

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 31ST DAY OF OCTOBER 2013/9TH KARTHIKA, 1935

CRL.A.No. 1178 of 2009 (B)

AGAINST THE ORDER/JUDGMENT IN SC 474/2006 of II ADDL.DISTRICT
COURT, ERNAKULAM

APPELLANT(S)/ACCUSED NO.5:

FAISAL, S/O MAKKAR, NAVAS MANZIL,
NEAR VYASAPURAM TEMPLE, PANANGAD DESOM
KUMBALAM VILLAGE, ERNAKULAM DISTRICT.
(ACCUSED IN CUSTODY).

BY ADV. SRI.B.PRAMOD

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
(CRIME NO.330/2003 HILL PALACE POLICE STATION
TRIPUNITHURA).

R1 BY ADV. PUBLIC PROSECUTOR SRI. GIKKU JACOB,

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
21.8.2013, ALONG WITH CRA. 1179/2009 & CRA. 1733/2009, THE COURT ON
31-10-2013, DELIVERED THE FOLLOWING:

[CR]

**K.T. SANKARAN
&
B. KEMAL PASHA, JJ.**

Crl. Appeal Nos.1178, 1179 & 1733 of 2009

Dated this the 31st day of October, 2013

J U D G M E N T

Kemal Pasha, J.

Can human beings be so cruel to another human being? The factual matrix unfurls the brutality and the continued physical torture, which a human being was subjected to, from dawn to noon on the fateful day, by the assailants for taking away his life, inch by inch. The deceased, who had least expected the impending danger, fell in the trap played by the assailants. He was abducted during dawn, tortured to the core, and finally, he succumbed to it by about the afternoon.

2. Deceased Vidyadharan, a young man of 35, had

fought for peace in his locality by strongly resisting the goonda activities and drug trafficking by certain antisocial elements of the locality. He did not know the dangers to which he was exposed, in fighting against those antisocial elements. He has been mercilessly exterminated by such antisocial elements, in the prime of his youth, leaving his young widow of 27, two small daughters aged 5 and 1, and his aged mother, with whom he was very fond of, to the mercy of others.

3. Criminal Appeal No.1733 of 2009 has been preferred by A1, Criminal Appeal No.1178 of 2009 has been preferred by A5 and Criminal Appeal No.1779 of 2009 has been preferred by A4 in Sessions Case No.474 of 2006, of the II Additional Sessions Court, Ernakulam. Through the impugned judgment, the court below found these appellants guilty of the offences punishable under Sections 471, 143, 147, 148, 364, 302 and 201 IPC read with Section 149 IPC, and each of them was sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹5,000/-, in default, to undergo simple

imprisonment for six months, under Section 471 IPC, rigorous imprisonment for 6 months each under Section 143 IPC, rigorous imprisonment for one year each under Section 147 IPC, rigorous imprisonment for two years each under Section 148 IPC, rigorous imprisonment for 10 years and to pay a fine of ₹ 15,000/-, in default to undergo simple imprisonment for two years each under Section 364 IPC, imprisonment for life and to pay a fine of ₹25,000/-, in default, to undergo simple imprisonment for two years each under Section 302 IPC, and rigorous imprisonment for 3 years and to pay a fine of ₹5,000/- each, in default, to undergo simple imprisonment for six months each under Section 201 IPC.

4. A1, A4, A5, A6, A8 to A12 and A14 have faced trial before the court below in the said case, out of whom the present appellants, namely A1, A4 and A5, alone were convicted and sentenced as aforesaid. Pardon was tendered to A6 and he turned as an approver. A8 to A12 and A14 were acquitted. A2 is no more. A3, A7 and A13 are absconding.

5. The prosecution case is that A1, A2, A3, A8, A9, A12 and A13 had hatched a criminal conspiracy on some days prior to 13.09.2003 for abducting and murdering Vidyadharan, who is the deceased in this case, who was a leader of the D.Y.F.I., against whom A1 and A2 had entertained enmity. In pursuance of the said criminal conspiracy, A1 abetted A9 to A11 to keep a watch over the activities of the deceased. On 12.09.2003, A1 to A6 assembled at the house of A9 and A10 and they spent the night on the terrace of that house. During that night, they dishonestly altered registration No. KL-07P-5460 of the taxi car of A8, as KL-07-546 by covering the letter 'P' and the numeral '0' with yellow insulation tapes and used the said false number as genuine. On getting up early in the morning of 03.09.2003 at about 6.15 a.m., A1 to A6 went near Pullukattu Kavu temple situated at the side of the Poothotta - Tripunithura public road by the said car bearing the false registration No.KL-07-546 and lay in wait for the arrival of the deceased. A2 to A5 were armed with deadly weapons like swords and A6 was armed with iron

rod.

6. Deceased Vidyadharan came on that way by peddling his bicycle on his way to his work place, Indian Oil Corporation, where he was employed. A1 started the car and kept it ready for drive. A2 to A6 rushed to the deceased, caught hold of him, and lifted him into the car and made him to lie on the platform just in front of the rear seat. A3 and A6 occupied the front seat; while the others occupied the rear seat. The deceased was severely stamped by those sitting on the rear side and he was virtually pinned down to the platform by forcibly placing their legs on him. Even then the deceased cried aloud.

7. They all took the deceased to an unoccupied bungalow at the Estate of the Plantation Corporation of Kerala Limited at Ayyampuzha by the car. A7 joined the abductors *en route*. The deceased was severely assaulted, kicked and stamped at the courtyard of the said bungalow, as a result of which, Vidyadharan died at about 2.45 p.m. A3 took away the Titan wrist watch worth ₹500/- from the deceased. A1 to A5

destroyed the evidence by burning the wallet and dress belonging to the deceased. A1 to A6 dumped the corpse into the boot of the car and thereafter threw it away to an isolated place near the Cochin Refinery at Ambalamughal. A1 to A4, in order to cause the evidence to be destroyed, washed their clothes, cleaned the interiors of the car and left one of the turkey towels used inside the car at the room provided to them by the 14th accused, who harboured and concealed them in the house at Thiruvamkulam.

8. On the basis of Ext.P1 First Information Statement furnished by PW1, PW76 Assistant Sub Inspector of Police, registered Crime No.330/2003 of Hill Palace Police Station through Ext.P1(a) FIR. PW79 Circle Inspector of Police, Hill Palace Police Station conducted the major part of the investigation. PW78, the successor in office to PW79, completed the investigation, and filed the final report.

9. On the side of the prosecution, PWs 1 to 79 were examined and Exts.P1 to P122 were marked. MOs 1 to 43 were

identified. On the side of the accused, Exts.D1 and D2 were marked. The court below found the appellants guilty of the offences punishable under Sections 471, 143, 147, 148, 364, 302 and 201 read with Section 149 of IPC, convicted them thereunder, and sentenced them as aforesaid.

10. On 14.09.2003, the dead body was seen at an isolated property acquired by Cochin Refineries Limited at Ambalamughal. PW79 was the Circle Inspector of Police, Hill Palace Police Station for the period from 06.03.2002 to 14.03.2005. On 14.09.2003, he took over the investigation in this case. On the next day, he conducted inquest on the dead body of the deceased and prepared Ext.P25 inquest report. PW42, who was the member of the Puthencruz Grama Panchayat during that period, was present during the inquest. He identified the dead body and affixed his signature in Ext.P25 inquest report. PW43 is another attestor to Ext.P25 inquest report.

11. During inquest, PW79 collected the material objects

from the hands and heels of the dead body by using cellophane tapes. He seized MO35 *shuddy* found on the dead body. He prepared Ext.P26 mahazar at 2 pm on the same day in respect of the place where the dead body was found. PW43 is one of the attestors to Ext.P26 mahazar also, prepared by PW79 in respect of the place where the dead body was found lying. The dead body was sent for postmortem examination to the Police Surgeon at Alappuzha.

12. PW59, Lecturer in the Department of Forensic Medicine, Alappuzha conducted the postmortem examination on the body of the deceased and prepared and issued Ext.P47 postmortem certificate. He noted the following antemortem injuries:

"B. Injuries (Antemortem)

1. Lacerated wound 2x1x1 cm on the left side of the top of head just above the parietal eminence.
2. Abraded contusion over an area 5x4x1 cm on the left side of the forehead incorporating a lacerated wound 1x0.5x0.5 cm in its lower extent, 4 cm above the outer end of eye brow.

3. Abraded contusion 5x2x1 cm on the right side of forehead, just above the outer end of eye brow.
4. Abraded contusion 5x3x1 cm on the right malar eminence of the face.
5. Abraded contusion 6x4x1 cm on the left malar eminence of the face.
6. Lacerated wound 3x1x0.5 cm on the front of the root of the left ear an adjoining areas of its lobule.
7. Abraded contusion 3x2x0.3 cm on the back of left ear.
8. Lacerated wound 2.5x1x1 cm on the inner aspect of the middle of upper lip.
9. Contusion 2x1x0.5 cm on the inner aspect of the upper lip just inner to the left corner of the mouth.

The tooth numbers 11, 21 and 22 were missing. The edges of their sockets were lacerated and cavity filled with blood clots.

On dissection, the whole areas of the scalp tissue showed contusion in its full thickness sparing the right parietal region. Skull bone was intact. Haemorrhagic contusions over an area (a)5x3x1cm on the left temporo parietal region. (b) 4x2x1cm on the right frontal region. (c)3x3x2cm on the undersurface of the frontal lobe. Subdural and subarachnoid spaces of the brain showed diffuse haemorrhages. Sulci of the brain narrowed and its gyri flattened.

10. Multiple abraded contusions over an area 26x24 cm involving the

front and sides of abdomen, its upper extent being 5cm below the stomach pit. On dissection, the coils of intestine showed contusion at several sites. The undersurface of the right lobe of the liver showed laceration 10x5x3 cm. Spleen showed laceration 3x1x1 cm. Abdominal cavity contained 1.7 litres of blood with clots.

11. Multiple crescentic abrasions over an area 4x2cm ranging in sizes from 0.5x0.1 cm to 0.8x0.2 cm clustered together on the left side of front of neck, 5cm below the lower jaw and 8cm outer to midline.
12. Abrasion 4x3 cm on the right side of the neck, 6 cm below the angle of lower jaw.
13. Linear abrasion 3x0.1 cm on the right side of the neck, 4cm below ear lobule.

On dissection the subcutaneous tissues underneath injury numbers 11,12 and 13. Showed infiltration of blood. The muscles of the neck showed heamorrhage at many places.

14. Fracture of the 8th and 9th ribs of the right side near their vertebral end.
15. Abraded contusion 7x4x2cm on the right side of the top of shoulder just outer to the root of neck.
16. Abraded contusion 5x3x2cm on the top of right shoulder, 8cm outer to the root of neck.
17. Linear abrasion 26x0.2cm involving the back of right shoulder and arm. Its lower end was 16cm above the elbow.

18. Contusion 5x3x2cm on the outer aspect of right elbow.
19. Multiple small abrasion over an area 6x5cm on the outer aspect of right forearm, 4cm below the elbow.
20. Abrasion 3x2cm on the back of right forearm just above the wrist.
21. Lacerated wound 1.5x0.5x0.5cm on the back of right index finger just above the nail.
22. Multiple small abrasions over an area 9x6cm on the outer aspect of right thigh, 7cm above the knee.
23. Multiple small abrasions over an area 6x5cm on the front of right knee.
24. Lacerated wound 1x0.5 X 0.5 cm on the front of right leg 5cm below the knee.
25. Multiple small abrasions over an area 12x7cm on the front of right leg 9cm above ankle.
26. Abraded contusion 5x4x2cm on the front of right ankle.
27. Multiple small abrasions over an area 8x4cm on the top of right foot 4cm in front of the ankle.
28. Abrasion 6x5cm on the front of left ankle.
29. Abrasion 5x4cm on the front of left knee.
30. Abrasion 6x4cm on the outer aspect of left forearm, 5cm above the wrist.
31. Contusion 4x3x2cm on the front of left elbow.
32. Contusion 7x4x4cm on the back of left arm, 5cm above the elbow.
33. Abraded contusion 10x6x2 cm on the top of left shoulder, 5cm

outer to the root of neck.

34. Abraded contusion 10x8x2 cm over the left shoulder blade.

35. Multiple small abrasions to an area 13x10cm over the right shoulder blade and adjoining areas of trunk.

36. Abrasion 17x8cm involving both sides of back of trunk, 5cm above the natal cleft.

37. Abrasion 5x4cm on the right buttock.

38. Abrasion 6x4cm on the left buttock.

13. As per the request of PW79, PW59 Police Surgeon collected and produced MO36 chest hair sample, MO37 scalp hair sample, MO38 nail clippings, and also MO39 blood sample of the deceased.

14. The opinion of PW59 as to the cause of death is that the death was due to multiple injuries sustained. According to PW59, MO24 series of teeth could be two of the missing teeth mentioned under injury No.9. In cross examination, PW59 was asked as to whether the said injuries could be caused by a fall from about 80 feet height. He clearly answered in the negative and stated in evidence that all the said injuries could not be caused due to such a fall. In fact, any expert opinion is not

required to conclude that the death of the deceased was homicidal. He had sustained altogether 38 antemortem injuries. There cannot be any better opinion than the one expressed by PW59 as to the cause of death of the deceased. It clearly stands proved that the death of the deceased was due to multiple injuries sustained, and that the death is homicidal.

15. The case of the prosecution is that the incident, which resulted in the death of the deceased, was consequent to a conspiracy hatched by the accused on account of the enmity of A1 and A2 towards the deceased. We are taken through the evidence of the prosecution at length, by the learned counsel for the appellants, as well as by the learned Public Prosecutor. The investigation has laboured much to establish motive on the part of these appellants. Now, we shall deal with that aspect.

16. PW41 has stated in evidence that he could see A1 and A2 pasting Ext.P23 notice on an electric post at the road side, in front of his house, about one month prior to the death of the deceased. As and when they went away after pasting the

notice, he removed it. According to him, Ext.P23 contains defamatory matters for deliberately defaming the deceased. He produced Ext.P23 at the police station about one month after the death of the deceased. The same was seized by the Circle Inspector through Ext.P24 mahazar. On going through Ext.P23, it is evident that the matters contained in Ext.P23 are *per se* defamatory.

17. It has come out from the evidence of PW79 Circle Inspector of police, Hill Palace Police Station, who investigated this case, that Ext.P23, which was one of such posters pasted by A1 and A2 at Udayamperoor region was taken out and produced by PW41 at 11 a.m. on 17.10.2003, which he seized through Ext.P24 mahazar.

18. It has clearly come out from the evidence of PW39 that, while she was employed in GPM Services, which is a D.T.P. Centre at Kadavanthra, A1 came to the said institution and got printed a notice against the deceased. She clearly identified A1.

19. PW38 was the Office Secretary of the Private Bus

Employees Union of the CITU at Kaloor. According to him, A1 had engaged in a quarrel with the party workers of PW38. A1 was in inimical terms with the deceased and one P.V.Prabhakaran. A1 and his associates were engaged in working against the deceased. He came to know that A1, who had pasted the notice containing filthy matters against the deceased, was beaten by the party workers. A1 told PW38 that A1 would see that the deceased would be done away with. Even though PW38 had asked A1 to desist from such acts, A1 told him that he would be proceeding with the implementation of his decision.

20. It has come out in evidence that A1 had issued Ext.P22 letter to the party office of A1, by exerting threat to life against the deceased and his friends. On 01.10.2003 at 3 p.m., PW79 seized Ext.P22 letter issued by A1 to the office of the Local Committee Secretary, Paravur, which was produced by the said Local Committee Secretary, Jayaprakash at the office of PW79, through Ext.P21 mahazar.

21. According to PW6, who is the younger brother of the deceased, the deceased had convened a meeting protesting against the goonda activities of A1 and A2. In retaliation, A1 and A2 had published a notice by defaming the deceased. The deceased was the leader of the D.Y.F.I. The members of that organisation took it seriously, which resulted in an attack towards A1 whereby he had sustained injuries during the month of July, 2003. Subsequent to it, there was threat to the life of the deceased.

22. According to PW8, who is the wife of the deceased, she knew that A1 and A2 were in utter inimical terms with the deceased, as he had objected the goonda activities and the sales of narcotic drugs and psychotropic substances by A1 and A2. The said objections of the deceased had resulted in the publication of a defamatory notice by A1 and A2 as against the deceased. The said notice was published 1½ months prior to the abduction and murder of the deceased. The publication of the notice had triggered the protest of the party workers towards

A1, which had resulted in a quarrel resulting in injuries to A1.

23. PW30 is running a bakery in the name Kalleli Bakery at Kochupally, Udayamperoor. He knows A1. According to him, A1 frequently used to come to his shop and used to make phone calls from there. He has a phone with number '2792480'. As A1 and A2 had engaged in goonda activities at Kochupally, the same were protested by the D.Y.F.I. workers under the leadership of the deceased, and they had affixed posters canvassing such objections. On one day, A1 and A2 tore away the posters. As the deceased had questioned it, A1 affixed posters defaming the deceased. There occurred a quarrel between A1 and D.Y.F.I. workers regarding it during the month of July 2003, and A1 had sustained injuries in such a quarrel.

24. On 27.07.2003, while PW68 was working as the Medical Superintendent of the VKM hospital, Tripunithura, he had examined A1 with the history of assault, around 7.30 p.m. on the same day at Poothotta, and noted the following injuries:-

“Lacerated injury right side of neck. Laceration with

earlobe tears on the right side. Laceration on left shoulder, right forearm, both the elbows, and multiple abrasions on left knee. Laceration of scalp on parietal region.”

He was brought by the police flying squad at 8.10 p.m. He was discharged at 11.30 p.m., on the same day. Ext.P46 is the wound certificate issued by PW68.

25. PW58 was the Junior Superintendent of the Additional Chief Judicial Magistrate's Court, Ernakulam during December, 2003. He proved the copy of the FIR in Crime No.263/2007 of the Hill Palace Police Station as Ext.P44, the copy of the report filed by the investigating officer in that case as Ext.P45, and the copy of the wound certificate in that case as Ext.P46. Therefore, it is evident that the said crime was registered in connection with the bodily harm sustained to A1 on 27.07.2003.

26. PW74 was the writer attached to the Hill Palace Police Station during November, 2003. According to him, he had produced the petition register and Ext.P72 petition before the Circle Inspector, which the Circle Inspector seized through

Ext.P73 mahazar. The deceased was the complainant. On enquires on the complaint, A1 could not be located. The friend of A1 was called and he was warned. The copy of the petition register was marked as Ext.P76 and the relevant entry is marked as Ext.P76(a).

27. PW70 was the Head Constable attached to the Hill Palace Police Station during 2003. According to him, in the month of July 2003, the Sub Inspector of Police, Hill Palace Police Station, received Ext.P72 complaint, on which he (PW70) made enquires, as the Sub Inspector had entrusted Ext.P72 with him for enquires. The complaint was dated 22.07.2003, complaining that A1 and his friends would commit the murder of CPI(M) workers, who are the complainants. A1 could not be traced out and, therefore, the said complaint was closed.

28. According to PW77 Sub Inspector of Police, Hill Palace Police Station, he had entered Ext.P72 complaint filed by the deceased on 22.07.2003, in Ext.P76 petition register. Subsequently, he made Ext.P76(a) entry in Ext.P76.

29. According to PW79, Ext.P72 complaint filed by the deceased at the Hill Palace Police Station along with the petition register were produced by PW74 Writer of the Hill Palace Police Station, which he seized at 11 a.m. on 17.12.2003 through Ext.P73 mahazar. As the petition register was in daily use at the police station, the same was released after obtaining Ext.P76 copy. PW71 was the police constable attached to the Hill Palace Police Station during November, 2003. On 17.11.2003, he affixed his signature in Ext.P73 mahazar prepared by the Circle Inspector, by which the petition register and Ext.P72 complaint were seized. The petition register was released to the SHO on kychit.

30. From the evidence above along with the contents of Ext.P23 and Ext.P72, it has come out that A1 was in utter inimical terms with the deceased, and that A1 was eagerly waiting for an opportunity to settle scores with the deceased. The statement of PW38 was recorded under Section 164 Cr.P.C. also. It has come out that A1 had entertained utter enmity

towards the deceased. The deceased, who was aware of such a design on the part of A1 and his associates, had preferred Ext.P72 complaint before the police.

31. According to PW19, A8 was running a hotel at Puthenkavu. Two days prior to the incident, he could see A1, A2, A8 and A9 standing together and talking each other in front of the hotel by about 9.30 a.m.

32. The prosecution case centres around circumstantial as well as direct evidence. The prosecution is relying on PW7 accomplice, to prove various details of the incident and thereby to prove the case against the appellants. PW7 had identified the appellants as well as the other accused, except A12 who was not present in the dock at the time of his examination.

33. According to PW7, on 12.09.2003, while he was sleeping at his house as he was on rest following medical treatment in connection with a heart attack suffered by him, A5 along with A2 came over there and called him out. When PW7 declined by stating that he was on rest, A5 requested for his

mobile phone. He refused to heed to the said request, as the said mobile connection was in the name of his younger brother. He identified MO9 as the said LG mobile phone having reliance connection. Then A5 told PW7 that he had given PW7's mobile number to somebody and they would call him in the said mobile number. They insisted him to go along with them by stating that they should go to a house in connection with a marriage, and by promising that they would return immediately. He accompanied them to the S.N. Junction also known as market junction, where he could see a white ambassador car in which A1, A3 and A4 were sitting.

34. They also got into the car and they proceeded to Nettoor. They stopped the car at Nettoor junction, where A1 got out and talked something to a person who was standing there. A1 returned to the car and then they proceeded to Vyttila. They had food from a temporary shop at the road side, and then proceeded to a house belonging to a relative of A1 at Udayamperoor. While they were in the car, he could see A1

taking four sword-sticks, which he identified as MO4 to MO6 and MO7 iron rod, and handing it over to A5. As A5 took it in a hurry, he got one of his fingers injured. All of them went to the terrace of that house, and slept there during that night.

35. On 13.09.2003, around 4 a.m., all of them woke up, got into the car, and proceeded towards Pullukattu Kavu Temple near the Matom bus stop. They parked the car at the eastern side, facing the road. PW7 took MO7 iron rod and others, except A1, were holding sword-sticks. Even though PW7 had told A1 that he wanted to go to his house, A1 told him that they had to meet somebody and just frighten him, and he could go immediately thereafter. Even though they waited for some time, they could not see that man. Buses started plying through the road and sunlight started spreading. On seeing a man dressed in brown shirt and pants coming by a bicycle, A2 alerted by shouting 'brown shirt'. All of them rushed to the bicycle. A2 pulled him down from the bicycle. A1 swiftly got into the car and started the engine. All of them caught hold of that man named

Vidyadharan, who is the deceased, and forcibly took him to the rear seat of the car. Deceased was crying aloud as 'Aiyyo'. A2 threw away the bicycle to the road side, and got into the car. PW7 along with A3 occupied the front seat. The deceased was placed on the foot-board, in between the rear seat and the front seat. Others occupied the rear seat and they stamped the deceased and pinned him there, by placing their feet on him forcibly. PW7 could realise the name of the deceased as Vidyadharan, only on hearing others calling him by that name.

36. The car proceeded from Nadakkavu through the road lying towards east. On the way there was a toll booth. Even though the man at the toll booth attempted to stop the car for collecting toll, the car sped away without stopping. After covering some distance, they stopped the car in an isolated property situated at the road side. In the process of catching hold of the deceased at the road, A5 had lost his lungi there. PW7 identified the said lungi as MO1. A1 and A2 got out from the car and went to a nearby house. They returned by stating

that there was nobody at the house. Then, the car proceeded towards Thalayolaparambu. When the car reached Thalayolaparambu, its diesel expired. A1 got out of the car and stopped an autorickshaw which was coming through that way. PW7 along with A1 got into the autorickshaw and went to a house at Thalayolaparambu. A1 obtained MO10 series cans (two in numbers) from that house, again got into the autorickshaw, and went to the petrol bunk at Thalayolaparambu. They purchased diesel in the said cans and returned to the place where the car was lying. After filling diesel in the car, they proceeded by it to the house of A1 situated towards south-east to the Vaikkom Temple, obtained a lungi from there, and gave it to A5. Through Thanneermukkam Bund, they reached Cherthala and from there they came to Thoppumpadi, and proceeded through Kundanoor, to Chalakkudy.

37. When they had reached Eramalloor, A1 asked him to rub the windshield of the car, to make it clean. When he rubbed it, the name "Aikarayil" written in Malayalam on the glass, which

was concealed by using black ink, reappeared and became visible. Then, he could see that the letter 'P' in 'KL-07P' in the number plate was concealed with a sticker. Further, the numerical '0' in the number '5460' was also seen similarly concealed by using a sticker. Both the stickers were removed. According to PW7, the other accused, who were present at the house of the relative of A1 on the previous night, had changed the number of the car on the previous night, while he was sleeping, and therefore, he was not aware of it.

38. On the way, A3 went to a house situated at the western side of the road, and talked to a fatty man, whom PW7 could later identify as A7. A7 also came along with A3 and got into the car. A3 had earlier contacted A7 by the mobile phone of PW7, and thereby A7 was waiting for them. According to PW7, A7 was not aware of the presence of the deceased in the car, prior to his getting into it. From there, they proceeded to Athirappally Estate.

39. On the way, everyone beat the deceased. When they

reached Athirappally check post, A7 got down, gave the men at the check post the number of the car, and signed the register. The car proceeded further, and stopped near a vacant quarters. The deceased was pulled out of the car, and dragged towards the quarters. They caused the deceased to sit on a tank which was present near the quarters. A4 pulled both the hands of the deceased backwards and hit on the backbone of the deceased with his knee. A1 was seen beating the deceased by questioning him. In the meantime, A5 asked PW7 to bandage the injury on his finger. At that time, A4 took a rubble and attempted to drop it on the head of the deceased. PW7 rushed to him, pushed away A4, and removed the rubble from there. A3 took a pipe made of clay and beat the deceased. Again, PW7 intervened and removed that pipe also. He advised the deceased to answer the queries of A1 immediately so as to lessen the harm.

40. As he had strained in removing the rubble, he felt some sort of discomfort, and thereby he told others that he

wanted to purchase medicine. Then, A1 paid him an amount of ₹500/-. He, along with A3, got into the car and went to the check post. A1 had told him to give a false name at the check post. Even though he gave his name falsely as 'Mohan', he affixed his correct signature in the register at the check post. He identified the said register as Ext.P2, and the entries made by him with the signature as Ext.P2(a). In the said entry, the number of the car was shown as 'KL-07P-5460' and the time as 11.10 a.m. When they reached the road and enquired about the medical shop, they were told that it would be available only at Chalakkudy. They went to a hotel, obtained food parcel, and then went to a house from where they purchased a bottle of arrack, and came back. On reaching the check post, again he made similar entries in the register, which is Ext.P2(b).

41. On reaching near the quarters, he could see the deceased in a pitiable and blackened state. The deceased was seen dressed in an underwear alone. His face had become swollen. All the said accused took food from the food parcel

brought as aforesaid. A7 alerted all of them with the information that the forest people were coming. Immediately, all of them lifted the deceased and dumped him beneath an oil palm. By that time, a phone call came to the mobile phone of A1 that his younger brother was abducted by somebody. As the battery charge of the phone ran out, it became switched off and, therefore, he could not continue to talk. Then, A1 obtained his (PW7's) mobile phone, called somebody and talked and then, returned the mobile phone by stating that there was no problem. PW7 approached the deceased and examined his pulse, and realised that there was no pulse at all. A1 took the car in reverse and brought it near to the quarters. All of them, except PW7 and A7, took the body of the deceased and dumped it in the dickey of the car. The shirt and pants of the deceased were burnt by A3, after pouring arrack on it, at a place near the quarters. All of them started from there by the car. While they were coming back, it was A7 who made entries in the register at the check post. Thereafter A7 did not get into the car, and he

went away. When they reached near the Refinery at Ambalamugal, the body of the deceased was taken out from the dickey and dropped it at an isolated place.

42. They came back to Aluva. A3 went out of the car and returned within one hour. A1 dropped him and A5 at a bus stop. He along with A5 went to a Bar near the transport bus stand and consumed liquor. Then both of them went to the house of his mother-in-law at Asokapuram and stayed there that night. In the morning, he went to his house, and A5 went to his house. He shifted his children and wife, to her house. He sold his mobile phone for ₹500/-. Thereafter, due to tension, he went to Mangalore. As he had lost peace of mind, he returned to the house of his uncle Thankappan at Thuravoor. In the next morning, he approached his another uncle named Pavithran, who is the Secretary of the SNDP, and narrated him the entire details. Along with his relatives, he reached the office of the Circle Inspector of Police, Palluruthy, where he surrendered. From there, he was taken by the Sub Inspector of Police, Hill

Palace Police Station, to the Circle Inspector of Police. He confessed before the Judicial First Class Magistrate at Ernakulam, and his statement was recorded. He affixed his signature in it. On the date of incident, he was dressed in MO11 T-shirt and MO12 lungi.

43. PW26 is the mother-in-law of PW7. According to her, after '*Onam*' in the year 2003, on a Saturday during night, PW7 along with his friend A5 came to her house and they stayed there. On the next morning by 6 a.m., they went away. She has clearly identified A5.

44. According to PW12, who is the brother of PW7, after going along with A5 by about 9.30 p.m. on 12.09.2003, PW7 had returned to the house by about 10 a.m. on 14.09.2003. After that, PW7 took his wife and children to his wife house. Subsequently, PW7 came to the house of their uncle named Pavithran at Eramallur. PW7 narrated the entire incident that occurred and confessed that he was an accused in the Vidyadharan murder case. They produced PW7 at the

Palluruthy Police Station through the Ponnurunny SNDP Branch.

In cross examination, he has stated in evidence that, when PW7 went out with A5, a T-shirt and lungi were worn by him.

45. On the basis of the information furnished by PW7 and as led by him, PW79 reached the house of PW7 and seized MO11 shirt and MO12 lungi of PW7 through Ext.P96 mahazar. Based on the further information furnished by PW7, MO9 mobile phone was seized at 11.50 a.m. on 19.09.2003, through Ext.P29 mahazar. PW46 has affixed his signature in Ext.P29 mahazar, by which the police has seized a mobile phone from one Santhosh, at the petrol bunk at Kundannur.

46. According to PW79, on 26.09.2003, A6(PW7) furnished Ext.P32(a) information as follows:-

"I have hidden the iron rod among the bushes at the road side at Kodyathumala side, while I was going back from my wife's house."

On the basis of the said information and as led by A6, he reached the place and seized MO7 iron rod taken and produced

by A6 through Ext.P32(a) mahazar. According to PW49, he saw one of the accused in the Vidyadharan murder case taking MO7 iron rod from the bushes at the side of the Aluva - NAD road and handing it over to the police. The police seized the same through Ext.P32 mahazar, in which he affixed his signature.

47. PW67 was the Judicial First Class Magistrate-I, Ernakulam during October, 2003. On 09.10.2003, he recorded the statement of PW7 in Crime No.330/2003 of the Hill Palace Police Station, as per the order of the Chief Judicial Magistrate, Ernakulam. After conducting an enquiry regarding the free will of the deponent, he recorded the statement after convincing himself about the voluntary nature of the statement, by questioning the witness. The said questions and answers were also reduced to writing and the same is attached to the statement of the witness. All the consequences of making the confession statement were disclosed to the witness. The entire statement furnished by the witness was reduced to writing, and the same was recorded in accordance with the provisions

contained in Section 164 of the Code of Criminal Procedure. From the evidence of PW67, it seems that he had complied with all the mandatory formalities contained in Section 164 of the Code of Criminal Procedure, in recording Ext.P64 statement of PW7(A6).

48. Even though PW7 was subjected to lengthy and searching cross examination, nothing could be brought out in order to discard or disbelieve his testimony. According to Section 133 of the Indian Evidence Act, an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. At the same time, we are aware of the rule of prudence contained in illustration (b) to Section 114 of the Indian Evidence Act, which gives a clear caution that an accomplice is unworthy of credit unless he is corroborated in material particulars. Let us examine whether the prosecution has succeeded in corroborating the evidence of PW7 in material particulars.

49. PW1 was a co-worker of the deceased at the bottling plant of the Indian Oil Corporation at Udayamperoor. According to him, in the morning of 13.09.2003, after 6 a.m., while he was proceeding to the company by his bicycle from south to north through the Vaikkom - Ernakulam main road, he could see the deceased coming by his bicycle behind him, when he reached at the south of the Pullukattu Kavu Temple. When he(PW1) passed the temple and went forward for some distance, he could see a car lying at the eastern side of the road and 3-4 persons sitting in the car. When he reached near the Matom bus stop, he heard a cry from behind as "Aiyyo". When he looked back, he could see the car which was lying there was proceeding towards north. Again, the cry as "Aiyyo" was heard from the car. It was a white ambassador taxi car bearing No.'KL-07-546'. When the car went away, PW2 who was another co-worker of PW1 and the deceased, who was standing in front of the temple shouted by stating that "*Our Vidyadharan is being abducted*". He went towards PW2. PW2 narrated the incident

and told him that a dhoti of one among the abductors was dropped at the place from where the deceased was forcibly taken to the car. They could see the bicycle of the deceased lying there near the eastern side of the temple. MO1 brown coloured lungi was also lying there near the bicycle. He went to the Company and told other workers about the abduction of the deceased. The matter was informed to the Union Office also. On that day he did not enter duty. Someone from the Union Office told him to go to the Police Station and report the matter. Then, he went to the Hill Palace Police Station, Tripunithura, and furnished Ext.P1 First Information Statement before PW76, Additional Sub Inspector of Police, Hill Palace Police Station. He identified the car and the bicycle as MO2 and MO3.

50. PW76, while working as Additional Sub Inspector of Police, Hill Palace Police Station, recorded Ext.P1 First Information Statement furnished by PW1, on the basis of which, he registered Crime No.330/2003 of the Hill Palace Police Station, through Ext.P1(a) First Information Report. He started

investigation and reached the scene of occurrence at 9 a.m. on the same day and prepared Ext.P74 scene mahazar. The scene near the Pullukattu Kavu Temple, from where the deceased was abducted, was pointed out by PW1. He seized MO1 lungi, M03 bicycle and two ink stained papers found on the scene of occurrence. PW72 is one of the attestors to Ext.P7 scene mahazar. According to him, a bicycle and MO1 lungi which were found in the scene were seized through the said mahazar. On the next day, the investigation was taken over by PW79, Circle Inspector of Police, Hill Palace Police Station. The evidence of PW1 stands fully corroborated by the evidence of PW76 and the contents of Ext.P1.

51. PW69 was the Village Officer Manakkunnam during 2006. According to him, as per the request of the investigating officer, he prepared Ext.P71 plan in respect of the spot near Pullukattu Kavu Narasimha Temple situated at the side of the Poothotta-Ernakulam road, involved in Crime No.330/2006 of the Hill Palace Police Station.

52. PW2 also was a co-worker of the deceased. According to PW2, on 13.09.2003 after 6 a.m., as usual, he was proceeding to the Company by his bicycle. When he reached in front of Pullukattu Kavu Temple, he could see a person holding a sword running towards the eastern side of the road by shouting "*brown shirt*". He could see MO2 white ambassador car lying at the eastern side of the road, facing the road. The engine of the car was on and it was ready to move. Immediately, four persons got out of the car with weapons and rushed to the western side. Three of them were armed with swords and one of them was armed with an iron rod. At that time, he could see the deceased coming through that portion of the road by his bicycle for going to the Company. The said four persons forcibly caught hold of the deceased, dragged him down from the bicycle, and forcibly lifted him to the rear seat of the car. The car sped away towards north. He could see one of them throwing away the bicycle of the deceased to the eastern side of the road. MO1 lungi was seen lying near the bicycle. According to him, the car was a

white ambassador taxi car and he could not note down its number as the car proceeded in an exorbitant speed. When he looked towards north, he could see PW1 watching the incident by sitting on his bicycle and by looking backwards. He immediately told PW1 that "*Our Vidyadharan has been dragged into the car forcibly, and is being abducted*". PW1 came towards him. Some other persons also gathered there on hearing the commotion. He identified A4 and A5 as two of the persons who were present among the persons who abducted the deceased. He identified MO3 as the bicycle of the deceased, and MO2 as the car by which the deceased was abducted. According to him, he could identify the swords held by the three persons and the iron rod held by the other person. He identified the said swords as MO4, MO5 and MO6 and the iron rod as MO7. On going through the evidence of PW2, it has come out that his versions fully corroborate the versions of PW1. Over and above it, he has identified A4 and A5 and also MO2 ambassador car by which the deceased was abducted.

53. PW3 was a Plus Two student as on the date of incident. According to him, on 13.09.2003 around 6 a.m., while he, along with his brother Vinod and neighbour Satheesh, was engaged in doing exercise at a ground situated at the opposite side of the Pullukattu Kavu Temple, he could see a white ambassador car lying at the eastern side, facing the road. After some time, he could see three or four men forcibly taking another man into the rear seat of that car. Then immediately the car sped away towards Tripunithura side. He could see weapons in the hands of the persons who abducted the other man. On coming to the road, they could see 4-5 persons standing at the road and talking about the abduction of Vidyadharan. He could see a bicycle and a lungi lying at the road side. On a careful scrutiny of the evidence of PW3, it seems that his evidence corroborates the evidence of PWs 1 and 2 in respect of the evidence regarding the abduction of the deceased.

54. PW4 was also a co-worker of the deceased.

According to him, on 13.09.2003 by about 5.45 a.m., he went to the Pullukattu Kavu Temple for worship. When he came out of the temple, he could see a white ambassador car parked on a lane at the eastern side of the main road, as if it was ready to enter the road at any time. He could see A1 standing outside by reclining on the driver's door of the car. A1 belongs to his locality and, therefore, he could easily identify him. While he was proceeding to his house, he could see A9 and A10 engaged in a talk with Nishad at the road side.

55. PW5 used to sit as cashier at the counter of Hotel Everest at Tripunithura, being conducted by the son of her uncle. She used to go to the hotel around 5.45 a.m., by catching bus from the bus stop near the Pullukattu Kavu temple. A9 and A10 are her neighbours. On 13.09.2003, while she was going to the bus stop in the morning, she could see them standing along with A2 at the bus waiting shed situated at the northern side of the temple. According to her, A1 is the son of the mother's elder sister of A9 and A10. A1 was seen standing near a white

ambassador car parked at the eastern side of the road, facing the road.

56. PW25 is the driver of a mini lorry. He knows PW13. On 12.09.2003, during night, he had transported two loads of manure to the house of PW13. The first load was unloaded at 9.30 p.m., and the second load was unloaded at 12.30, after midnight. When he was driving the lorry to the house of PW13 by about 12.30 in the night, an ambassador car was seen lying on the road thereby blocking his way. Only after removing the ambassador car, the lorry could go. He informed the matter to PW13. PW13 came out with a torch and reached near the car. Two persons came out of the car and they removed the car to the nearby house. PW13 has almost supported the versions of PW25, even though he has turned hostile to the prosecution.

57. PW6 is the younger brother of the deceased. The deceased was residing separately at his wife house along with his wife, daughters, and mother in law. On every morning, he used to reach his family house in order to visit his mother, and to

wear his uniform, and from there he used to go for work. Brown coloured shirt is part of his uniform. He lastly saw the deceased alive during the dawn of 13.09.2003. On the previous night, the deceased stayed at the family house. On 13.09.2003, while he left for work, a *Titan* watch was worn by him. By about 7 a.m., 3-4 persons came to the house and informed that the deceased was abducted by somebody by a car from near the temple. Immediately he along with his friends and relatives went to the place and they could see around 50 persons gathered there. PW2 narrated the entire incident to him. They went in search of the car by autorickshaws and a car. When enquired at the toll booth, they came to know that the car sped away through that toll booth. Over and above it, they went to the house of A1 and A2 and made enquiries there. They were found missing after the incident. On the next morning of the abduction, the body of the deceased was found lying at Ambalamugal.

58. PW8 is the wife of the deceased. According to her, the deceased was working at the Indian Oil Corporation,

Udayamperoor. There were two shifts in that Company, the first shift being one from 6 a.m. to 2 p.m., and the second shift being one from 2 p.m. to 10 p.m. During the period of incident, the deceased was in the first shift. The deceased used to leave the house by 4.30 a.m. and then, he used to visit his mother at his house and from there, he used to wear the uniform and by bicycle go to the Company. On 11.09.2003 and 12.09.2003, he was not present at the house and on those days, he was engaged in election work being an active worker of the CPI(M) and on those nights he was staying at his house. On 13.09.2003, at about 10 a.m., his friends and party workers came to her house and told her that 5-6 persons had abducted the deceased by a car. On getting that information, she rushed to the house of the deceased. On the next day, the body of the deceased was traced out. The deceased used to wear MO8 watch and take his purse while going for duty. His purse contained her photograph. She identified MO13 as the remnants of the purse and her partly burned photograph. She

had the copies of the same photograph with her, which she had produced before police. MO14 is one of such photographs. MO14 photograph produced by PW8 was seized by PW79 through Ext.P95 mahazar.

59. PW78 was the Circle Inspector of Police, Hill Palace Police Station from 07.03.2005 onwards. According to him, he was in search of three absconding accused in this case, and while so, A3 surrendered before the Additional Chief Judicial Magistrate, Ernakulam on 17.02.2006. He formally arrested A3 on 24.02.2006 with the permission of the court and obtained his custody on 28.2.2006. A3 furnished the following information:-

“I have placed the watch at a place in my house. I will point out the place, if I am taken there. I will take and produce the watch.”

On the basis of the said information, he reached the house of A3 along with A3. A3 took out and produce MO8 watch from among the tin sheets spread on the terrace of the house, at 1.30 p.m. on 02.03.2006. The said information furnished by A3

is clearly admissible in evidence under Section 27 of the Indian evidence Act. He produced MO8 watch through Ext.P82 property list.

60. PW17 is an employee at the Mulanthuruthi Toll Gate during 2003. The said Toll Gate is situated on the road leading to Pallithazham from Nadakkavu. According to him, if any vehicle passes through the Toll Gate without paying toll, he used to note down its number. On one day in the morning after 6 am, a white ambassador car, all of the glasses of which were closed, had passed through the Toll Gate without paying toll. He noted the number of the said car as 'KL-07-546'.

61. From the evidence of the aforesaid witnesses, and the contents of Ext.P1 the others exhibits described in their evidence, it clearly stands proved that on 13.09.2003, by about 6 a.m., the deceased was abducted by the appellants along with PW7 and some other accused, by MO2 white ambassador car, the registration number of which was then exhibited as 'KL-07-546' from near the Pullukattu Kavu temple situated at the side

of the Poothotta - Tripunithura public road. MO1 lungi worn by one of the abductors fell on the road and was seen lying near MO3 bicycle of the deceased. The car sped away towards Thalayolaparambu. It passed through the Toll Booth without paying the toll. The deceased was crying aloud as 'Aiyyo'. It stands further proved that some of the abductors were armed with sword sticks and PW7 was armed with an iron rod at the time when the deceased was forcibly caught and taken to the car. MO8 watch of the deceased was discovered on the basis of the information furnished by A3, which is clearly admissible in evidence under Section 27 of the Indian evidence Act. That part of the evidence of PW7 clearly stands corroborated and proved by the evidence of the aforesaid witnesses.

62. PW12 is the brother of PW7. He had a mobile phone and Reliance connection in it, which were obtained by him around one month prior to the date of incident. He identified the mobile phone as MO9. According to him, the said mobile phone and its connection were being used by PW7. He knew A5 even

from his childhood onwards. According to him, his brother PW7 and A5 were close friends. On 12.09.2003, by about 9.30 p.m., A5 came to his house, called PW7, and took him away.

63. PW9 was working along with A8 in Gulf. When they returned from Gulf, A8 started a hotel. A8 used to sit at the cash counter. PW9 also has worked at the said hotel. He worked in the hotel up to 16.09.2003. He had to shut down the hotel on account of the murder of the deceased. A8 had an ambassador car bearing registration No. KL-07P-5460. The name '*Aikarayil*' was written on the front wind shield of the car. Rose coloured turkey towels were spread on the seats of the car. A1 frequently used to visit the said hotel. On 11.09.2003 also, A1 had visited the hotel along with 2-3 persons and they sat together at the staff room of the hotel and had tea. On 16.09.2003, the car was there at the house of A8. According to him, when the people, who visited the hotel, told A8 that it was A1 and his friends who abducted the deceased, he could see A8 becoming perplexed. From the evidence of PW9, it has clearly come out that, on

11.09.2003 in the morning, A1 and A2, along with another boy, came to the hotel and the car was not seen at the hotel on 13.09.2003. It has come out that A1 had taken the car on 12.09.2003. Thereafter, he could see the car at the house of A8, on 16.09.2003 only. He identified MO15 series as the turkey towels which were spread on the seats of the car. On 12.09.2003 and 13.09.2003, the said car was not present at Puthenkavu. In cross examination, he admitted that Ext.D1 was the statement furnished by him under Section 164 Cr.P.C. before the learned Magistrate. In re-examination, he clarified that as the entire incidents were narrated by him before the police, he did not give all those facts in detail in Ext.D1.

64. According to PW66, he knows A1 and A8. A1 used to come to the hotel of A8. On 12.9.2003 by about 8.30 p.m., he went to the hotel of A8 for having tea. At that time, he could see A1, A2 and A8 standing near the car of A8 and engaged in a conversation. A8 entered the hotel, and A1 and A2 got into the car and drove away. It was A1 who drove the car.

65. Even though PW10 has turned hostile to the prosecution, he admitted that he had worked at the hotel of A8 till 12.09.2003. According to him, A8 had an ambassador car. He also stated that PW9 was also working in the said hotel and he could see and talk with PW9 on 12.09.2003 also.

66. PW34, is a neighbour of A8. According to him, A8 was running a hotel at Puthenkavu. He stated in evidence that A8 had a white ambassador car with registration No.KL-07P-5460, which is involved in this case.

67. According to PW27, he had rented out one of his houses to A14 and that A14 had taken on rent the said house by representing his name as Shaju. Later, he came to know from the police that his real name is Shibu.

68. According to PW28, A14 along with his wife and child, were residing on rent in a house of PW27. On one day during September 2003, while he, along with one Subramanian, was going through the pathway in front of the said house, they could see A14 and 3-4 other persons washing an ambassador car.

The name '*Aikarayi*' was seen written on the front wind shield of the car. Its registration number was starting as '*KL-07*' and ends in '*60*'.

69. PW79 Circle Inspector of Police, Hill Palace Police Station placed A8 under arrest through Ext.P89 arrest memo and Ext.P90 custody memo at 1.30 p.m. on 16.09.2003. According to him, A8 furnished Ext.P18(a) information as follows:-

"I have parked the car at Puthenkavu. I will take and produce it, if I am taken there."

On the basis of Ext.P18(a) information furnished by A8, ambassador car bearing Registration No.KL-07P-5460 was seized from the courtyard of his house through Ext.P18 mahazar on 17.09.2003. PW34 was present when PW79 seized the said car. The photographs of the car were taken. Ext.P19 series are the photographs with the negatives.

70. According to PW61 Scientific Assistant, MO28 is the hair sample taken from the spare tyre. MO29 is the fibre sample

taken from the spare tyre. MO30 is the hair sample taken from the backseat platform of the car. MO31 is the blood sample collected from the rear window of the car. MO32 is the blood sample collected from the handle of the door of the car. MO24 series are the two bloodstained teeth with root, collected from the platform of the car. MO33 are the two buttons with thread taken from the platform of the car.

71. According to PW79, PW61 Scientific Assistant was also present during the seizure of MO2 car. The hair found on the spare tyre inside the dickey of the car was taken, sealed and labelled by PW61 was sent for chemical analysis. MO28 is the returned item of its remnants. The fibre sample taken from the spare tyre in the dickey of the car which was also taken, sealed and labelled, was sent for chemical analysis. Its returned remnants is MO29. Hairs from the platform of the car in front of the rear seat, collected, sealed and labelled by PW61 were also sent for chemical analysis, and its returned remnants is MO30. The blood collected from the glass of the rear door of the car

which was also taken, packed, sealed and labelled, was also sent for chemical analysis. MO31 is the same. The blood taken from the handle lock of the left rear door of the car taken, packed, sealed and labelled by the PW61 is MO32. The two teeth found at the said platform of the car near the left rear door collected and handed over by PW61 are MO24 series. The two buttons with thread taken from the platform of the car at that portion are identified as MO33.

72. According to PW34, who was present when the police seized the said car through Ext.P18 mahazar, on 17.09.2003, he could see the officers of the Forensic Department inspecting the car. When its dickey was opened and examined, clotted blood was seen on the tyre placed inside the dickey. They took two teeth and some hairs from the portion in front of the back seat of the car. They were seen taking blood from the handle inside the left rear door of the car. They took blood from the window glass of the left rear door.

73. PW35 is the photographer, who took the photographs

of the ambassador car at the direction of the police, at the house of A8 on 17.09.2003. He identified the photographs and negatives as Ext.P19 series.

74. Ext.P13 R.C. Book and Ext.P17 series of agreement papers of car bearing registration No.KL-07P-5460 produced by the father's younger brother of A8 were seized by PW79 through Ext.P101 mahazar. On 29.09.2003, PW77 seized the sale deed by which ambassador car bearing registration No.KL-07P-5460 was purchased by A8, through Ext.P31 mahazar.

75. During September 2003, PW61 was working as the Scientific Assistant, District Crime Records Bureau (DCRB), Kochi city. On 17.09.2003, he examined white ambassador car bearing registration No.KL-07P-5460 at the premises of the office of the Circle Inspector of Police, Hill Palace Police Station. On examination, hair and fibre samples were found on a spare tyre placed in the boot. Blood stains were found in the inner side of the rear window and on the handle of the back door lock. Few hair samples and 2 numbers of bloodstained teeth with the

root were found on the platform of the rear seat. On examination of the registration number at the number plates, the letter 'P' and the digit '0' were seen tampered with. The top layer of the yellow and black paints were found partially removed in the said area.

He collected the following samples:-

- (1) Hair samples taken from the spare tyre.
- (2) Fibre samples taken from the spare tyre.
- (3) Hair samples were taken from the platform of the backseat.
- (4) Blood samples taken from the inner side of the rear window.
- (5) Blood samples taken from the handle of the door lock.
- (6) Two bloodstained teeth taken from the platform of the backseat.
- (7) Two buttons with the thread taken from the platform of the backseat.

All the samples were packed, labelled and sealed, and handed over to the investigating officer for forwarding the same to the

Forensic Science Laboratory, Thiruvananthapuram.

76. PW79 placed A14 under arrest on 28.09.2003 through Ext.P104 arrest memo and Ext.P105 custody memo. When A1 was questioned, he furnished Ext.P36(a) information as follows:-

“The dhoti worn by me and two turkey towels placed on the seat of the car were washed and kept at the rented house of the friend of Aji(A2). I will show the house wherein the said dhoti and turkey towels are kept and I will take it and produce, if I am taken there.”

On the basis of the said information and as led by A1, he reached the rented house of A14. A1 took and produced MO21 dhoti and MO15 series two rose coloured turkey towels on 24.09.2003 at 4.30 p.m., and he seized the same through Ext.P36 mahazar.

77. PW52 was residing near the rented house of A14. According to him, the police brought two persons to the said house and taken MO21 dhoti and MO15 series of turkey towels from the cloth-line inside the room of the house, which the police

seized through Ext.P36 mahazar, in which he also affixed his signature. Ext.P36(a) is clearly admissible in evidence under Section 27 of the Indian Evidence Act.

78. PW14 is an autorickshaw driver at Thalayolaparambu. He knows A1. According to him, on 13.09.2003, he was coming back by his autorickshaw from the Velloor Railway Station. When he reached a place called *Mittayikkunnu* near the Devaswom Board College, A1 showed his hand and stopped his autorickshaw and told him that he wanted to go to Thalayolaparambu. A1 along with another person got into the autorickshaw. When the autorickshaw reached a place called *Illithondu*, A1 asked him to stop the autorickshaw and thereby he stopped it. A1 went inside a house. It seemed that the house belongs to the relatives of A1. When A1 came back, he was seen holding two cans. From there, A1 asked him to proceed to the petrol bunk and thereby they went to the petrol bunk, from where A1 purchased diesel. They came back to *Mittayikkunnu*, where he could see an ambassador car lying. The time was at

6.30 am. In cross examination, he has stated in evidence that he was sure that A1 had come by that ambassador car and he could see A1 coming out of that car. It was the very same car to which A1 and the other person returned. There were 2-3 other persons also in the car. He identified the cans found in the hands of A1 as MO10 series.

79. PW15 had a jeep of his own and it was being driven by him. A1 is the son of the elder sister of his wife. According to him, on 13.09.2003, by about 6.30 - 7 a.m., A1 came to his house by an autorickshaw asking for diesel. More diesel was not there in his jeep and he was not in the habit of keeping extra diesel. Then, A1 asked for two cans. His wife took MO10 series cans and handed over it to A1. He is residing near the road at *Illithondu* situated towards east of the Thalayolaparambu Church.

80. On getting information regarding the presence of A1 and A2 at Kakkanad, PW79 reached Kakkanad at 5.30 p.m. on 19.09.2003, and placed A1 and A2 under arrest. Exts.P97 and

P98 are the arrest memo and custody memo respectively of A1, and Exts.P99 and P100 are the arrest memo and custody memo respectively of A2.

81. According to PW79, A1 furnished Ext.P37(a) information as follows:-

“The two cans were thrown into the bushes found at a place in between Chithrapuzha and Irumpanam while coming back by the car. I will point out the spot to which the cans were thrown away and will take and produce the two cans, if I am taken there.”

On the basis of the said information furnished by A1, and as led by A1, he reached the bushes situated around 200 metres away from the Irumpanam junction, at the northern side of the Irumpanam - KRL Public road. A1 searched among the bushes, took out MO10 series cans and handed over it to him, which he seized through Ext.P37 mahazar. Blood traces were found on MO10 series cans, and the same were pointed out by the Scientific Assistant.

82. PW53 has affixed his signature in Ext.P37 mahazar by

which the police seized MO10 series cans taken out and produced by A1 from near the bridge situated at the east of Irumpanam junction. According to him, he saw the same. According to PW61 Scientific Assistant, on 30.09.2003, he examined MO10 series two plastic vessels in connection with the above crime. MO10 series had been collected from the side of the refinery road, near Irumpanam junction. On examination, very trace amount of blood was detected on them. Instructions were given to the investigating officer to forward the same to the Forensic Science Laboratory for further detailed examination, if required. Ext.P37(a) is clearly admissible in evidence under Section 27 of the Indian Evidence Act.

83. PW16 is a worker at the petrol bunk of the Indian Oil Corporation at Thalayolaparambu. He has been working there from 1974 onwards. On 13.09.2003, by about 10-15 minutes prior to 7 a.m., A1 came to the petrol bunk and purchased diesel in two cans brought by A1. It was his assistant Rajappan, who filled diesel into the said cans. The said Rajappan is no more

now. The police had brought A1, and he identified A1 as the person who purchased diesel. In cross examination, he has stated in evidence that A1 came to the petrol bunk by about 6.45 a.m., and that he had purchased diesel for ₹200/-. According to PW61, it was he who had collected the said amount of ₹200/- from A1.

84. When A1 was questioned by PW79, A1 furnished Ext.P33(a) information as follows:-

"I have hidden the knife beneath the twigs and leaves at the oil palm estate near Ezhattumugham side. I will point out the place where the knife is hidden and I will take out and produce the knife, if I am taken there."

On the basis of the said information and as led by A1, he reached the mud road leading to the uninhabited bungalow near the gate of the check dam irrigation compound of the Athirapally estate at Ezhattumugham. A1 took out and produced MO16 knife from the place where it was hidden by him. He seized the same through Ext.P33 mahazar.

85. According to PW79, A2 furnished Ext.P34(a)

information as follows:-

“I have hidden the sword beneath the creepers in the estate. I will show the place where the sword is hidden and take out and produce the same, if I am taken there”.

Based on the said information and as led by A2, he reached the place where MO4 sword was hidden by A2. He seized MO4, which was taken and produced by A2 through Ext.P34 mahazar at 12.30 p.m. on 27.09.2003.

86. PW50 is a worker of a tipper lorry. According to him, he affixed his signatures in Exts.P33 and 34 mahazars, by which the police had seized MO16 knife and MO4 sword, taken and produced by A1 and another accused, who was not present at the time of his examination, from among the bushes and creepers found in the 18th division of the estate of the Plantation Corporation at Ezhattumugham, very near the dam gate. He identified MO4 and MO16. Ext.P33(a) and Ext.P34(a) are clearly admissible in evidence under Section 27 of the Indian Evidence Act.

87. PW20 is the Security Guard at the gate of Plantation Corporation of Kerala Limited. Three shifts of work are there. The first shift is from 6 a.m. to 2 p.m., second one is from 2 p.m. to 10 p.m., and the third one is from 10 p.m. to 6 a.m. When anybody goes out or goes into the estate, he will have to note down the vehicle number, its details, the date, the destination and the driver's name in a Register and to get the signature of the person furnishing such details. Ext.P2 was the said Register kept there at the gate on 13.09.2003, which the police seized from him through Ext.P7 mahazar. On 13.09.2003 in the morning, from 6 a.m. to 2 p.m., he was on Guard duty at the check post of the Athirappilly estate at Ezhattumugham of the Plantation Corporation of Kerala Limited. A person named Jomy (A7), who is known to him, had made Ext.P2(c) entries in Ext.P2 at 10.26 a.m. on that day. The destination was noted as the 17th Block of the Plantation. The said vehicle went out for which Ext.P2(a) entry was made. The said vehicle again went through the check post for which Ext.P2(b) entry was made. In cross

examination, he has stated in evidence that it is not necessary that the driver himself should sign the Register; it is sufficient if one of the persons travelling in the vehicle signs the same. Ext.P2(a) entry was made by Mohan, who had taken the car out of the estate. Ext.P2(b) shows that the car came back at 12.05 p.m. The persons on duty at the said check post were not asked to inspect any of the vehicles.

88. PW21 was the Security Guard on duty at the said check post from 2 p.m. to 10 p.m. on 13.09.2003. According to him, PW20 was the person on duty at the said check post during the first shift. On that day at 2.45 p.m., vehicle bearing registration No.KL-07P-5460 went out of the check post. The entries relating to the same are in Ext.P2(d) and the same were made by Jomy(A7), who was known to him.

89. PW22 is the younger brother of A1. According to him, A9 and A10 are the sons of his mother's younger sister. A1 is residing at Kochupally at Udayamperoor. Even though he had turned hostile to the prosecution, it has come out from his

evidence that A1 had reached their house at Chemmathukara and obtained cloth by stating that somebody along with him had suffered an accident and that he had obtained money also.

90. On 13.09.2003, PW30 came to know that on that day by about 6.15 a.m., A1 and A2 along with some other persons had abducted the deceased by a car. On that day, at 7.15 p.m., while he was sitting at his shop, he got a phone call from A1. A1 told him as follows:-

"I am Jaison who is talking. You all had caught my younger brother and handed over to the police. It is not a problem for me. I have settled the problem of Vidyadharan. If anybody else wants, they can directly enter into a fight with me and then they could see as to who would win."

Then, he asked A1 as to from where he was talking and also asked as to what happened to Vidyadharan. Immediately, A1 cut the call.

91. On 27.09.2003, on getting information regarding the presence of A4 near Kalamassery Railway Station, PW79

reached the place at 9.15 p.m., and placed A4 under arrest through Ext.P102 arrest memo and Ext.P103 custody memo. A4 furnished Ext.P35(a) information as follows:-

“Shoes, banyan, jeans and shirt worn by me are kept by my mother at my house, after washing it. I will point out the house and take and produce shoes, banyan and shirt, if I am taken there”.

Based on the said information and as led by A4, he reached the house of A4 and seized MO17 shirt, MO18 T-shirt, MO19 jeans and MO20 series shoes taken and produced by A4, through Ext.P35 mahazar.

92. PW51 is residing near KRL colony. He knows A4 who is one of his neighbours. According to him, he had affixed his signature in Ext.P35 mahazar, by which the police seized MO17 shirt, MO18 T-shirt having the picture of lion, MO19 Jeans and MO20 series pair of shoes of A4 taken and produced by A4 and the mother of A4, from the house of A4. He has stated in evidence in cross examination that A4 who came along with the police came out of the jeep and entered inside the house and

took out all the said material objects, and A4 along with his mother handed it over to the police. Ext.P35(a) is clearly admissible in evidence under Section 27 of the Indian Evidence Act.

93. According to PW79, A4 furnished Ext.P38(a) information as follows:-

“The sword was hidden by me among the bushes near KRL pump. I will show the place wherein the sword was hidden and will take out and produce the sword, if I am taken there.”

On the basis of the said information and as led by A4, he reached the bushes situated around 200 metres away towards west from the KRL petrol bunk. A4 searched among the bushes and took out and produced MO5 sword, which he seized through Ext.P38 mahazar. PW54 is the signatory to Ext.P38 mahazar, in which he affixed his signature near the petrol pump of KRL at Ambalamughal. According to him, he saw the police bringing A4, who is the accused in Vidyadharan murder case, to that place. A4 took and produced MO5 sword. Ext.P38(a) is clearly

admissible in evidence under Section 27 of the Indian Evidence Act.

94. On getting the secret information regarding the presence of A5 at Panangad, PW79 went over there and placed A5 under arrest at 2.30 p.m. on 16.09.2003, through Ext.P91 arrest memo and Ext.P92 custody memo. On questioning, A5 furnished the following information:- *"It was that dhoti which is worn by me at present."* The said MO40 dhoti was seized from A5 through Ext.P93 mahazar. Again, he furnished the following information:- *"That shirt was placed by me in my house. I will took and produce the shirt, if I am taken there."* Based on that information, and as led by A5, he reached the house of the A5 at 3.30 p.m. A5 took and produced MO41 shirt, which he seized through Ext.P94 mahazar.

95. Further, A5 furnished the following information:- *"I will show the place, if I am taken there."* Based on that information and as led by A5, PW79 reached Athirapally estate in Ayyampuzha Village, in Aluva Taluk. A5 pointed out the northern

courtyard of the uninhabited estate bungalow near the estate check dam. He prepared Ext.P39 mahazar in respect of that place at 4.45 p.m. The said information furnished by A5 has been entered in Ext.P39 mahazar. MO22 piece of brick, MO25 series of two pieces of wooden reapers, the ash relating to the burned clothes, a partially burned photograph and a turkey towel were seized. The ash is identified as MO42, the partially burned photograph is identified as MO13 and the turkey towel is identified as MO15(a). MO26 series of insulation tapes, which contained blood and hair affixed on it, were collected and handed over to him by the Scientific Assistant. The Scientific Assistant collected MO27 blood found on the tamarind tree standing at that place.

96. PW55 is a coolie worker of the Vettilappara estate of the Plantation Corporation. He is residing in the quarters of the Plantation Corporation. According to him, he saw a person showing the place near the quarters of the superintendent of the estate near the Thumbormoozhi dam, known as

Ezhattumugham dam. The said person, who is aged around 25, pointed out the place near the northern corner of the bungalow from where the police seized brick, stick, towel, some burned items and adhesive tape. He identified the piece of brick so seized as MO22 and the towel as MO15(b). He identified MO23 series as the adhesive tapes. The said information furnished by A5, which led to the discovery of the said place and the aforesaid material objects, is clearly admissible in evidence under Section 27 of the Indian Evidence Act.

97. According to PW79, the photographs of that place were caused to be taken by the department photographer. Ext.P58 series are the photographs and negatives. PW63 was the Rural Police Photographer, Ernakulam, during 2003. He took the photographs of the scene of occurrence and produced that along with the negatives as Ext.P58 series, before police. While PW65 was working as the concerned Village Officer, he prepared Ext.P63 plan in respect of the scene of occurrence. PW79 seized Ext.P2 register from the estate check post through

Ext.P7 mahazar.

98. According to PW61 Scientific Assistant, he examined the scene of occurrence in Crime No.330/2003 of the Hill Palace Police Station. The scene was at Athirappally, at the premises of the Manager's quarters in D4 division of the estate. On examination, blood was detected on a tamarind tree found on the northern side of the cottage. One bloodstained towel and three pieces of yellow insulation tapes were found on the scene. Blood and hair samples were found on the tapes. He collected the following samples from the scene:-

(1) blood samples taken from the tamarind tree.

(2) pieces of insulation tapes taken from the scene.

All the samples were packed, labelled and sealed, and handed over to the investigating officer for forwarding the same to the Forensic Science Laboratory for further detailed examination. He identified MO23 as the pieces of insulation tapes collected from the scene. MO27 is the blood sample collected from the tamarind tree. Ext.P56 series are the reports signed by him.

99. According to PW79, A5 furnished Ext.P30(a) information as follows:-

“I have hidden that sword among the bushes at NAD site. I will point out the place where I have hidden the sword and I will take and produce the sword, if I am taken there.”

On the basis of the said information and as led by A5, he reached the isolated property in the possession of KINFRA belonging to HMT Company, Kalamassery at the eastern side of the HMT- Asokapuram public road. A5 took out and produced MO6 sword from among the bushes, which he seized through Ext.P30 mahazar. PW47 saw A5 taking MO6 sword from the HMT compound at the side of the HMT - NAD road and handing over it to the police. The police seized the same through Ext.P30 mahazar, in which he affixed his signature. Ext.P30(a) is clearly admissible in evidence under Section 27 of the Indian Evidence Act.

100. On 17.09.2003, at 8.35 a.m., while PW62 was working as the Assistant Surgeon at the Taluk Headquarters

Hospital, Tripunithura, he examined Faizal, Nawaz manzil, Panangad (A5). He has noted his identification marks, as a black mole on the dorsum of the small finger of the right hand, and a tattoo mark on the left side of the chest. The history was given by the said patient when asked that, he sustained injury when he tried to catch and remove the sword stick on the 13th of September, 2003. On examination, it was found that he had an abrasion on the forehead and multiple abrasions on the finger of the left hand. There were also a deeper cut and a wound on the right index finger, at the region of the middle phalanx. He issued Ext.P57 certificate. According to him, the injury could be caused by coming into contact with any of MOs 4 to 6, and that the careless handling of the weapon may also cause the said injury.

101. PW73 is residing near the Matom bus stop, Kochupally, Udayamperoor. A9 and A10 are his brothers. A1 is the son of his mother's sister. A1 was a driver. According to PW73, the phone number at his house is 0484-2793581. His mother died on 13.09.2002 and his father died on 27.09.2002.

13.09.2003 was the first death anniversary of his mother, and on that day, A9 and A10 were present at his house. A1 had reached there by about 10-10.30 p.m. on the previous night. According to him, there were no other persons along with A1. Questions that could be put in cross examination were put to him by the prosecution by declaring him as hostile. According to him, A1 had gone away from the house by about 5 a.m.

102. PW77 was the Sub Inspector of Police, Hill Palace Police Station during September, 2003. He had assisted the Circle Inspector who had investigated this case. At 12.40 p.m. on 16.09.2003, he had seized the call particulars of the mobile No.9895292246, which was being used by A1, through Ext.P28 mahazar.

103. When A2 was questioned by PW79, he furnished Ext.P106(a) information as follows:-

“The jeans worn by me was washed and kept at the rented house of the friend of Aji(A2). I will point out the house wherein the said jeans is kept, if I am taken there.”

Based on the said information and as led by A2, PW79 reached the rented house of A14, from where A2 took out and produced MO43 jeans, which he seized through Ext.P106 mahazar. Ext.P106(a) is clearly admissible in evidence under Section 27 of the Indian Evidence Act.

104. Material objects were produced before court by PW79. Ext.P118 forwarding note was filed for sending the material objects to the Forensic Science Laboratory for examination. Ext.P120 series are the Reports received from the Forensic Science Laboratory after examination. On examination, MO42 ashes were found to be the remnants of charred and partially burned cotton clothing. MO22 brick seized from the compound of the estate bungalow, MO32 blood sample collected from the door lock of the MO2 car, MO41 shirt of A5, MO21 dhoti of A1 and MO15 turkey towel seized from the scene of occurrence were found containing human blood. However, the said human blood were found insufficient for grouping. MO18 T-shirt worn by A4 and MO16 knife discovered at the instance of

A1 contained blood; but the same was insufficient to determine the origin.

105. We are mindful of the fact that greater caution is required in order to rely on the evidence of an accomplice, as he is a *particeps criminis* and also is a person who has betrayed his friends, who were the other participants of the crime, who had reposed confidence on him. On a careful scrutiny of the evidence discussed above, we are fully satisfied that the evidence adduced by PW7 is fully corroborated in all its material particulars. It has come out in evidence that PW7, who was originally A6, has turned as an accomplice voluntarily, without any sort of compulsion from the part of the investigating machinery. It seems that the incident had created a guilty conscience in him and ultimately he had decided to reveal the entire incident voluntarily to the police, as he had lost peace of mind. He has revealed everything in court and he has not suppressed anything. When the deceased was being tortured to death near the estate bungalow at Ezhattumugham, it seems

that PW7 had intervened twice in order to avert severe torture and loss of life of the deceased. There is absolutely no reason to discard the concrete evidence adduced by PW7.

106. In fact, we are surprised to see as to how the court below could acquit some among the accused, who faced the trial, especially in the light of the concrete evidence of PW7, which stands corroborated not only in material particulars, but also in all particulars. We have our own reservations against the acquittals on the charge of criminal conspiracy. We leave those questions in the absence of any challenge by the State or the victims. One has to think whether justice has been fully done to the deceased by the administration of criminal justice? Can the departed soul unveil the blindfold of the goddess of justice?

107. From the discussions made above, we are satisfied that the guilt of the appellants for the offences under Sections 143, 147 and 148 IPC and Sections 471, 364, 302 and 201 IPC read with Section 149 IPC clearly stands proved. Matters being so, the conviction passed by the court below is not liable to be

interfered with.

108. For too long, the administration of criminal justice has centred its attention more on the rights of the criminal than on the victims of the crime. It is no wonder that even at present, the entire focus of the criminal justice system is on the offender; to punish him or to seek his reformation and rehabilitation with all the resources and goodwill available through the courts and other governmental and non-governmental agencies. We are made to understand the personality and the individual and social factors which might have contributed to the criminal behaviour of the accused; the victims of the crimes are, on the other hand, the forgotten people in the system. Little attention has been made on the victims of crime as persons deserving protection of the administration and the society for rehabilitation in an honourable and dignified manner.

109. Judicial attitude, as reflected in sentencing, also should appear to be amenable to the personal factors and characteristics of victims. More severe judicial action is

discernible in cases of helpless victims, especially elderly persons, children and females. There should be a severity in ordering compensation as an after effect of sentencing, when the crime is not a victim precipitated crime. When once the sentence was reflected in retributive justice, the remedies should also continue to be based on the restitutive justice, which required compensation by the wrongdoer to the victim or his family members. Every time a situation cannot be thought of to push the victims of crimes to the corridors of the civil courts to have an ordinary civil action to recover compensation in the shape of monetary damages.

110. In practice, it gives rise to the unfortunate situation in which the victim of the crime becomes an irrelevant factor in the administration of justice; the State being merely concerned with the punishments and to a lesser extent, reformation and rehabilitation of the offender. Even though in modern countries the system of restitutive justice is not confined to the payment of compensation out of the fines imposed on offenders, but the

State has also accepted responsibility for compensation in varying degrees. Because of obvious reasons, mainly economic, almost nothing has been done so far in the Third World countries. It is a fact that a victim has hardly any role in the criminal trial though there is an increasing awareness now that the victim must be given rightful participation opportunities in the trial instead of being just a helpless and mute spectator to the court proceedings. It has to be realised that the victims must be accorded the dignity and respect by the criminal law agencies, especially the police and courts. The restoration of the losses to which the victims are put should also be a criterion in imposing sentence when the courts are not helpless to award such amount of fine, out of which they can be adequately compensated. Not only retributive justice but also restitutive justice in the form of assistance to crying victims should be the trend of modern courts.

111. When the court has a very limited discretion under Section 357(1) Cr.P.C; it can give compensation only out of the

fine if imposed on the offender theoretically, the power of the court to impose a sentence of fine along with the sentence of life imprisonment, cannot be forgotten, even though practical considerations would prevail. Of course, the amount of fine should be determined on the basis of various factors including the nature of the crime, the number of injuries, the paying capacity of the offender etc. Of course, it is true that in awarding compensation the court should not just consider what compensation to be awarded to the heirs of the deceased and then impose a fine which is higher than the compensation. At the same time, that can also be a criterion along with the other attending circumstances as aforesaid in imposing fine.

112. It is true that compensation by the State to the victims of crime is the only proper remedy; but it is very unlikely for such a scheme to materialise in India and other developing and poor countries. The fact, however, remains that ineffective means of preventing and controlling crimes are the main factors leading to victimisation. The Supreme Court in **Guruswamy v.**

State of Tamil Nadu ((1979) 3 SCC 799) has held that in a case of murder, it is only fair that proper compensation should be provided for the dependents of the deceased. The decision in **Baldev Singh v State of Punjab ((1995) 6 SCC 593)**, also favours in awarding compensation to the victims in cases of murders.

113. In **Hari Singh v. Sukhbir Singh & Others ((1988) 4 SCC 551)**, it was held as follows:-

“The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused.”

114. In **Sarwan Singh & Others v. State of Punjab ((1978) 4 SCC 111)**, it was held as follows:-

“If the accused is in a position to pay the

compensation to the injured or his dependents to which they are entitled to, there could be no reason for the court not directing such compensation. When a person, who caused injury due to negligence or is made vicariously liable is bound to pay compensation it is only appropriate to direct payment by the accused who is guilty of causing an injury with the necessary mens rea to pay compensation for the person who has suffered injury.”

115. In ***Dilip v. Kotak Mahindra Co. Ltd. [2007 (2) KLT 488 (SC)]***, it was held as follows:-

“The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for

one or the other factors enumerated out of the same.”

116. In ***Hari Kishan & State of Haryana v. Sukhbir Singh (AIR 1988 SC 2127)***, the Apex Court, by awarding compensation to the victim, had highlighted the significance of Section 357 in the Code of Criminal Procedure as follows:-

“.....It is an important provision, but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences, but, it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime-as well as reconciling the victim with the offender.... We therefore recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.” (emphasis supplied)

117. Section 357 of the Code is designed simply to

ameliorate the stricter requirements laid down in the cases in respect of the burden of proof required before compensation orders are made. The effect of the sub-section is to reduce slightly the obligation required it to be discharged in a civil litigation seeking a decree for damages. This means that the court in imposing fine as part of the sentence, may use its own knowledge to a limited extent to supplement a deficiency in the evidence of the amount of actual loss. The offender should be forced to recompense the victims of his crime. At a more pragmatic level, criminal justice systems rely heavily on victims for information about crimes and about offenders, and for evidence in court. It is only fair that, in return, the system should ensure that they receive the proper help and support. In cases like the present one, the fine that has to be realised, which has to be defrayed as compensation to the victims, should also have a punitive effect on the offender as well as reparative in relation to the victims. The order to pay compensation out of the fine amounts should be applauded a safe form of reparative justice,

or at least as recognition that our system ought to be multifunctional rather than limited to punitive responses.

118. The deceased, a young man was brutally done away with by the appellants and some other antisocial elements. PW8 has become a widow at the age of 27. Their two small daughters aged 5 and 1 have lost their paternal protection for ever. The aged mother, with whom he was very fond of, has lost her son. The total amount of fine imposed by the court below on these appellants comes to ₹1,50,000/-, out of which the court below has ordered the payment of ₹1,25,000/- to PW8 as compensation. Considering the totality of the circumstances involved in this case, we are of the view that the court below ought to have imposed a harsher sentence of fine on these appellants, so that it could have been ordered to be given to PW8 as compensation. Unfortunately, there is no 'victim allocution' in this case, in the sense that the victims of the crime have not urged for a harsher sentence.

119. The legislature has not imposed any restriction on the

amount of fine that can be imposed by a Court of Session. In cases like the present one, when not be categorised as 'the rarest of rare cases', and at the same time, when special facts and circumstances are there, courts should not wriggle out of its power to impose appropriate sentence of fine with appropriate default sentence also, so that it should have a punitive effect on the accused, and reparative effect on the victims, thereby the administration of criminal justice system should become multifunctional. Courts must take inspiration from the law declared in ***Hari Kishan*** (*Supra*). Criminal justice system is no longer penal justice system alone; it is restitutive justice system, too.

120. Regarding the sentence, we are of the view that the sentences imposed by the court below do not call for any interference. At the same time, we order that the entire fine amount, if paid or recovered, shall be paid to PW8 as compensation under Section 357(1)(c) of the Code of Criminal Procedure, as we feel that any deduction from it amounts to

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denial of justice to her. These appeals are devoid of merits and are only to be dismissed, and we do so.

In the result, these Criminal Appeals are dismissed.

K.T. SANKARAN, JUDGE

B. KEMAL PASHA, JUDGE

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