IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 499 OF 2002

M.C. ALI & ANR. .....APPELLANT(S)

VERSUS

STATE OF KERALA ...RESPONDENT(S)

W I T H

CRIMINAL APPEAL NOs.434 of 2002

AND

CRIMINAL APPEAL NOs. 500-501 of 2002

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. These three appeals have been filed against a common judgment of the High Court whereby the six appellants in the three appeals have been convicted under Sections 302, 307, 149 and 34 of the Indian Penal Code (for short 'IPC'); the sentence to life imprisonment for offences under Section 302 read with Section 149 or 34 of the IPC; rigorous imprisonment for five years under Section 307 read with Section 149 or 34 of the IPC; rigorous imprisonment for six months each under Sections 143 and 148 of the IPC.

2. Initially 13 persons including the six appellants had been charge-sheeted in Kumbla Police Station, Crime No.22/1994 for offences punishable under Sections 143, 148, 324, 307 and 302 of the IPC read with Section 149 of the IPC. Upon trial, the six appellants had been convicted under Sections 143, 147, 148, 307 and 302 read with Section 149 of the IPC and sentenced to life imprisonment together with various other periods of imprisonment under different sections. The sentences were directed to run concurrently. Accused Nos. 7 to 13 were found not guilty and acquitted of all the charges. The convicted accused filed Criminal Appeal No.391/96 before the High Court of Kerala. At the same time, the acquittal of accused Nos.7 to 13 was challenged through revision by K. Hussain (PW2) the son of Moosa Haji, PW5 (the injured witness), through Criminal Revision Petition No.1115/96. Through a common judgment, the High Court was pleased to accept the appeal filed by the convicts and their convictions as well as their sentences were set aside. The case was remanded to the Trial Court for fresh disposal after complying with the provisions under Section 233 of the Criminal Procedure Code. Criminal Revision Petition No.1115/96 against acquittal of accused Nos.7 to 13 was dismissed.

3. On remand, accused Nos.1 to 6 appeared before the Court on 9.1.1998. They were given an opportunity to adduce defence

evidence. Consequently, they examined DW1 to DW5 and marked Exbts. D7 to D10. At the time of the remand, the earlier Sessions Judge who had convicted accused Nos.1 to 6 had been transferred, therefore, the evidence was recorded by his successor in office. On a reappraisal of the evidence led by the parties, the Sessions Judge came to the conclusion that the prosecution had failed to prove the offences alleged against the accused. They were, therefore, all acquitted.

4. These acquittals were challenged by the Sate of Kerala in Criminal Appeal No.444/98 and by PW2, K. Hussain, in Criminal Revision No.552/98. The High Court, by a common judgment, came to the conclusion that the prosecution had conclusively proved the case against accused Nos. 1 to 6 and the findings recorded by the Sessions Judge were perverse and manifestly erroneous. Therefore, the judgment of the Trial Court was set aside. They have all been convicted for various offences, as noticed above.

5. Against the conviction and sentence, accused Nos.1 and 4, namely, K. M. Iddinkunhi and Andan, have filed Criminal Appeal No.434/2002, accused Nos. 2 and 3, namely, M.C. Ali and Andunhi have filed Criminal Appeal No.499/2002 and accused Nos.5 and 6, namely, B.K. Bayan Kunhi and K.B. Abbas have filed Criminal Appeal Nos.500-501/2002.

6. We have heard the learned counsel for the parties. Before we consider the submissions made by the learned counsel, it would be appropriate at this stage to notice the case as presented by the prosecution.

7. It is claimed by the prosecution that Moosa Haji, (PW5), his family and some of his close relatives are believers of Shemsia Thareequat sect in the Muslim community. They are the worshippers of Sun and followers of Sai Baba. They are not accepted by a large section of the Muslim community. Therefore, the local Jumaath had unleashed "a sort of an overt and covert attack on PW5 and other followers of Thareequat movement." This had created fights between the two groups of the locality which caused friction in the relationships, activities and life which ended up in a number of disputes including criminal cases. The majority in the Muslim community of the area had ex-communicated PW5 and other followers of Thareequat movement. It is further alleged by the prosecution that some of the religious scholars had even called upon the members of the Muslim community to annihilate the followers of the Thareequat movement on the belief that such actions would bring the reward from the Almighty. Such type of social boycotting had put PW5 and other followers in a situation of not even getting employees to work in the agricultural fields and also for other work. This had compelled

them to bring the workers from other areas. PW1, Chandrasekhara, was thus brought by PW5 from Ubradka, Mittur, Karnataka State and deceased Faizal from Manjeri. Because of the threat of other people of the Jumaath both PW1 and deceased Faizal were residing in the house of PW5. PW1 Chandrasekhara belonged to Scheduled Caste.

8. On 30.1.1994, PW5 Moosa Haji and his son PW2 Hussain returned at about 8 p.m. to their home. They came to know that the child of CW9, Mammunhi Haji, the brother of PW5, had met with an accident and suffered some injuries. On receipt of this information, PW5 asked PW2 to go to the house of CW9 and enquire about the details. Because of the tension prevailing in the locality between the two groups of Muslim community, PW5 asked PW1 and the deceased Faizal to accompany PW2 to the house of CW9. Thus all the three proceeded to the house of CW9, at about 9.15 p.m. There were two ways to reach the house of CW9 from the house of PW5. Both were through the paddy fields, one on the higher level and the other on the lower level. They had proceeded along the path way leading through the higher level. When they reached the Thrikkandam paddy field of one Kunhamu Haji, they proceeded westwards to reach the house of CW9. The paddy field was free of paddy as the harvest was over. They walked through the bund of the fields. All three of them had torches in their hands. While thus proceeding, they found a group of

about 15 persons standing on the north-western end of the paddy field. While they were proceeding westwards the group of 15 moved towards eastwards along the same bund. The group also had torches in their hands and they had flashed the torches on PW5, 1, 2 and Faizal who also flashed back their torches. In this light PW1 identified A1 to A6 as he knew them by name. A7 to A13 were also present in the group whom PW1 could identify, but did not know their names at that time. PW2 knew A1 to A13.

9. When both the groups thus reached at the paddy field, the accused suddenly attacked PWs 1, 2 and Faizal. A1 had MO1 weapon in his possession and A2 to A6 were in possession of knives. A7 to A13 were in possession of sticks like MO2. A1 to A4, with the weapons in their hands, inflicted cuts on the neck of Faizal. When PW2 intervened, A1, A3, A5 and A6 attacked PW2 with weapons in their possession. Because of the severity of the injury suffered by Faizal, he fell down. A1 to A6 had again attacked Faizal who was lying down by inflicting cut injuries on his body. The other accused had beaten Faizal and PW2 with sticks. The accused were shouting to do away with PW2 and Faizal. To save his life, PW1, i.e., Chandrasekhara jumped from the higher level of the ridge to the lower level and took shelter in the house of CW9 Mammunhi Haji. PW2 Hussain, who also suffered injuries, ran for his life and reached the

house of CW9. As Faizal did not reach the house of CW 9 Mammunhi Haji, PW 1 along with a son of CW 9 went to the scene of occurrence and saw that Faizal was lying dead in the paddy field.

10. PW 5 Moosa Haji heard a lot of noise from the side of the paddy field. He sensed something bad must have happened, as his son and employees had gone in that direction. Therefore, becoming restless, he proceeded towards the direction from where the noise originated. He ran towards the west of his house and as he reached the path to the mosque on the north direction, he saw some persons entering that pathway from the paddy field in the west. Some people had already gone towards north. On reaching nearer, he identified accused 1 to 4, 7, 9 and 11 to 13. All of them possessed weapons like knife or sticks. PW 5 Moosa Haji enquired as to what happened to which A 7 replied that they had killed two persons. Suddenly A 13 gave a cut to PW 5 with a sharp edged knife-like weapon. While warding off the same, PW 5, fearing further attack, ran towards his house. He locked the door and remained inside. His attempts to contact CW 9 Mammunhi Haji over the telephone were not successful.

11. PW7, the then Sub-Inspector, Kumbla Police Station, received information at 9:50 pm on 30.1.1994 over telephone that some incident had taken place at Ujar Ulwar village resulting in the death of one person. The informant did not disclose his identity. PW7 entered

this information in general diary (Ex. P9). He then proceeded to the place of occurrence with whatever force he had in the police station.

12. On reaching the place of occurrence, after making inquiries near the local mosque, he was able to trace out the house of PW5, who was inside the house. He (PW5) narrated what had happened to the Sub-Inspector and took the police party along the pathway to the house of his brother, CW9. At the house of CW9, they saw PW2 who had sustained injuries. At that time they learnt that Faizal had been murdered. The Sub-Inspector (PW7) immediately made arrangements to take PW2 and PW5 to the hospital in the police jeep.

13. First Information Statement was taken from PW1 by PW7 in the house of CW9. Since Police jeep was sent with PW2 and PW5 to the hospital, he sent a constable to Kumbla Police Station. The Head Constable (PW8) on general diary charge (GD charge) duty, registered the FIR at 00.30 hours on 31.1.1994. On that day morning itself it was sent to the Magistrate and the Magistrate signed it on the same day at 3.30 p.m. According to the prosecution, Circle Inspector, Kumbla Police Station (PW9) who was at Kasargod on law and order duty in connection with the meeting of the Muslim League, received wireless information that two groups had clashed at Ujar Ulwar village. He, therefore, rushed to the village with police party where he met PW7. Both of them made arrangement for maintaining law and

order. They also posted guards at the scene of occurrence during the night. The injured witnesses PW2 and PW5, who were traveling in the police jeep, reached Bayikatta. From there they got into the car of their relative as the jeep had to be returned to the Sub-Inspector PW7. At that stage, PW5 remembered that he had forgotten to take any money. They, therefore, went to the house of one Mohan Kamath, a friend of PW5, who also accompanied them to the City Hospital Research and Diagnostic Centre at Mangalore.

14. When the first accused was questioned, he made a confessional statement to PW9 about the place of concealment of MO1, weapon of offence. A1, after recording the statement, took PW9 to the ditch with thick grass on the eastern side of the paddy fields where the occurrence took place. He took out knife (MO1) from the place where it had been concealed. This was duly sealed by PW9 under Ex.P8 seizure mahazar on 3.2.1994. The seizure mahazar is attested by PW6. The accused were produced before the Magistrate Court and remanded in custody. The MO1 was then forwarded for chemical examination. The report of the chemical analysis Ex.P21 shows there was human blood on MO2 series, the sticks. There was no blood on MO1, 6 and 9.

15. Dr. S. Adhyanth PW3, the duty medical officer, examined PW2 and PW5. He issued the wound certificate (P4) in respect of PW2 and

admitted him for treatment. He was discharged on 7.2.1994. The same doctor also issued the wound certificate (P5) on examination of PW5 who was treated as an outpatient. The doctor PW3 sent intimation Exbs.P6 and P13 to the police regarding the admission of PW2 and treatment of PW5. Further investigation was conducted by PW9 from 31.1.94. He conducted the inquest on the dead body of Faizal. He also seized material objects (MOs 2 to 9) and prepared Ex.P14 report. A knife (MO6) covered with newspaper (MO9) was found kept at the back of waist of the deceased. During the inquest PW9 got the photographs of the dead body and the scene of occurrence which is marked at Ex.P2 (series). Ex.P2 (A) shows that MO6 was on the waist of the deceased. The photos and the negatives were seized under Ex.P17 seizure mahazar, when produced by the photographer. PW9 also drew up Ex.P.15 scene mahazar. In Ex.P1, PW1 mentioned only the names of accused A1 to A6. But he stated several more accused were there whose names were not given. But according to him, he could identify them. After questioning PW2 and PW5, names of other accused were included.

16. Dead body of Faizal was sent for post mortem and PW3 received the post mortem certificate (Ex.P3) from the then doctor of Community Health Centre, Kasargod. The post mortem certificate was marked by consent of both sides under Section 294 of the

Criminal Procedure Code. In the First Information Statement (Ex.P1), PW1 Chandrasekhara had stated the names of accused 1 to 6. He also stated that there were 7 more accused whose names were not known to him but he could identify them on sight. PW2, according to the prosecution, was under general anesthesia for suturing of the wounds and, therefore, could not be questioned immediately. However, he was questioned by PW9 on 3.2.1994 in the City Hospital. Thereafter PW9 filed report (array of accused) P.16 in Court on 3.2.1994 including the names of accused 7 to 12. PW5 was questioned by the investigating officer, PW9. On 4.2.1994 on the basis of his statement name of 13th accused was added. Accused Nos. 1 and 3 to 6 surrendered before the investigating officer in his office on 3.2.1994. They were duly arrested. Accused Nos.A8 to 12 were arrested between 29.4.1994 and 30.4.1994.

17. At the same time, A2 to A7 also claim to have suffered some injuries on the night of 30.1.1994. They went to Unity Health Complex at Mangalore on 31.1.1994, where they were admitted and treated as in-patient. Exs. P23 and P24 are the treatment particulars whereas Exbs.P25 and P26 are the case sheets respectively of the accused. PW10 and DW1 had treated them during this period. They were discharged on 23.3.1994 on which date PW9 arrested them. A13 was absconding but later appeared before the Magistrate Court.

18. While at the Unity Health Complex**,** a statement was given by M.C. Ali (A2), which was recorded by the Kadari Police Station as the First Information Statement (Ex.P22). In this he claimed that on 30.1.1994, he and his neighbour Abdul Rahiman were returning from Kasargod at 9.30 p.m. after attending a Muslim League meeting. When they reached a place called Trikkandam through Kunjamu Haji's field at 10.15 p.m., they found Mammunhi Haji's son Hussain, his brother Abdul Khader, Moosa Haji, his son Hussain, his brother-in-law Jamal Bayikkatta coming from the opposite direction. The complainant also stated that these people had enmity with them and thus they blocked them and told "we will not leave anybody". Mammunhi Haji's son and Jamal inflicted injuries on his left hand shoulder and armpit. When Abdul Rahiman came to block, Moosa Haji and his son inflicted injuries on his right hand and the wounds started bleeding. At that time complainant fell down and he was beaten up on his right leg and left side of the head with a stick and as a result of which he became unconscious. He has also stated in his complaint that there was a case pending regarding the issue of a mosque between him and the accused and thus the accused had caused injuries to them with sword-like knife, sticks, etc. On the basis of the aforesaid statement, Crime No. 67/94, transfer FIR (Ex.P11) for offences under Sections 143, 147, 148, 324, 341, 506

read with 149 IPC was registered. The same was later on transferred to Kumbla Police Station, where PW8 registered it as Ex.P12 of Kumbla Police Station. PW9 also conducted the investigation of FIR (Ex.P12). On completion of the investigation charges were filed against five accused persons including PW2 and PW5.

19. On committal this case was numbered as SC No.66/95 against the 13 accused. The case against 5 accused, registered on the basis of FIR Ex.P12, was numbered as SC 111/95. The trial of both the cases was taken up simultaneously one after the other and judgment in both the sessions cases was pronounced on the same day. We have noticed above that after trial accused 1 to 6 were convicted in SC No.66/95.

20. On remand, the accused had examined DWs 1 to 5. The Trial Court takes note of the post mortem report of the dead body. It was marked as Ex.P3 by consent of both the sides. The report indicates the following external and internal injuries:

> "Entire body of an adult male lying supine. Rigor mortis present in both upper & Lower limbs. Bleeding from both nostrils present.
>
> External injuries:- Incised wound on the face transversely placed extending from the center of upper lip to Lt. Cheek 14 x 3 x 3 c.m. exposing the oral cavity cutting the full thickness of facial muscles. 2) Incised wound on the Lt. Cheek below the Lt. Eye transversely placed 6 x 1 c.m. skin deep. 3) Incised wound on the lower part of chin transversely placed 10 x 6 c.m. flap of skin

& subcutaneous tissue raised exposing the lower part of mandible. 4) Incised wound on the Right side of neck transversely placed 12 x 5 x 6 c.m. cutting the muscles of neck on Right side with carotid artery and jugular veins and trachea being cut.

Incised wound on the inner aspect of left ankle region transversely placed 6 x 1 x1 c.m. cutting the lower end of tibia. 6) Incised wound 1 c.m. above injury No.5 transversely placed 4 x 1 c.m. skin deep. 7) Incised wound on the front of right leg transversely placed 5 x2 c.m. cutting the tibia which is fractured. 8) Incised wound on the front or right leg 6 c.m. above injury No.7, 4 x 5 c.m. skin deep. 9) Incised wound on the dorsum of right second toe 5 x 0.5 x 1 c.m. along the long axis of the toe cutting the tendons and bone. 10) Linear abrasion obliquely placed on the front of right thigh 6 c.m. long. 11) Linear abrasion obliquely placed on the front of left thigh 5 c.m. long. 12) Linear abrasion transversely placed on the front of left shoulder 3 c.m. long. 13) Incised wound on the right side of scalp running anterior posterior 6 x 1 c.m. exposing the skull.

Internal Examination :- Thoracic cage intact. Heart & Lungs intact. Plae stomach, contains partly digested food materials. Liver, spleen and kidneys plae. Urinary bladder contains 150 c.c. of Urine, skull intact, Brain and meninges pale".

21. The opinion as to the cause of death of Faizal given in Ex.P3 is that "the deceased dies due to hemorrhage and shock due to injuries to major vessels of neck". During the hearing neither the prosecution nor the defence has challenged the finding and the opinion contained in Ex.P3. Therefore it was accepted by the Trial Court that Faizal died

due to hemorrhage and shock suffered by him because of the injuries on the major vessels of the neck.

22. We may also notice here that the injuries noted in the wound certificate (Ex.P4) issued to PW2 on examination by the doctor PW3. PW2 was examined at 1.15 am on 31.1.1994. The certificate indicates the following injuries:

> "1. L shaped incised wound on the parietal aspect of the skull 5 x 6 c.ms;
> 2. Two small incised wounds on the right parietal region of the skull;
> 3. Incised wound over the nose 2 cm x 1 cm;
> 4. Swelling and deformity over the lower end of left hand. X-ray of the left hand showed comminuted fracture of right ulna lower end."

23. As noticed earlier, he was admitted on 31.1.94 and discharged on 7.2.94. The injury No.4 was grievous while the other injuries were simple. The doctor also noticed that the history was of alleged assault by known persons at Ulwar, Kumbla at 10.15 pm on 30.1.1994. PW5, who was examined by doctor PW3 at 1.25 am on 31.1.1994, was also issued wound certificate Ex.P5. As per Ex.P5 statement following injuries were suffered by PW5:

> "1. Incised wound over the first web space of the left hand with partial tear of the flexor tendons (1" x ½")'
> 2. Incised wound on the base of the left thumb 3/4 "x ¼".

24. Doctor also opined that injury No.1 in respect of PW5 was grievous in nature. PW3 sent intimation Ex.P6 to the police. As per the intimation report P6, RMO had come to the hospital. On the basis of Ex.P6, it has been noticed that PW2 was taken to the operation theatre for suturing and closed reduction under general anesthesia was done. The report also shows that at 11.40 am on 31.1.1994 the patient was not in a position to give a statement. The Trial Court notices that after remand the defence had examined DW1 to DW5 and marked Exs. D7 to D10, the prosecution had marked Ex. P25 (a-g). Thus the total evidence in this case was PW1 to 10 and Exts P1 to P26 series together with MO1 to 9 for the prosecution and DW1 to 5 and Exts.D1 to D10 for the defence. The Trial Court, after hearing submissions from the prosecution as also the defence, formulated the following points for consideration:

> "1. What was the cause of death of Faizal?
> 2. Whether the accused 1 to 6 along with others had formed themselves in to an unlawful assembly and acted, in furtherance of their common object, as alleged against them by the prosecution?
> 3. What offence, if any, is proved against the accused 1 to 6?
> 4. Regarding sentence?"

25. As noticed earlier, the post mortem report has been accepted by both the sides, according to which Faizal died due to hemorrhage and

shock suffered by him because of the injuries on the major vessels of neck. While discussing points No.2 and 3, the Trial Court notices that PW1 is a native of Mittur, in State of Karnataka and has been living in the house of PW5 as a worker under him for the last about 10 years. He had gone with PW2, and the deceased Faizal to the house of CW9 at about 9.15 pm on 30.1.1994. It is alleged by the prosecution that the occurrence took place, whilst they were enroute to the house of CW9. PW1 has supported the prosecution version. It was he who gave Ex.P1 FIS to PW7 on the basis of which crime against A1 to A6 was registered at Kumbla Police Station. The Trial Court then notices the sequence of events as narrated earlier. Prosecution mainly relied on the evidence of PW1, 2 and 5 in support of its version.

26. The Trial Court noticed the entire sequence of events, narrated above. It also noticed the defence version. It was noticed that the learned counsel appearing for the accused had pointed out that there was delay in sending Ex.P1 and P10 to the Court; PW1 was probably not present at the scene of the incident; the injuries sustained by A2 and A7 were not explained by the prosecution and the registration of a counter case by A2 would be sufficient to show that it was the PWs who were the offenders.

27. The Trial Court further notices that the local Muslim community who are in majority have a long standing enmity with PW5, his family and other close relatives. The religious scholars had even called upon their followers to do away with the believers of Shemsia Thareequat sect of the Muslim community. Their life and movement had been made impossible in the locality. The majority of the Muslim community was encouraged to disrupt the life of the family of PW5 and his relatives. They had been boycotted and were not allowed to socialize with the local Jumaath. The Trial Court also notices the prosecution version that on 30.1.1994 at about 8 pm, PW5 and his son PW2 returned to the house. They were informed that CW9, brother of PW5, who was residing at some distance from the house of PW5 had telephoned to inform that his son had sustained some injuries because of a fall. Therefore PW5 had asked PW1 deceased Faizal to go along with PW2 to the house of CW9. PW1 and Faizal had been asked to go along with PW2 due to the peculiar situation existing in the locality against PW5 and his family. At about 9.15 P.M. they proceeded to the house of CW9 Mammunhi Haji.

28. In appreciating the evidence with regard to the alleged occurrence, the Trial Court notices the background of both PW1 and deceased Faizal with regard to their relationship with PW5 Moosa Haji. It is noticed that PW1, who belongs to a schedule caste

community, had been working for PW5 for the last 10 years. At the time of the occurrence he was allegedly residing in the house of PW5. He admits that his native place is Mittur Sullia in the State of Karnataka. Faizal was also working under PW5 and he is the native of Manjeri, Malappuram District. He had also been brought by PW5 for employment as he was unable to find any local workers. The Trial Court notices that according to both PW1 and PW2 they had taken the shortest route through the paddy field to the house of CW9. All of them had torches in their hands. Whilst they were going they found a group of 15 people standing together about 50 meters away from them. At that time they were passing through the pathway near the house of A4. They did not suspect anything when they had moved forward for another 10.5 meters. One of the individuals from the crowd flashed the torch light at them. Other members of the crowd flashed their torch lights on the ground. By that time the distance between the deceased PW1 and PW2 and the other group was about 5 meters. All three of them also flashed back their torch lights. PW1 and PW2 were walking with Faizal in the front, in the torch light. Suddenly they cut Faizal on his neck causing injuries. PW2 intervened. Then A2, A3 and A5 and A6 caused injuries with their weapons on the hands, head, face and other parts of the body of PW2 by cutting with the weapons. Faizal fell down and PW1 ran away from the scene. PW1 stated that after seeing that PW2 and Faizal were

injured, he ran for safety to the house of CW9. The door of the house was closed as they were afraid of further attacks. Since Faizal did not reach the house of CW9, PW1 and son of CW9 went to the place of occurrence. They saw that Faizal was lying dead in the paddy field. Both of them returned to the house of CW9 and reported the matter. PW7 then got the information over the telephone as narrated earlier. He came to the place of occurrence, and went to the house of PW5. He had also sustained injuries in the same incident, after Faizal had been killed and PW2 had been injured. PW5 then took the police party to the house of CW9 by the same route which had been taken by PW1, PW2 and Faizal. Statement made by PW 1 was recorded as First Information Statement by PW 7 which is produced as Ex. P1. This was sent to PW8 who recorded the FIR. The FIR according to PW7 was recorded at 00.30 hrs on 31.1.1994. It was received by the Judicial Magistrate, Ist Class, Kasargod at 3.30 pm on 31.1.1994. The Trial Court notices the submissions of the defence that this gap of 15 hrs clearly shows that PW1 was not present in the house of CW9 when PW7 went to that house. In fact, no First Information Statement was recorded by PW7 at that place. According to the defence Ex.P10 FIR was registered much later. This gap has given an opportunity for the prosecution to manipulate the case and book innocent persons who were thought to be inimical with PW5 and his family.

29. Analyzing the aforesaid submissions of the defence, the Trial Court notices that Ex.P10 FIR was received by Kasargod Magistrate at 3.30 pm on 31.1.94. The distance from Kumbla Police Station to Kasargod is less than 15 kilometers. They had a duty police constable who comes to the court to attend the day's cases at Kumbla Police Station. Therefore, there was no difficulty for the Kumbla Police Station authority to send Ex.P10 and Ex.P1 along with police constable so that they will be received at least by the office of the Magistrate if not the Magistrate himself before 11 am on that day. The Trial Court scrutinizes the effect of late receipt of the FIR by the Court very closely. The prosecution had submitted that the delay in receiving Ex.P10 FIR was not fatal to the prosecution case as it did not prejudice the accused and it was not introduced to make any improvements or distort the version of the occurrence. After appreciating the aforesaid legal position the Trial Court notices that since it is the case of the prosecution that PW1 had run away from the place of occurrence after witnessing the assault, the action of PW1 and the evidence of the prosecution needs close scrutiny. Therefore late receipt of Ex.P10 and P1 assumes importance. The Trial Court then notices that it is recorded in the inquest report Ex.P14 that the inquest on the dead body of Faizal was conducted on 31.1.1994. The inquest commenced at 10 a.m. and was completed at 12.30 p.m. The

query at Sl.No.12 (a) of the prescribed form is to be filled by PW9 under Section 174 Criminal Procedure Code. The query is "while conducting inquest is any person suspected who and why". In answer to this Ex.P.14, PW9 recorded that "accused are known". The Trial Court also notices that P.W.9 did not record who the accused are and why they are suspected.

30. The Trial Court agrees with the suggestions made by the defence that Ex.P.14 was perhaps prepared prior to Ex.P.1. Vague answer was given to Question 12 (a) of Ex.14, so that other persons could be added as the accused. Therefore, it has been held that Ex.P1 has not been registered as alleged by P.W.7. Another suspicious circumstance was that PW1 had deposed that Ex.P1 was recorded by himself. But in cross examination, he conceded that Ex.P1 was not in his own hand writing and is in that of some other person's hand writing. The Trial Court, therefore, holds that Ex.P1 was not recorded as alleged by the prosecution at the place and time recorded both in Ex.P1 as well as in Ex.P10. The Trial Court also notices that when PW1 appeared as DW5 after the remand, he deposed that he had been working for PW5 for the last 10 years. He also deposed that he would do whatever PW5 asked him to do. However, since the witness had clarified in the re-examination that he

did not understand the question, the Trial Court ignored the earlier statement.

31. The Trial Court then examines the sequence by which the names of accused No.7 to 12 have been incorporated. The Trial Court takes note of the fact that both the parties claim to have recognized each other in torch light. After analyzing the evidence with regard to the assault, the Trial Court notices that there is no reason as to why the attackers would allow PW1 to escape. After all they were fifteen persons in a group and had every intention to kill the three members of the opposite group approaching them. The Trial Court also concludes that behaviour of PW1, PW2 and Faizal to continue walking towards the other group even though they were carrying weapons in their hands would not be consistent with normal human conduct. The normal instinct would have been either to retaliate or to run away from the scene. On the basis of the above the Trial Court had formed an opinion that the prosecution had not placed before the Court the exact situation under which the attack had really occurred. This would put a cloud of suspicion over the presence of PW1 at the scene of the crime. In case PW1 was present, he ought to have identified the accused with their respective weapons. If he had fled the scene, he could not have given all the graphic details of the assault, in the FIS, as recorded in the house of CW9. For this reason perhaps PW9 was

not in a position to reply to the prescribed query at Sl.12A under Section 174, Criminal Procedure Code while conducting the inquest.

32. The Trial Court pointed out numerous other infirmities in the prosecution case. It is noticed that PW1 was such a dedicated worker of PW5. He had even made a false complaint against three of the accused under Section 3(1)(X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 506(2) read with Section 34 IPC. All the accused were acquitted as the prosecution version was disbelieved. The Trial Court also refers to another judgment Ex.D8 in case No.98/1995 delivered on 30.5.1996 in which four accused were proceeded against by PW1 under Sections 341, 323, 324 IPC read with 34 IPC and Section 310 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In this also the Court observed that it is not safe to accept and to act upon the evidence of PW1, therefore the accused were acquitted. The Trial Court, therefore, notices that PW1 is not a believable witness. He is a sincere employee of PW5. In view of his past conduct the locals probably had more hatred towards PW1 than Faizal. Therefore it becomes more suspicious that Faizal gets killed while PW1 is left uninjured by the same group.

33. Moving on to the evidence of PW2, who was admitted and treated in the city hospital Bangalore at 1.15 A.M. on 31.1.1994, the

Trial Court takes note of the wound certificate issued by PW3. PW3 stated that till PW2 was taken to the operation theatre, he was in a position to speak. It is further stated by this witness that the effect of general anesthesia may last for two and a half hours and thereafter the patient will be normal. According to the endorsement made on Ex.P6 by Dr. Geeta Rao the then RMO, PW2 had been taken for suturing and closed reduction under general anesthesia at 11.40 am on 31.1.1994. PW2 was not questioned until 3.2.1994. He was able to speak till he was taken for suturing at 11.40 on 31.1.1994. Although PW2 was present in the house of CW9, PW7 did not record any statement from him. Since PW2 was the injured witness he would have surely given a true version. He was present at the scene of occurrence. He had faced the attackers whereas PW1 had fled the scene on seeing the assailants. The prosecution had totally failed to explain as to why PW2 was not questioned till 3.2.1994. The explanation given by prosecution that PW2 was not in a position to speak is belied by the statement of PW3 together with the endorsement as well as the recorded content in Ex.P4. From the above also the Trial Court formed an opinion that the prosecution is not placing the whole truth before the Court.

34. The Trial Court then critically examined the evidence of PW5, father of PW2. PW3 had also treated PW5 and given wound certificate

Ex.P5. It is noticed that PW9 did not question PW5 till 4.2.94. It was after questioning PW5 that A13 was added to the earlier accused and then no explanation was available as to why PW5 was not questioned till 4.2.94. The only explanation given by the prosecution is that he was not available for interrogation. Rejecting the aforesaid explanation the Trial Court concluded that PW9 deliberately delayed recording the statement of PW5 to implicate other innocent persons. At this stage, the prosecution had argued that the statements of PW2 and PW5 cannot be discarded only on the ground that they are interested witnesses. The principle of law is accepted by the Trial Court. Therefore, the evidence of these witnesses was very carefully scrutinized. The Trial Court notices that there is absolutely no independent evidence in this case to corroborate the evidence of these interested witnesses. Neither the immediate neighbours nor any of the people living in the vicinity have been examined. The explanation given by the prosecution is that due to enmity towards PW5 and his family none has come forward to give the evidence. The Trial Court, therefore, observes that in such circumstances the evidence of PW1 and PW2 had to be carefully examined to rule out any inherent inconsistencies. The Trial Court further notices that there is no independent evidence with regard to the injuries caused to PW2 by A2, A3, A5 and A6. If these four persons had actually attacked PW2, he would have suffered many more grievous injuries. The only

grievous injury suffered by him was fracture of ulna lower and other injuries were simple in nature. PW2 at that time had run away. Faizal after suffering fatal injuries had fallen down. Again there is no corroboration from any independent witness.

35. To make the matter even worse, A2 and A7 had suffered a number of injuries. PW10 had deposed that A2 had suffered the following injuries:

> "(1) incised wound right shoulder 2" in length
> (2) incised wound left side of chest 1½" in length,
> (3) incised wound left elbow 3" in length,
> (4) incised wound left forearm 3" in length and
> (5) fracture of lateral condyle of left humerus."

36. According to PW10 injury No.5 is a grievous injury. Similarly, injuries in respect of A7 were given in Ex.P24. This also shows that he had sustained an incised wound 2½ inches long over the left forearm with tendons divided. This injury is grievous in nature. As noticed earlier, this assault had resulted in the registration of transfer FIR in Crime No.67 of 1994 which was subsequently transferred and registered as FIR Ex.P12 at Kumbla Police Station. There is no explanation offered of the injuries. The Trial Court notices that in this case PW9 had concluded after the investigation that both the cases are true. But none of the prosecution witnesses PW1, PW2 and PW5 speak about the manner and the circumstances under which A2 to A7

had sustained injuries. Therefore, this also leads to the conclusion that the prosecution story as put through PW1, 2, and 5 is not correct.

37. The defence has also pointed out that the investigating team did not even care to collect blood stained earth from the scene of the occurrence. There was no moonlight on 30.1.1994. The torches allegedly possessed by Faizal, PW1 and PW2 at the time of the occurrence were not recovered. In spite of the availability of son of CW9 and CW9 himself, they were examined as witnesses. The Trial Court, however, observed that "these small issues were, however, not considered to materially effect the case as put forward by the prosecution either in favour of the prosecution or in favour of the defence." However, otherwise on independent assessment of the evidence the Trial Court concluded that there was no evidence to connect accused with the crime.

38. The High Court in the impugned judgment has narrated the entire sequence of events as recapitulated by us above. The High Court also noticed briefly the reasons given by the Trial Court for not believing the prosecution story. It is observed that there is no delay in recording the F.I. Statement. According to the High Court, there is no circumstance to doubt that Ex.P.1 was not recorded at the time and place of the incident. There is no reason for PW7, the Sub-Inspector

or PW9, the Investigating Officer, to make any false case. The High Court also concluded that it was unlikely that P.W.9, the Investigating Officer, and P.W.8 who had registered the FIR being Muslims, would concoct the story against the accused who were also Muslims. It was unlikely that they would have supported PW5 and his family who had leniency towards BJP. The High Court also concluded that there was no delay in forwarding the FIR to the Magistrate. Ex. P10 FIR was registered at 00.30 hrs on 31.1.1994. Ex P9 shows that there was only PW 8, Head Constable and another constable in the police station at that time. Other Police personnel were on law and order duty. Ex.P.10 was sent to the Court through a Constable PC 450 at 8 a.m. on 31.1.1994. If the Magistrate noted his initial only at 3 p.m. the prosecution cannot be faulted. Even if there is delay, it has been clearly explained. Mere delay in receipt of occurrence report by itself does not make the investigation tainted. The High Court also observed that on getting telephonic information, after entering the same in the G.D., the police party rushed to the spot. On reaching the spot without any delay, F.I. Statement was recorded. There was no delay in starting the investigation. Injured were sent to the hospital in the police jeep itself. Law and order situation was tense. Ex.P.1 was recorded at the house of C.W.9 at 11.45 p.m. and the FIR was registered at 00:30 hours on 31.1.1994. With regard to the non-mentioning of the accused in the column provided under Sl.No.12 (a)

of the inquest report (Ex.P.14), it is noted that the names of the accused are mentioned at the column where it is provided that "any person was questioned and whether statement was recorded from any person and their statement." The High Court accepted the fact that the statement was recorded from C.W.9 who had not seen the incident. The eye witnesses PW1, PW2 and PW5 were not present when the inquest report was prepared. That is why in column 12(a), it was recorded that "accused are known". Their names were actually mentioned at column No.13 in Ex.P.14. The High Court also observed that non-examination of C.W.9 is not fatal. The High Court also makes the observation that the object of preparing the inquest report is only to draw a report of the apparent cause of death describing the wounds found on the body of the deceased and stating in what manner and by what weapon or instrument such injuries were inflicted. It is neither necessary nor obligatory on the part of the investigating officer to investigate into or ascertain who were the persons responsible for the death. Since the names of the accused have been mentioned in column No.13 it would not, in any manner, weaken the prosecution case. The High Court also negatived the reasoning of the Trial Court as to why the FIS was not recorded on the basis of the information given by P.W.1 rather than P.W.2 who was injured. According to the High Court, there is no rule or mandate under Section 154 of the Code of Criminal Procedure that F.I.

Statement should be recorded only from an eye witness. The High Court reiterated that the police reached the trouble spot on receiving information by telephone. They went to the house of PW5 hearing that some incident had taken place near his house. PW5 then took them to the house of C.W.9. There they saw PW1 and PW2. The High Court also notices that when P.W.1 saw that the deceased fell down and PW 2 injured, he then escaped to the house of C.W.9. Since he had seen the persons who had attacked the deceased, he identified at least A1 to A6 with their names. It is noticed by the High Court that PW2 was seriously injured. His presence was also not doubted. He was made an accused in the counter case. The High Court noticed that although PW2 was injured, he was not unconscious. According to the wound certificate, Ex.P4 on 31.1.1994 at 11.40 a.m. he was not in a position to give a statement. At the time the anxiety of the police was to send the injured for treatment, therefore, the names of the accused were subsequently disclosed by PW2. The High Court then considered the conduct of PW1 in filing complaints under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is, however, observed that the evidence of PW1 cannot be ignored on the ground that he was a loyal servant of PW5. Non recording of the statement of PW2 and P.W.5 immediately was also explained by the High Court on the ground that there was a law and order problem in the area. When the police went to record the statement on the next day, P.W.2 was

under general anesthesia. He was not in a position to give a statement. He was only questioned when he was in a position to speak. With regard to adding the names of accused nos. 7 to 13, it is held that at the maximum, the other persons added by PW.2 or 5 when they were questioned can be absolved by giving the benefit of doubt. The High Court then examined the circumstance that the incident happened in the night after 9.15 p.m. PW1 and PW2 are natural witnesses. PW2 was an injured eyewitness. PW5 was also injured.

39. On the basis of the law as settled by this Court in a number of judgments which are noticed by the High Court, it is held that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person leaving a way for the real accused to escape. PW2 is not only related to PW5 but he was also seriously injured. The High Court reiterates that the presence of PW2 at the scene of occurrence is not disputed due to the registration of the counter case. With regard to the non explanation of the injury on the accused, it is stated that PW9 and PW10 spoke about the same. The injuries were also explained by PW10, the doctor, who stated that the injuries in Ex.P.23 and P.24 certificates can be caused otherwise than by assault, i.e., by a fall or by a road transport accident.

40. Upon consideration of the entire evidence, the High Court held that the prosecution was able to prove the case conclusively against A1 to A6 beyond any shadow of doubt. The High Court also recorded that "the findings by the Sessions Court otherwise is perverse and manifestly erroneous. Appreciation of evidence by the Sessions Court in this case lacks coherence and findings are based on unwarranted assumptions. Hence, even though it is an order of acquittal, interference is required." The High Court also observed that "in this case, only conclusion possible from the evidence is that accused Nos. 1 to 6, i.e., respondents in this appeal are guilty of the charges levelled against them." With these observations, the judgment of the Trial Court was set aside and the appellants were convicted as noticed by us above.

41. We have heard the learned counsel for the parties. Mr. Ranjit Kumar, Learned Senior Counsel, appearing for the appellants in Criminal Appeal No.434 of 2002 has addressed the Court on all the issues discussed by the Trial Court as also by the High Court. The learned senior counsel has reiterated the infirmities in the prosecution evidence as narrated by the Trial Court. Learned counsel submitted that the findings of the Sessions Court were just and reasonable and the High Court ought not to have interfered in the appeal. It is settled law that if two views are possible, the one which

favours the accused has to be accepted. That being the position, the High Court erred in upsetting the acquittal and recording the conviction of the appellants. The submissions made before the Trial Court as before the High Court have been reiterated. It is not necessary to recapitulate the same again.

42. On the other hand, the learned counsel appearing for the State of Kerala has submitted that acquittal of the appellants has been set aside by the High Court on a thorough appreciation of the evidence. Each and every circumstance relied upon by the Trial Court had been answered by the High Court. It is unbelievable that PW2 and PW5, who were injured witnesses, would falsely implicate the accused. According to the learned counsel, only one conclusion was possible which has been duly recorded by the High Court.

43. We have considered the submissions made by the learned counsel. We may notice here that the High Court has clearly recorded the legal proposition involved in this case in the following words:

> "Being an appeal against acquittal, we are bound to see whether views expressed by the learned Sessions Judge are reasonably possible. If the views expressed are reasonably possible, even if another view is possible, appellate court will not interfere in it."

The aforesaid statement of law recognizes the settled position in the case of ***Antar Singh v. State of M.P.***, *(1979) 1 SCC 79*:

> **"**This Court has repeatedly held that although in an appeal against acquittal, the powers of the High Court in dealing with the case are as extensive as of the Trial Court, but before reversing the acquittal, the High Court should bear in mind that the initial presumption of the innocence of the accused is in no way weakened, if not reinforced, by his acquittal at the trial; and further, the opinion of the Trial Court which had the advantage of observing the demeanour of the witnesses, as to the value of their evidence should not be lightly discarded. Where two views of the evidence are reasonably possible, and the Trial Court has opted for one favouring acquittal, the High Court should not disturb the same merely on the ground that if it were in the position of the Trial Court, it would have taken the alternative view and convicted the accused accordingly."

44. This settled proposition of law has been reiterated by this Court in the case of ***Chandrappa*** *v.* ***State of Karnataka*** {2007 (4) SCC 415}. In this case, the provisions of Section 378 of the Code of Criminal Procedure, 1997 were critically examined. After adverting to numerous decisions of this Court, it was observed as follows:

> "From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (*2*) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (*3*) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not

> intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court.
>
> (*5*) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court."

From the above, it becomes evident that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal. The acquittal re-enforces and reaffirms the presumption of innocence of the accused. The High Court, in fact, makes a reference to the judgment of this Court in the case of ***Kali Ram*** *v.* ***State of H.P.****, (1973) 2 SCC 808,* wherein this Court has observed :

> "Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

45. Having noticed the aforesaid principle, the High Court reviewed the entire evidence. It reached the conclusions which are opposite to the conclusions recorded by the Trial Court. We are unable to accept the opinion of the High Court that findings recorded by the Trial Court are perverse and manifestly erroneous.

46. We have very elaborately dealt with the judgments of both the courts below, to show that the Trial Court had meticulously examined the entire evidence, to record its conclusions. We may now briefly indicate our reasons for not agreeing with the view expressed by the High Court, that the conclusions reached by the Trial Court were perverse and manifestly erroneous.

47. There was a clear cut enmity between PW5 and his family on the one side and the accused party on the other side. It was a religious dispute which undoubtedly led to high tension. The majority group had gone so far as to encourage the members of its community to annihilate PW5 and his family. Prior to the assault, there was a meeting of the Muslim community. The incident took place in the dark. The Trial Court noticed that none of the torches were recovered or produced by any of the concerned persons. There was also no moon light. In such circumstances, the recognition of the six accused

may not be possible. The Trial Court on this matter reached a reasonable conclusion. The Trial Court had meticulously examined each and every issue. The Trial Court also noticed that there was anticipation of trouble otherwise there was no occasion for PW2 to be accompanied by PW1 and Faizal for going to the house of CW.9, brother of PW5. The Trial Court also traced the progress of these three individuals through the paddy field. Since it was a dark night, it was not entirely unbelievable that the torches had been introduced to ensure that the accused could be said to have been identified. Surprisingly, after Faizal was fatally injured, PW1 bolts from the scene of crime. This PW1 is so loyal to PW5 that he has been taking undue advantage of being a scheduled caste and lodging false complaints against the accused persons under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Yet when the other faithful servant of PW5 was being brutally murdered, he decided not to defend and ran away. The Trial Court, therefore, concluded that the behaviour of PW1 was wholly unnatural.

48. Moving on to the evidence of PW5, the Trial Court noticed that when he went out of the house, he heard lot of noise from the side of the paddy field. When he went towards the west of his house, he saw some persons entering the pathways from the paddy field. He identified the accused persons. When he enquired from A7 as to what

had happened, he was also attacked and injured. He also ran back to the house. His attempt to contact his brother and others on the telephone remained unsuccessful. In the meantime, PW1 and 2 had reached the house of CW.9. Subsequently, Faizal's dead body was discovered by PW1 and the son of CW.9. The police arrived at the scene. Although PW2, the injured witness, was available, his statement was not recorded. It was PW1 who gave the F.I. Statement. It must be remembered that he had run away when the deceased was being assaulted. In such circumstances, we are unable to hold that the conclusions reached by the Trial Court were unreasonable or perverse.

49. The Trial Court meticulously examined the sequence of events with regard to the recording of the FIR. It cannot be held that the conclusion reached by the Trial Court that the occurrence report could not have been sent earlier, as the same was yet to be prepared, is not possible. The FIR was recorded at 0030 hrs on 31.1.1994. It was not received by the Magistrate till 3.30 p.m. on 31.1.1994. The Trial Court also noticed that the names of the accused were mentioned in Ex.P.1. But they were not mentioned in the relevant column of the inquest report. If the First Information Statement Ex.P.1 had been prepared prior to Ex.P.14, the names would surely

have been mentioned therein. These conclusions again, in our opinion, cannot be said to be perverse.

50. The Trial Court also noticed that due to the long enmity of P.W.5 and his family with the accused, the evidence had to be scrutinized carefully. Faizal as well as PW1 were the employees of PW5 who had been brought from the State of Karnataka as the local labour was not available. The Trial Court noticed that in case there had been an assault, as projected by the prosecution, there was no reason why PW1 would have been spared while Faizal was brutally murdered. After all, it was P.W.1 who had proceeded against those accused while working under PW5 by filing false cases against the accused. The Trial Court also noticed that delay in recording the statement of P.W.2 cannot be easily brushed aside. He was conscious through all the night and yet the statement was not recorded at the initial stage by PW7. He became unconscious only at the time when general anesthesia was given to him at 11.40 a.m. the following day.

51. Mr. Ranjit Kumar also pointed out that PW2 in the witness box merely stated that he was tired at the time when P.W.7 had come to the house of CW9. The Trial Court noticed that there was absolutely no explanation with regard to the injuries suffered by the accused.

This apart, all the witnesses being interested witnesses, their evidence could not be believed in the absence of independent corroboration.

52. In our opinion, taking into consideration the entire facts and circumstances of the case, it would not be possible to agree with the High Court that the findings recorded by the Trial Court were perverse or that only one conclusion consistent with the guilt of the accused was possible. We are of the opinion that the two views being reasonably possible the High Court ought not to have interfered with the verdict of acquittal recorded by the Trial Court. Consequently, we allow the appeal and set aside the judgment of the High Court.

Criminal Appeal No.434 of 2002 and
Criminal Appeal Nos. 500-501 of 2002:-

1. In view of the judgment passed in Criminal Appeal No.499 of 2002, these appeals are also allowed.

.....J.
[B.Sudershan Reddy]

.....J.
[Surinder Singh Nijjar]

NEW DELHI,
APRIL 13, 2010.