2 cm, slightly oblique on the gluteal fold, the lower outer end merging with injury No.19.

21. Incised wound 15.5x2x7.2 cm horizontal on the back of left thigh 22 cm above knee. Thigh bone underneath showed a cut 0.3 cm deep with fragmentation of the edges.

22. Incised wound 2x0.3x0.5 cm horizontally placed on the back of left thigh the back end 0.5 cm above the front inner end of injury No.(21).

23. Multiple small abrasions over an area 5.5x5 cm on the outer aspect of left thigh 6 cm above knee."

23. According to PW12, the death was due to multiple injuries. She deposed that, there are 5 antemortem injuries noted in Ext.P11 certificate and all incised wounds that noted in Exts.P10 and P11 could be caused with MO1

like weapon and injury nos.4, 5, 9 and 11 could be caused in a forward fall and injury no.3 could also be caused in the same manner. During the cross examination, she had deposed that injury nos.1 and 2 are on scalp and there were no fracture and no damage was caused to brain and no internal hemorrhage to the brain. She opined that, injury nos.1 and 2 alone would not be sufficient to cause death and injury nos.3, 4 and 5 were minor in nature. She has also deposed that, injury nos.6, 7 and 8 were not on the vital part like neck, head etc. and then she added that injury no.6 was sufficient to cause death. When it was put to PW12 that whether injury nos.6, 7 and 8 were injuries that could cause grievous hurt, she answered positively. According to her, injury no.9 was a minor one and injury no.10 was also an injury that comes under grievous hurt. When it was put to her that the location of the injuries was not on vital part, her answer was that, the amputated injuries were on vital parts though not on the vital organs and death was due to shock following the bleeding. The

court below mooted a question that, if the death did not ensue consequent to injury nos.6, 10 and 12, it would be only grievous hurt, she answered that, injury nos.17 to 22 were not on the vital organs but on the vital parts and she added that of those group of injuries, injury no.21 only cuts the bone and all other injuries would hurt grievously. She had also deposed that, injury nos.17, 18, 19 and 20 do not show any cut on the bone and injury nos.22 and 23 were minor and simple. During the cross examination, the following question was put to the witness, "When I say multiple injuries have caused the death, I mean not one injury but several injuries have caused the death?" and her answer was in confirmative and she further deposed that multiple injury had caused the death and the victim had consumed alcohol prior to his death.

24. PW13 was the then Village Officer, Vettoor-Cherunniyoor village. He prepared the site plan of the place of occurrence and it contains his signature and thus it was marked as Ext.P12. There was no cross examination

on PW13.

25. PW14 was the then Investigating Officer, who was then working as C.I. of Attingal. As the C.I., Kadakkavur, was on leave, PW14 had undertaken the investigation in Crime No.7/04 of Anchuthengu police station w.e.f. 30.1.04 onwards as instructed by Dy.S.P., Attingal Police Station. Thus when PW14 was examined, he had deposed that he went to Anchuthengu police station and authorised S.I.Rajan to prepare the inquest report of the body of the deceased in the above crime. According to PW14, thereafter he reached at the place of occurrence and prepared the scene mahazar in the presence of witnesses and thus he identified scene mahazar, which was already marked as Ext.P8. PW14 had identified MO3 series of chappals (having a writing of 'Quovadis' on it), MO5 blood stained soil and MO6 blood that were seized by stating it in the scene mahazar and he had drawn separate mahazars for the same. Further he had deposed that, he had also seized a portion of forearm amputated from a human body

that was found from the bushy area of the canal situated on the western direction of the place of occurrence and on knowing that the said amputated portion of hand belonged to the deceased in the present case, the same was entrusted with PC 8801 to send the same for postmortem examination to the Medical College. The inquest report prepared by the S.I. had been sent to the court and he had questioned and recorded the statement of witnesses. The material objects collected while recording the mahazar and inquest were sent to the court. The accused in this case was arrested at 4 a.m. on 30.1.2004 from the bus stand in front of Chirayinkeezhu railway station and the arrest memo so prepared was marked as Ext.P13.

26. PW14 has further deposed that, the confession statement of the accused was recorded on questioning him, in which it was stated that, the accused had concealed the weapon (the sword stick), used for committing the crime, under an ash pit, beneath a coconut tree standing at the backside of his house on the western side of latrine and it

was buried under the ashes and if he was taken there, he would show the place and the sword stick and as led by him, the police party reached at Pallivalakam house (where he was residing), at Raathikal desom in Vettoor village and from the place pointed out by the accused, ie., at the backside of his house, beneath a coconut tree standing on the western side of latrine, from the ash pit, the accused had taken out the sword stick at about 10 a.m. on 31.1.2004 and the same was taken into custody by drawing a mahazar in the presence of witnesses. Thus PW14 identified the sword stick as MO1. The mahazar was identified and marked as Ext.P14. The relevant portion of the confession statement of the accused was marked as Ext.P15. According to PW14, on questioning the accused about the dress worn by him at the relevant time, he stated that after the occurrence, the same were kept on the verandah of the house of one Jameela at Arivaalam and if he was taken there, he would show the place and the dress. Accordingly, as led by the accused, PW14 and party

reached at Thundil house, at Raathikal desom, where the said Jameela was residing, and the accused had taken out the dhoti and shirt worn by him, which were seized after preparing a mahazar on 31.1.2004. Thus PW14 had identified the said dhoti and shirt as MO4 series. The mahazar prepared for the seizure of MO4 series was marked as Ext.P9. The relevant portion of the confession statement was marked as Ext.P16. According to PW14, thereafter, he got identified the accused and the weapon by the witnesses. The accused was later produced before the court by filing a remand report. The properties seized were produced before the court after endorsing the same in form 151(A). To send MO1 to FSL for chemical examination, a forwarding note was prepared and produced before the court and a copy of the same was marked as Ext.P17 and the requisition for the same was marked as Ext.P18. According to PW14, a report was given to the Village Officer, Vettoor, to prepare a site plan. The material objects such as the dhoti and shirt, that were

seized during the time of inquest, were sent for chemical examination as per Ext.P17. He had also deposed that the witnesses had given Ext.P2, P2(a), P3 and P3(a) statements. The accused was arrested on 31.1.2004 and it was mistakenly mentioned as 30.1.2004.

27. During the cross examination, he had deposed that the Express report in the above case was received by him at about 8.30 a.m. on 30.1.2004 and the said report was given by the then S.I., Anchuthengu Police Station and the same was kept in the office file. He deposed that he had not seen the original FIR. The investigation was undertaken on the 30th itself and it continued till 17.3.2004 and he firstly prepared Ext.P8. He had subsequently questioned PW1 but it was not seen recorded in his statement. In the FIS, the names of the eye witnesses were not mentioned but he added that it was stated that several people had witnessed the incident. When it was put to him that whether PW1 was again questioned to ascertain as to who had seen the occurrence, his answer was in negative

and he had to say nothing if the name and details of witness Aleema was not mentioned in the remand report. He had also affirmed that the house of PW1 and PW2 were not located in the scene mahazar, but Pws.1 and 2 were residing in the house of one Samil and the said house was mentioned in Ext.P8 and the said Samil was questioned and his statement had been recorded. He had also admitted that the house of CW5 was very close to the place of occurrence. According to him, in the house of CW5, altogether 5 persons reside and on getting out of the house of CW5, the place of occurrence could be seen and no inmates of the house had seen the occurrence, but they had only seen the accused leaving the place of occurrence with the sword. He had also not attempted to verify as to whose foot MO3 chappals were suitable or to whom those belonged to. According to PW14, the house in which CW12 is residing was 30 mtrs. away from the place of occurrence and he had visited the house, and there were steps from the house to the road, but the said facts were not recorded

in the documents. He deposed that, on getting out of the house, the place of occurrence could be seen. PW14 evasively deposed that, in the house there reside CW12's wife, children and his mother and he does not know the exact number of persons residing there and he had not verified the ration card or voters list etc. of the inmates. He was also not aware as to which ration card or in which voters list the name of the deceased Babukka was included. He did not examine any document to ascertain that the deceased Babukka was residing in the house of CW12. The parents of the deceased were separated due to difference of opinion and resided separately. The father of the deceased was questioned during the inquest conducted by the S.I. When it was put to him that, whether the Juma-ath Mosque was very adjacent to the place of occurrence, he admitted the same. He had also stated that as part of the investigation he visited the Mosque. He had also admitted that the occurrence in the present case had taken place immediately after the night prayer in the Mosque, in which

the accused, PW6, CW7 Faruq etc. had also participated. He did not conduct any investigation as to whether the deceased had consumed alcohol on the date of occurrence, despite the fact that he came to know about the said fact on verifying the chemical examination report. The deceased Babukka was an accused as per Ext.P4. He did not verify any record to ascertain whether the deceased was enlisted in KD list. In the first remand report prepared by him, he had recorded the injury noted on the left leg of the accused and the said injury was bandaged, but he did not enquire about the hospital at which he took the first aid. He had deposed that it was incorrect to say that the said injury, as a result of which the said Babukka succumbed, was inflicted by using MO1. He had also deposed that when the accused was under his custody, he sustained no injury and he had not received any evidence to the effect that the accused sustained any injury from any place after the fatal incident till his arrest. It is shown in Ext.P8 that one Khaleefa was conducting a petty bunk near

the Mosque and his statement was not recorded after questioning him. According to him, the bunk was closed before the incident. PW14 deposed that, as per the version of Aleema, she saw incident from the courtyard of the house and apart from PW1, the deceased and the accused, there were so many people gathered at the place of occurrence, and among them there were people who had witnessed the incident and they were also questioned. According to PW14, he came to know that the accused entered into the autorickshaw of PW8 at 9 o' clock. As per his opinion, the occurrence was over by 8.45 p.m. PW14 came to know from the mother and relatives of the accused and from the neighbours that, after the incident, the accused firstly had gone to his house and then to the neighbouring house of one Jameela. It was put to PW14 that, as to whether any witness had stated that the accused was seen entering to his house with the sword, he answered that, nobody had stated so. It was also asked that, as per Exts.P8 and P12, the location of the house of

the accused could not be found out, then he said that, the accused house was at Arivaalam but not at the seashore. When it was asked, whether it was told to PW14 that anybody had seen the accused at the seashore, he answered negatively. According to him, he was not remembering whether he reached the house mentioned in Ext.P14 through the canal bund or through the seashore, and in Ext.P14, the canal and the bund were not located. According to PW14, he knew that the place of occurrence was near to the seashore, but he hadn't measured the distance from the place of occurrence to the seashore and the distance from the seashore to the house mentioned in Ext.P14 and also to the house of the said Jameela. When it was put to him that blood was seen in MO1 sword, he answered that, a stain was present there, but it cannot be said that whether it was a blood stain or anything else, and there was rust in MO1 weapon, which is a sword stick and the blade of the sword was found damaged. According to him, nobody had given evidence to the effect that the

accused had used the sword, which was in his possession, prior to the incident, and for that purpose, PW14 had questioned the relatives and friends of the accused elaborately. He answered to a query mooted by the court below, that he stated MO1 weapon as a 'sword stick' since there was no curve at its end. When it was put to PW14 as to whether the witness had stated that the sword was a one side edgy sword having a handle in it, he replied that, in Ext.P1 it is said so. He also deposed that, it was incorrect to say that Ext.P15 statement was not given by the accused. He also denied the suggestions that Ext.P14 was artificially created and that MO1 was obtained from the place of occurrence and it belonged to the deceased Babukka. During re-examination, he identified the accused as the person whom he arrested at the relevant period.

28. PW15 was the then S.I., Anchuthengu police station, who recorded the FI statement given by PW1. During the chief examination, he had deposed that on 29.1.2004 at about 11.15 p.m., PW1 gave statement at the

Station, and on the basis of which FIR in Crime No.7/04 was registered under sections 302 and 324 of IPC, which contains his signature and thus he identified the same, which was already marked as Ext.P19. The body note of the de facto complainant who gave the statement had also been prepared and the same was identified and marked as Ext.P1(a). Thereafter, he prepared the inquest report of the body of the deceased Mohammad Raphie at about 1.30 p.m. on 30.1.2004 at the mortuary of Thiruvananthapuram Medical College Hospital and he identified the inquest report, which was marked as Ext.P5. According to PW15, the further investigation was conducted by the Attingal C.I.

29. During the cross examination, PW15 had deposed that Ext.P5 was produced before the court on 3.2.2004. According to him, after preparing Ext.P5, he entrusted the same with the Station writer and he endorsed the same in the Tapal register and sent it to the court through a Police Constable. As per his version, on the evening of 30.1.2004, he entrusted the same with the writer so as to send the

same on the next day morning. He admitted that, he enquired as to the details of persons who witnessed the incident and as per his version, some people had witnessed the same. He had also answered that, the name of a particular person who witnessed the incident was not mentioned in the FIS. To the persons who are giving statements, it was asked as to whether anybody had seen the occurrence, and if the names of such persons were obtained, it could have been reduced into writing and he asked the same to PW1 as well, but he hadn't given the names of such witnesses. When it was asked as to whether he had written the names of neighbours and local people as the persons who witnessed the incident, on his own, with a view to plant the names of witnesses at the time of investigation, he answered in the negative. In Ext.P15, neither the names of persons who saw the incident had been mentioned nor their statements were recorded. According to him, Ext.P19 was a grave crime, but it is not compulsory to prepare the Express report in grave crime

and hence no Express report was prepared in Ext.P19. When it was put to PW15 as to whether it is seen from any documents that he had informed PW14 about Ext.P19 crime, his answer was that he sent wireless message at about 11.30 p.m. and for which, there is no GD entry. According to him, the first informant/PW1 was an injured and he issued passport to PW1 for going for treatment in the hospital, but it was not mentioned in Ext.P6. As per his version, the body could be sent for postmortem only on completing the inquest and as per Ext.P10, postmortem started at 4.45 p.m. and the inquest (Ext.P5) was completed by 3 p.m. According to him, it was incorrect to say that Ext.P5 was delayed because Ext.P1 was not prepared till 3 p.m. on that day. He had also denied the suggestion that, Exts.P1 and P19 were not prepared at the date and time mentioned therein.

30. PW16 was the then C.I., Kadakkavur Police Station, and on completing the investigation on 14.1.2005, after verification of the record, he laid the charge. Thus

during his examination, he deposed that, prior and after the period January 2005, he was the C.I. of Kadakkavur, and on completing the investigation in the present case on 14.1.2005, the records were verified and charge was laid before the court. He was not cross examined.

31. During the 313 enquiry, the version of the accused was that when himself, Faruq and Shaji were coming out of the Mosque after offering prayer, the deceased Babukka came in an autorickshaw in a drunken stage and assaulted him. At that time, himself, Shaji and Faruq ran away to different ways and he has absolutely no connection with the occurrence in the present case.

32. These are the evidence and materials referred to by the learned Sessions Judge in the impugned judgment, whereupon he came to the conclusion that the prosecution has succeeded in proving its case against the appellant/accused.

33. Sri.Anandan Pillai, the learned counsel for the appellant vehemently submitted that the trial court is

wrong in convicting the appellant simply on the basis of the evidence of Pws.1 and 2 who are highly interested witnesses and close relatives of the deceased, particularly in the absence of any independent and corroborating evidence. It is pointed out by the learned counsel that even as per the version of the prosecution, the occurrence had taken place at 8.40 p.m. on the fatal day and there was no sufficient light so as to see the incident by any person including Pws.1 and 2. Therefore, the claim of Pws.1 and 2 that they had seen the incident, cannot be considered. It is also the contention of the learned counsel that the trial court has miserably failed in acting upon the independent evidence adduced by Pws.3, 4 and 5 and according to him, from their evidence it can be seen that the deceased in this case has sustained injuries not as alleged by the prosecution but in a different way and the prosecution has suppressed those materials. It is pointed out that the deceased was a drunkard and even on the date of the incident, he had consumed liquor and hence it was the

deceased who is the aggressor. It is also the contention of the learned counsel that if the accused had attempted to exercise his self defence from the attack of the deceased Babukka, who had consumed liquor, the offence under section 302 is not attracted against the appellant. Another important contention advanced by the learned counsel for the appellant with the support of decisions reported in **Bhaba Nanda Sarma and others Vs. State of Assam {(1977)4 Supreme Court Cases 396}**, **Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others {(2001)6 Supreme Court Cases 145}**, **Sivaraman Vs. State of Kerala (AIR 2003 SC 165)** and **State of Kerala Vs. Shiyas (AIR 1976 SC 2263)** is that, the non explanation of the injury on the accused is fatal to the prosecution and therefore the appellant is entitled to get the benefit of doubt and the trial court has miserably failed to extend those benefit in favour of the appellant. So according to the learned counsel, the defence version is more probable than the case set up by the prosecution and

the motive alleged by the prosecution is insufficient to commit such a grave crime, since according to him, the incident in which the deceased was an accused was occurred on 27.5.2002, whereas the crime in the present case was occurred on 29.1.2004 and hence there was a long gap of 2 years and therefore, it is against human logic to hold that the accused who was the injured in the above referred case had maintained animosity towards the deceased in the present case for a period of 2 years. Thus according to the learned counsel for the appellant, the findings that arrived on by the court below are absolutely incorrect and consequently, the conviction recorded against the appellant is unsustainable and liable to be set aside and the appellant is entitled to get an acquittal.

34. Per contra, the learned Public Prosecutor strenuously submitted that though Pws.1 and 2 are relatives of the deceased, their evidence is credible and no infirmities or discrepancies exist to reject their evidence who are quite natural and eye witnesses. According to the

learned Public Prosecutor, as far as Pws.1 and 2 are concerned, neither the deceased nor the accused was strangers to them and in their evidence, they had deposed that they witnessed the entire incident in the light emanating from the electric post situated on the scene of crime. So according to the learned Public Prosecutor in the absence of any serious discrepancies or infirmities or contradiction in the evidence of Pws.1 and 2, the trial court is fully justified in acting upon the depositions of Pws.1 and 2 and in convicting the appellant. It is also the submission of the learned Public Prosecutor that even though Pws.3, 4 and 5 turned hostile, their evidence need not be rejected totally, merely for the reason that they had turned hostile. Thus on the consideration of the evidence of Pws.3, 4 and 5 it can be seen that their evidence are sufficient to show the genuineness of the prosecution case particularly with respect to the time and place at which the incident occurred. According to the learned Public Prosecutor, even if the deceased had consumed liquor, there is no

evidence or materials brought on record at the instance of the defence to show that the deceased was out of his control and the incident was occurred because of his drinking habit. According to the learned Public Prosecutor, the defence has not admitted the occurrence as agitated by the prosecution and was also failed to show that the deceased was the aggressor so as to claim the right of self defence. According to the learned Public Prosecutor, in the alternative, even if the right of self defence is accrued on the accused, it cannot be said that the accused was right in amputating the leg and hand portions of the deceased in exercise of such self defence, which caused the death of the said Babukka. It is further contended that at no point of time, the defence had raised a contention that the accused sustained injury during the transaction as alleged by the prosecution or in any other transaction between the deceased and the accused. Therefore, even if there is any injury on the accused, the prosecution is not bound to explain the same especially when the same is very

minor and trivial in nature. It is the further contention of the learned Public Prosecutor that by producing Ext.P4, the prosecution has succeeded in showing that the accused was very much inimical towards the deceased connected with the incident covered by Ext.P4 FIR. So according to the learned Public Prosecutor, the prosecution has succeeded in proving the motive alleged, which prompted the accused to commit such a brutal murder of the deceased Mohammad Raphie @ Babu. It is also contended that though the defence had attempted to raise a plea that the occurrence was taken place near the Mosque when the accused and others came out after offering the night prayer, no evidence is adduced in this regard and therefore the defence has miserably failed to make out a probable case. So according to the learned Public Prosecutor, the trial court is fully justified in its finding and convicting the appellant for the offence under sections 302 and 324 of IPC and no interference is warranted from this Court.

35. We have carefully considered the rival contentions advanced by the learned counsel for the appellant and the learned Public Prosecutor. We have perused the evidence and materials on record. We have carefully gone through the decisions cited by the learned counsel for the appellant.

36. 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 convicting the appellant for the offence under sections 302 and 324 of IPC. As we have already pointed out, the prosecution case is that the accused was in inimical terms with the deceased Babu, as he had assaulted the cousin of the accused for which Ext.P4 crime was registered against the deceased. Thus as unfolded through the evidence of PW1, the prosecution case is that a quarrel was occurred near the Mosque at Arivaalam between the deceased Babu and the accused Ameer and when the said fact was informed to PW1 by his uncle's son Faruq, PW1 and the

said Faruq went to the place and brought back the deceased to their house and when they reached at the steps of the house on the road side, the accused came there with a sword and exhorted the deceased to meet his challenge. According to PW1, though the deceased tried to evade from the scene, the accused severed the deceased with the sword on his right leg and caused injury, consequent to which, he fell down on the road and thereupon the accused with the same sword chopped off his right leg and threw the same to the nearby canal. Though PW1 intervened in the matter, the accused turned towards him and wielded the sword and thus PW1 had also sustained injury on his left hand. Thereafter, the accused again attacked on the deceased who was lying injured and chopped away the right hand of the deceased Babu and the same was also thrown to the nearby canal. PW1 in an unequivocal language had deposed before the court that there was electric post on the road side, namely the Kadakkavur-Varkala road, lying in front of his house as well

as Arivaalam Mosque and he had seen the incident in that light emanating from the electric post. PW1 has also identified the accused who attacked the deceased Mohammad Raphie. Thus on a careful analysis of the evidence of PW1, it can be seen that PW1 is not only a natural witness, but also an injured in the very same incident and his evidence can be safely acted upon in the absence of any serious contradiction or infirmities. Though PW1 was subjected to lengthy cross examination, nothing brought on record to disbelieve his version. The only point raised by the learned counsel for the appellant is that as the incident was at 8.40 p.m., it was impossible for the witness to see the incident. When PW1 claimed that he was present at the place of occurrence and he sustained injury in the same transaction, we cannot ignore such a substantial evidence of PW1. There is no challenge from the side of the defence about the presence of PW1 at the place of occurrence at the relevant time, and probably, no such challenge was raised considering the fact that as

per the prosecution case, the incident was occurred very adjacent to the house of PW1 as well as the deceased. PW1 had also deposed that the accused is known to him right from his childhood. If that be so, in the absence of any challenge against the presence of PW1 as well as any challenge against his deposition about the presence of electric post and the light therefrom, we cannot entertain the contention raised by the learned counsel for the appellant that the incident could not be witnessed by PW1. Similarly, as rightly pointed out by the learned counsel for the appellant, PW2 is the direct sister of the deceased, but the said relationship is not a ground to discard her evidence. She is also a natural witness since she is also residing in the same house where her brother, the deceased Babu, and PW1 were residing. When PW2 was examined, she had deposed that while herself and her grandmother were chatting, she heard a screaming from the road and she heard the exhortation made by the accused. Accordingly, she came out of the house and she saw PW1

and her brother - the deceased Babu at the place of occurrence from where the noise heard. She had also deposed that when the deceased went to the road, the accused, by using a sword, amputated on him and the said cut fell on his left leg and consequently her brother/the deceased fell on the ground and thereafter, the accused repeatedly cut him and severed his limbs. It was also deposed by PW2 that on seeing such an incident, PW1 rushed towards them and the accused cut him also with the sword and he too sustained injury. From the above version of PW2, the evidence of PW1, is corroborating and the evidence of Pws.1 and 2 can be safely accepted. PW2 has also deposed that after amputating away the right hand and right leg, the accused threw the same to the adjacent canal. According to PW2, after the incident, the accused ran towards the seashore with the sword. She had also deposed that there is an electric post in the road and the entire incident could have been seen in the light emanated from it. In the case of PW2 also, though she was subjected

to lengthy cross examination, no material change could be brought out from her version during the chief examination and there is no infirmities or contradiction in her evidence atleast to doubt her version given in her evidence.

37. Thus it can be seen that Pws.1 and 2 are quite natural witnesses though they are relatives of the deceased. There is no rule that the evidence of relatives is liable to be rejected. In the present case, PW1 is not only a natural witness, but he sustained injury in the very same incident and therefore the said fact itself is sufficient to guarantee the correctness of his version and the credibility of his evidence. The evidence of Pws.1 and 2 corroborate mutually. Admittedly, the incident had occurred at 8.40 p.m. on 29.1.2004 and it is not possible to get other eye witness to the incident. In this regard it is relevant to note that when PW1 gave Ext.P1 FIS, he had not mentioned the name of any of the persons assembled there after the incident. That itself shows that no other person had dared to come directly to the place of occurrence at the time of

incident so as to watch the entire transaction by which the deceased sustained injuries at the hands of the accused. However, PW1 has stated that people gathered at the place of occurrence, almost at the end of the incident. It is also relevant to note that, as per the prosecution case, it is a case where the accused attacked the deceased and chopped away his right leg and hand in such a brutal manner, and therefore, we cannot expect that either their neighbours or the locals will volunteer to give evidence against the accused. Of course, if there are discrepancies or contradictions in the evidence of substantial witnesses, the court will search for a corroboration from independent source of evidence. But in the present case, the evidence of Pws.1 and 2 give a clear account, by which the deceased sustained injuries at the hands of the accused and they gave a correct picture as to how they happened to see the incident. That part of their evidence remained unchallenged. So there is nothing wrong on the part of the court below in accepting their evidence and entering into a

finding against the appellant/accused. So we are of the considered opinion that the evidence of Pws.1 and 2 gives a true picture about the incident and there is nothing wrong in accepting their evidence.

38. The other ground taken by the learned counsel for the appellant is that the court has discarded the evidence of Pws.3, 4 and 5. We have already referred to the evidence of those witnesses. Though PW3 turned hostile towards the prosecution, before he was declared as hostile, he had deposed that about 5-6 years back of the fatal incident, when himself and his friend was returning after seeing their friend, they saw the incident at a distance of 7 mtrs. and it was at about 8.30 p.m. and at that time there was electric post and light was emanating from it. So that portion of evidence of PW3 corroborates the evidence of Pws.1 and 2 about the place of occurrence as well as the time at which the incident occurred. Similarly, PW4 was another witness who travelled along with PW3 in a motor bike. He had also deposed during

chief examination that, he saw the incident and the incident was near Aruvaalam Mosque and the time was at about 8.30 p.m. According to him, he saw accused holding something in his hand and wielding. It is true, subsequently PW4 was also declared as hostile and they have denied the contradictory portion of their 161 statement. PW5 who is a lady had deposed that she knew the accused as well as the deceased in this case. According to her, on hearing the hue and cry at about 8.30 p.m. after offering the night prayer, she came out of the house and at that time she saw the deceased lying injured and also had seen the accused going towards east. She had also pointed out the accused who was standing in the box and she identified MO1 as the weapon, sword stick, held by the accused at the relevant time. So on a consideration of the evidence of Pws.3, 4 and 5 it can be seen that though Pws.3 and 4 turned hostile, they have admitted their presence at the place of occurrence at the relevant time, while giving evidence and they have

correctly deposed the time and the place of occurrence as alleged by the prosecution. PW5 had deposed that she had seen the deceased lying injured and the accused leaving the place of occurrence towards east holding MO1 like weapon. The above evidence of PW5 is very relevant because immediately after the alleged incident, she had seen the accused going with the weapon from the place of occurrence where the deceased was lying injured. So according to us, the above evidence of Pws.3, 4 and 5 corroborate the evidence of Pws.1 and 2, particularly the evidence of PW5 shows the presence of the accused immediately after the deceased sustained injury.

39. The learned counsel for the appellant strenuously submitted that the accused had attempted to exercise his self defence when the deceased suddenly attacked him. It is also the contention of the learned counsel that the prosecution has not explained the injury sustained by the accused. As the above two contentions are inter connected, we will consider the same together. As we have

already stated, the case of the prosecution is that on getting information about the altercation between the accused and the deceased near the Mosque, PW1 and Faruq-the son of his uncle had gone there and they brought back the deceased to PW1's house and when they were about to his house at the steps itself, the accused came again and challenged the deceased and thereafter inflicted number of injuries on the deceased by which the right leg and hands were amputated. So according to the prosecution, the occurrence was taken place in front of the house of PW1 and the Kadakkavur-Varkkala road lying in front of his house and near Arivaalam Mosque. It is pertinent to note that, as per the prosecution case, there is no challenge at all against the place of occurrence at which the deceased sustained injury at the hands of the accused. In the 313 statement, the accused has no case that he sustained injury in the said incident as alleged by the prosecution. To substantiate the above contention, the main evidence relied on by the defence is that of PW6, who

is none other than a close relative of the accused. PW6 has admitted that the accused is the son of his mother's elder sister. Going by the deposition in the cross examination of this witness, it can be seen that some answers were put to his mouth and accordingly gave evidence in terms of the case of the defence. The version of PW6 in page no.6 was that, on the date on which the deceased Babu died, himself and the accused were together and he knew Faruq, who was also with him at the Mosque. It was also deposed by him that all of them were inside the Mosque and after offering prayer, all of them came out of the Mosque together and the accused was on his right hand side at the prayer time. According to PW6, at that point of time MO1 weapon was not seen in the possession of the accused. It is the further case of PW6 that when they came out of the Mosque, the deceased came there in an autorickshaw and he was not conscious as he was drunk and the deceased caught hold of the shirt of the accused and there was a sword (MO1) in the hands of the deceased and the

deceased after assaulting the accused challenged him. At that time, PW1 rushed to the place and both PW1 and the deceased attempted to assault them. The remaining evidence of PW6 we have already referred supra. However, it is strange enough to note that no information was given in any Police Station with respect to the above incident and no complaint has been launched before any competent authorities. So, the above evidence of PW6 who is none other than the relative of the accused, cannot be swallowed without a pinch of salt.

40. In this respect, it is relevant to note that the version of the accused during his 313 examination was that when himself and PW6 and Faruq were coming out of the Mosque after offering prayer, the deceased came in an autorickshaw who was in a drunken stage and attacked them and consequently all of them had ran away. The accused has no case that he had sustained any injury in the said incident. It is also relevant to note that when the accused was produced before the Magistrate on his arrest

at 4 a.m. on 30.1.2004, no complaint has been registered before the Magistrate with respect to the injury found on him. Thus from the above facts and circumstances it can be seen that the accused has no case that he had sustained injury either in the transaction alleged by the prosecution, in which the deceased sustained injuries or in the alleged attack of the deceased on the accused when the accused was coming out of the Mosque along with PW6 and another. So, according to us, the prosecution is not bound to explain the injury noted by PW14 at the time of arrest of the accused. At this juncture, it is apposite to note that the alleged incident was occurred, as per the prosecution version, at 8.40 p.m. on 29.1.2002 and thereafter the accused was arrested at 4 a.m. on the next day, ie., on 30.1.2002. So, the possibility of sustaining injury by the accused, after the incident alleged by the prosecution and before his arrest, cannot be ruled out. As per the case pleaded by the defence itself, no right of private defence was accrued upon the accused especially when there is no

evidence or materials to show that in the transaction alleged by the defence, the accused received any injury from the deceased as an aggressor, so as to qualify the accused to exercise his right of private defence.

41. In view of the facts and circumstances involved in the prosecution case and in the absence of any claim or plea that the accused received injuries in the transaction alleged by the prosecution, no enquiry is warranted to ascertain as to who is the aggressor or whether the right was accrued upon the accused in exercising his private defence. The above factual peculiarities of this case persuade us to reject the contention of the learned counsel for the appellant on the basis of the decisions relied on by him and cited *supra*, since the facts and circumstances involved in those cases are entirely different from the facts involved in the present case. So the contentions of the learned counsel that the accused attempted to exercise his right of self defence on the sudden attack from the deceased and the non-explanation of injury on the accused

are fatal to the prosecution are devoid of any merit and deserve to be rejected and we do so.

42. It is also relevant to note that the prosecution has got a specific case of motive on the accused to commit this brutal murder. PW6 when examined, had admitted that the deceased was an accused in Ext.P4 crime connected with an incident whereby PW6 was allegedly attacked by the deceased and that he sustained injury in the said incident and the accused is his mother's elder sister's son. Even according to the defence, they have no case that any other incident had occurred prior to the present one. The way in which the deceased was attacked and murdered, itself shows the degree of enmity entertained by the accused against the deceased, particularly, when the deceased was not armed with any weapon and there was no attack from his part against the accused. So the motive alleged by the prosecution, according to us, assume importance, which prompted the accused to finish off the deceased in such a cruel manner. The defence has already failed to make out any probable case under which the

deceased sustained injuries and succumbed to his injuries.

43. In the light of the above facts and circumstances and the evidence referred above, we find no infirmities or illegalities in the findings arrived on by the court below against the appellant and as such we find no ground to interfere with the conviction recorded by the learned Judge of the trial court against the appellant and accordingly we confirm the conviction recorded against the appellant.

In the result, the conviction and sentence imposed on the appellant are confirmed and the appeal is dismissed as it deserves no merit.

Sd/-
V.K.MOHANAN,
Judge.

Sd/-
RAJA VIJAYARAGHAVAN V.,
Judge.

ami/

//True copy//

P.A. to Judge