

(2010) 01 KL CK 0061
In the High Court Of Kerala
Case No : Criminal A. No. 464 of 2006

Puthenpurayil Nathankandy Sathyan and Others	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 232, 313
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2010) 01 KL CK 0061

Hon'ble Judges : P. Bhavadasan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : P.S. Sreedharan Pillai, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

P. Bhavadasan, J.—Six persons were prosecuted for the offences punishable under Sections 143, 147, 148, 449 and 302 read with Section 149 Indian Penal Code. The sixth accused, who stood trial, was acquitted of all the offences. Accused Nos. 1 to 5 were found guilty of all the offences alleged against them. They were therefore convicted and sentenced to undergo imprisonment for six months each and to pay a fine of Rs. 1000/- each, in default of payment of which, they were directed to undergo imprisonment for one month each for the offence punishable u/s 143 IPC. They were also convicted and sentenced to undergo imprisonment for three months each and to pay a fine of Rs. 500/- each, and in default of payment of which, to undergo imprisonment for one month each for the offence punishable u/s 447 IPC. Accused Nos. 1 and 2 were convicted and sentenced to undergo imprisonment for two years each and to pay a fine of Rs. 1000/- each and in default of which, to undergo imprisonment for six months each for the offence punishable u/s 148 IPC. Accused Nos. 3 to 5 were convicted and sentenced to undergo imprisonment for two years each and to pay a fine of Rs. 500/- each, in default of payment of which, to undergo imprisonment for six months each for the offence punishable u/s 147 IPC.

Accused Nos. 1 to 5 were convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs. 10,000/- each, in default of payment of which, to suffer imprisonment for two years each for the offence punishable u/s 302 IPC.

2. This case discloses yet another instance of communal disturbance. It is unfortunate that an innocent person lost his life at the hands of some miscreants, who claimed to be retaliating for an objectionable act on behalf of a particular community.

3. The incident, which gave rise to this case occurred on 26.3.1995 at about 1.15 p.m. The deceased was running a shop near the place of incident. P.W.4 resides nearby to a row of shops, one of which was occupied by the deceased. She stays with her parents. On 26.3.1995 at about 1.15 p.m. she was waiting in front of her house for the marriage procession of the daughter of her neighbour. She then found a group of ten persons entering the shop of the deceased and eating a few plantains. After doing so, they caught hold of Ahmed, the deceased, by his neck and threw him on the road. He was attacked with M.O.1. In a frantic effort to save his life, the deceased ran to the house of P.W.4, which was quite nearby. The assailants followed him. The deceased, in a bid to escape, ran towards the well situate in the property of PW.4. Unfortunately, he fell down. That was sufficient for the assailants, who pounced on him and inflicted several injuries on him. After having achieved their purpose, the assailants left the place. Seeing the incident P.W.4 cried aloud, that brought several persons to the place. They found the deceased lying in a pool of blood dead.

4. P.W.4 laid Ext.P3 first information statement before Kolavallur Police Station. P.W.16, Head Constable of the Police Station recorded the first information statement given by P.W.4 and on that basis registered Crime No. 52 of 1995 of Kolavallur Police Station as per Ext.P9 FIR. At the time of giving Ext.P3 FIS, P.W.4 was not in a position to name the assailants, but however, she stated that she could identify them by sight. P.W.21 took over investigation. He went to the place of incident, conducted inquest over the body and prepared Ext.P2 inquest report. He seized M.Os. 2 to 9 found on the body and at the place of incident. On a perusal of the nearby places, P.W.21 was able to recover M.O.1 weapon, which was lying a short distance away from the place of incident, presumably abandoned by the assailants. The various things seized by him are M.Os. 9 to 15. In the meanwhile, he had the body sent for autopsy. P.W.14, the Forensic Surgeon, conducted autopsy and furnished Ext.P8 certificate. P.W.21 prepared Ext.P4 scene mahazar. He recorded the statements of witnesses. He would say that he had the accused arrested and he had questioned them. He procured the necessary documents, completed investigation and laid charge before court.

5. The Chief Judicial Magistrate Court, Thalassery, before whom final report was laid, took cognizance of the offences. Six persons were shown as the accused. All of them entered appearance. The learned Chief Judicial Magistrate complied with all the legal formalities. The learned Magistrate found that the offences were exclusively triable by a court of Sessions and accordingly committed the case to

Sessions Court, Thalassery. The said court made over the case to Additional Sessions Court (Ad hoc-I), Thalassery for trial and disposal. That court, on receipt of records issued summons to the accused.

6. The accused entered appearance before the said court. After hearing both sides, charges were framed for the offences punishable under Sections 143, 147, 148, 449 and 302 read with Section 149 IPC. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws.1 to 21 examined and Exts.P1 to P17 marked. After the close of the prosecution evidence, the accused were questioned u/s 313 Cr.P.C. They denied all the incriminating circumstances brought out against them and maintained that they were innocent. It is pointed out by them that they have been falsely implicated with ulterior motive. On finding that the accused could not be acquitted u/s 232 Cr.P.C. they were asked to enter on their defence. The accused examined D.W.1. After hearing both sides, the court below came to the conclusion that the prosecution had established its case as against accused Nos. 1 to 5. On coming to the conclusion that the prosecution has failed miserably to establish the role of accused No. 6, he was acquitted. Accused Nos. 1 to 5 were found guilty of the various offences as already mentioned and the conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

7. The question that arises for consideration is whether any interference is called for with the findings of the court below.

8. Ahmed, who was running a small business in one of the shops in a row of shops, is admittedly no more. He was not a native of the place where he ran his business. On the date of the incident, it appears that an organization had called for a "hartal" and most of the shops were closed. It was when late Ahmed had come to the shop to take previous day's collection that he was attacked. Ext.P2 inquest report would clearly indicate the nature of the wounds suffered by the deceased at the hands of the assailants. P.W.14, as already noticed, is the Forensic Surgeon. His report is Ext.P8. Ext.P8 shows as many as six incised wounds on the body of late Ahmed. The report, namely, Ext.P8, shows that death was due to the injuries suffered in the head and neck. It admits of no doubt that death of Ahmed was homicidal.

9. The most crucial question then is whether the prosecution has succeeded in establishing that it was accused Nos. 1 to 5, who had mounted an attack on Ahmed and caused severe injuries to him which resulted in his death.

10. The court below relied on the evidence furnished by P.Ws.4, 5, 6 and 7, which were found to be convincing enough to come to the conclusion that the prosecution has succeeded in establishing the case against the accused. According to them, the incident took place near the well in front of the house of P.W.4. As far as the other witnesses are concerned, their evidence is to the effect that they had occasion to see the assailants going towards the place of the

incident and returning from there. Some of them say that the assailants had dangerous weapons with them.

11. Learned Counsel appearing for the appellants criticized the finding of the court below on several grounds. According to them, the court has not applied its mind to the evidence in the case and has acted in a routine manner. Merely because some of the witnesses say that they had occasion to see the incident or see the assailants going to and coming from the site of the incident, it does not automatically establish that the prosecution case is true. According to the learned Counsel, there are inherent defects in the prosecution evidence, which would unerringly show that the prosecution case is not free from reasonable doubt. Drawing attention of this Court to the evidence in the case, it was pointed out that it was evident that the prosecution witnesses were very familiar with the accused persons, and if that be so, there was no justification as to why these assailants were not named in the first information statement itself. In fact the evidence of P.Ws.6 and 7, the principal witnesses in the case, would show that they had knowledge about the identity of the accused persons soon after the incident. Still the persons' identity initially remained in obscurity, and it was after the identification parade, the identities were established. Learned Counsel relied on the decision reported in *Heera and Another Vs. State of Rajasthan*, regarding the purpose of conducting identification parade. Reliance was placed on the decision reported in *Kanan and Others Vs. State of Kerala*, regarding the value of the conduct of identification parade. Considerable reliance was placed on the decision reported in *Tahir Mohammad, Kamad Girendra Singh and another, Badri Singh and others Vs. State of Madhya Pradesh*, for the proposition that when the witnesses without any margin of error and readily and immediately identify the accused persons, it does create a suspicion. Relying on the decision reported in *Hari Nath and Another Vs. State of U.P.*, it was contended that the failure on the part of the witnesses to indicate the accused, when it is very clear that they had knowledge about the identity of the accused, creates suspicion regarding the prosecution version.

12. In the case on hand, as already noticed, according to learned Counsel for the appellants, it is very clear that going by the prosecution evidence, the accused were from the locality and in fact from near the place of incident. They were familiar to the prosecution witnesses. Relying on the evidence of P.W.17, the learned Magistrate, who conducted the identification parade has pointed out that P.W.6 had no difficulty whatsoever in identifying the accused persons. The report of the learned Magistrate shows that he simply went near the accused person and pointed out the accused persons without any doubt. This shows that he was very familiar with the accused persons. It is also contended that except the oral evidence of P.Ws. 4, 5 and 6, there is absolutely no evidence in the case at all to implicate the accused persons.

13. Replying to the above contentions, learned Public Prosecutor pointed out that the oral evidence of the witnesses should not be viewed in isolation. One has to

notice the circumstances and atmosphere that prevailed at the time of the incident and then evaluate the evidence. It is clear from the evidence that there was an atmosphere of terror and fear unleashed by the assailants and none of the persons, who had actually seen the incident were infact ready to give statements. Most of them wanted to avoid getting involved and therefore they were very reluctant at the initial stage to disclose the identity of the assailants. According to learned Public Prosecutor, a reading of the evidence of P.Ws.4, 5 and 6 would show that they are natural witnesses and their versions regarding the incident are uniform, consistent and cogent. There is nothing to indicate that they had ill-motive to falsely implicate the accused persons and their evidence stands scrutiny. Merely because, even assuming that the accused were familiar to the witnesses and that they did not in the first stage itself divulge the identity of the accused, it does not mean that their evidence should be discarded. It is also true that initially in the statement given by the witnesses, there is nothing to indicate even the physical features of the assailants. But that does not matter. The prosecution has been able to establish the reasons for such a lacuna in the initial stage and has been able to adduce convincing evidence to show that it was none other than the accused persons, who had committed the gruesome acts. According to learned Public Prosecutor there are no grounds to interfere with the judgment of the court below.

14. The learned Public Prosecutor, in support of his contentions relied on the decision reported in *Amitsingh Bhikamsing Thakur v. State of Maharashtra* 2007(1) KHC 487 to highlight the purpose and object of conducting an identification parade. He also relied on the decision reported in *Saji v. State of Kerala* 2007(2) KHC 595 to show that even assuming that the media had published the photos of the accused, that need not affect the identification of the accused. Reliance was also placed on the decision reported in *Ankush Maruti Shinde and Others Vs. State of Maharashtra*, . In the said decision, it is highlighted that minor loopholes in the identification parade conducted at the time of investigation will not take away the evidentiary value of the identification of the accused by the witnesses in court, which forms substantive evidence.

15. At the outset, one may refer to the evidence of P.Ws. 4, 5, 6 and 7. They are all people residing very near to the place of incident. It is also true that all of them belong to the same community. However, a reading of the evidence would indicate that there was communal tension and unfortunate incidents in the area and death of one Surendran on the previous day of the incident has created tension in the area. One has to appreciate the evidence of witnesses in this context and the prevailing circumstances in the area.

16. P.W.4 is the author of Ext.P3 first information statement. The deceased was familiar to her, as he was running a business close to her residence. As per the evidence of this witness, while she was standing in front of her house waiting for a marriage party to arrive along with two of her relatives, namely, C.W.3 and C.W.6, she happened to see the deceased coming running towards her house. He

was crying aloud. He ran towards the well in the property of P.W.4. According to this witness, at that time he was bleeding. He fell near the well. She found a few people following him. In court, she was unable to identify them. Thereafter, she disowned the entire prosecution case and she was declared hostile. However, she identified accused No. 3 as one of the persons, who had chased the deceased.

17. P.W.5 says that on the date of the incident, at the relevant time, he was in his sister's house, which was close by. He happened to find a car coming to a halt on the road in front of the house of his sister. He deposed that 4-5 persons got out of the car and the car thereafter left the place. They went towards the shop of the deceased. He claims that the shop is visible from the residence of his sister. He heard a commotion from the shop of the deceased. When he turned his attention to that place, he found two or three persons pushing the deceased onto the road. He fell on the road. He got up and ran towards the house of P.W.4. P.W.5 claims that he then went near the house of Ahamed Haji, which situates just in front of his sister's house. From the rear portion of that house, he watched what was happening. He could see the rear portion of the house of P.W.4. He also says that the deceased ran towards the front portion of the house of P.W.4. He did not see what happened after the deceased had reached the front portion of the house of P.W.4. He deposed that soon thereafter he heard a loud cry from the house of P.W.4. He asked her for the reason. She told him that something had been done to Ahamed, who is lying near the well. He found Ahamed lying in a pool of blood. He found three or four persons running away from the place and he had recognised the persons as who had come in the car. He had identified accused Nos. 1, 2, 3 and 5 in court. He says that even though he had seen five persons getting out of the car, he focused his attention only on four of them. By that time C.Ws.8 and 16 had reached the place hearing about the incident and he would say that he returned to his sister's house and informed the police. According to the witness, there were communal clashes between Muslims and Hindus in the area at the relevant time. He would recall that when some of his friends went to see the body of Surendran, who died on the previous day, they were advised not to remain there since it was not safe for them to do so. According to him, on the date of the incident, a political party had called for a hartal and none of the shops had opened. Unfortunate Ahamed, as per the evidence, had gone to his shop to take the previous day's collection for purchasing articles for his business. P.W.5 would also say that he is a signatory to Ext.P2 inquest report.

18. P.W.6 is another witness, who claims to have seen the incident. He would say that at the relevant time, he was in the house of C.W.5. He had returned from Middle East a week ago. Since he was constructing a house, he was at the place itself. While he was talking to the son of C.W.5, he heard a loud cry from the road behind the house and he heard sounds of persons running away. C.W.5 and his son got inside the house and closed the door. P.W.6 says that he dared to find out what the commotion was about. Then he found about four or five persons running away from the house of P.W.4. He also found that they had weapons with

them. He says that out of the six persons in court he had seen five persons running away, except the one who was wearing spectacles. That is to say that he was able to identify accused Nos. 1 to 5. He went to the house of P.W.4 and he found a person lying near the well with injuries on his body. He says that he did not know who had done the act.

19. The next witness is P.W.7. He was coming along the main road. He resides a few metres away from the place of incident. While he was coming along the road, he heard the wails from the house of P.W.4. He found a few people coming running along from the opposite side. He says that one of them had a sword with him and another person had an axe. They passed him and he identified accused Nos. 1 to 4 in court.

20. One must remember that the accused are from the locality or nearby places. A close reading of the evidence would reveal that the accused are familiar to the witnesses. The evidence of P.W.6 shows that tension and terror was prevailing in the area and even though some of his friends went to attend the funeral rites of Surendran, they were persuaded to return for fear of immediate retaliation. It shows that the place was not safe. It indicates that there was some strong suspicion about the death of Surendran and that a particular community was involved in the incident. The evidence in the case also discloses that the people of the locality were living in constant terror and the moment they felt that something untoward will happen, they would run inside their house and close the doors. This was the atmosphere at the place of incident at the relevant time. This explains the reluctance on the part of the witnesses to divulge the names of the assailants at the first instance. Nobody was bold enough to tell the police about the identity of the assailants for fear of repercussions.

21. True there are discrepancies in the evidence of the above witnesses. It has come out in the evidence of P.Ws. 5, 6 and 7 that they were aware of the identity of the assailants soon after the incident. In fact the evidence of P.W.7 shows that when he reached the place of the incident at the relevant time on the relevant day, he had found C.Ws. 5 and 6 at the place. He says that he had disclosed the names of the accused to C.Ws.2 and 16. He would also depose that he was very much frightened to disclose the names of the accused persons to the police. His statement was taken on the third day of the incident. He admitted that even though he had claimed to have seen five persons, he could identify only four of them. As far as the evidence of P.W.6 is concerned, the criticism levelled is that his evidence cannot be believed because of the manner in which he had identified the accused at the time of test identification parade conducted during investigation. The learned Magistrate, namely, P.W.17 has narrated about his attitude and behaviour at the time of identification. We will come to it little later.

22. The evidence of P.W.5 is attacked on the ground that going by the statements given by this witness, he happened to see the incident when he was standing near the rear portion of the house of one Ahamed Haji. He had also stated that on the relevant day and at the relevant time he was in the house of

his sister, which was near the place of incident. It was pointed out that neither in the scene mahazar nor in the plan produced in the case, there is any mention about the house of the sister of P.W.5 or the house of Ahamed Haji, so as to enable us to ascertain whether what the witness speaks is true. According to the defence that is a deliberate suppression and if those houses were shown, it would have been easily shown that the version given by P.W.5 is false.

23. One must notice that P.W.4 had the courage to identify accused No. 3 at the time of evidence. It is significant to notice that the court below has noticed the demeanour of this witness and has infact noted it in the deposition. After she was declared hostile, the learned Public Prosecutor put questions in the nature of cross-examination, and she admitted that she was nervous and was frightened. Infact she began to cry in the box. Even though the court asked her on several occasions as to what she was frightened of, she was unable to answer.

24. As far as P.W.5 is concerned, his evidence is to the effect that when he was watching what was happened to Ahamed from the rear side of the house of Ahamed Haji, he saw Ahamed running towards the front portion of the house of P.W.4. He does not say that he saw the assailants inflicting injuries on late Ahamed. What he says was that while he was waiting behind the house of Ahamed Haji, he heard the cries from the house of P.W.4. Then he went to that house and asked P.W.4 as to what happened. P.W.4 then told him that Ahamed was attacked by a group of persons and he was lying bleeding near the well. The mere fact that the house of the sister of P.W.5 and also the house of Ahamed Haji is not shown by itself is not a ground to suspect the evidence of this witness. There is nothing to suggest that he has any reason to falsely implicate the accused. 25. A reading of the evidence of these witness would indicate that they were familiar with the assailants. It is true that if what they now say are true, they would have surely divulged the names of the assailants to the police at the first instance. One must remember here that the circumstance under which those names were kept undisclosed by the witnesses. They have given reasons for the same and that is supported by the evidence on record. May be strictly speaking the identification parade may not have much relevance in the case on hand. But one must remember that as far as the investigating officer was concerned, all that they had at the initial stage was four or five persons had attacked Ahamed and their identification could be established at sight. It might have been this fact, which would have prompted the investigating officer to seek an identification parade. P.W.17 had conducted the identification parade. In his report, namely Ext.P10, he gives the details of the identification conducted by him and the result of the same. It is true that he had observed in his report that the behaviour of P.W.6 was very strange at the time of identification parade. He had no doubt about the identity of the persons and he went straight to each one of them and pointed out all of them. His conduct, according to P.W.17, would indicate that he was familiar with the assailants. Normally this would be a very suspicious circumstance, which would weaken the prosecution case. But, here again, one has to recall that the incident had not occurred in normal circumstances and if

the witnesses were frightened about the consequences of disclosing the names of the assailants to the police at that time, they could not be found fault with.

26. At the time of identification before court, the first accused was identified by P.Ws.5 and 6. So also the second accused. The third accused was identified by P.Ws.4, 5 and 6. The fourth accused was identified by P.W.6 and the fifth accused was identified by P.Ws.5 and 6. At the time of giving evidence before court, the first accused was identified by P.Ws.5, 6 and 7. So also the second accused. The third accused was identified by all the four witnesses, P.Ws. 4, 5, 6 and 7 and the fifth accused was identified by P.Ws. 5 and 6. It is also true that there is some discrepancy regarding the weapon carried by various assailants. Whatever that be, it is well settled that it is the identification before court which forms substantive evidence. True, it may not be possible to say that the identification parade conducted during investigation is totally irrelevant and it has no consequence. However, the identification parade conducted during investigation is to ensure that the investigating officer is proceeding in the right direction. True, it is usually taken as a confirmative test for the identification in court. This would be evident from the decision relied on by the appellants reported in *Heera and Another Vs. State of Rajasthan*, . Therein the purpose and object for which the identification parade is conducted has been liberally considered. The said decision also considered the consequence of absence of conduct of an identification parade when the assailants are total strangers and also the absurdity in identification of assailants in court and also at the time of identification parade during investigation.

27. In the decision reported in *Kanan and Others Vs. State of Kerala*, it was pointed out that the idea of conducting test identification parade is to test the veracity of the witnesses on the question of capability to identify an unknown person whom the witness may have seen only once before. Under such circumstances, it was held that it will be unsafe to rely on his evidence regarding the identification and a conviction based solely on his testimony may be hazardous.

28. In the decision reported in *Tahir Mohammad, Kamad Girendra Singh and another, Badri Singh and others Vs. State of Madhya Pradesh*, it has been observed that if the witnesses without any margin of error or hesitation readily identified the assailants, that creates suspicion in the mind of the court. Of course, going by the principle of the test identification parade that is conducted, there is doubt regarding the identity and also about the veracity of the statements given by the witnesses.

29. But the question is one regarding appreciation of evidence. It is well settled that there are no fixed principles in the matter of evaluation of evidence. Each case depends upon its own facts. It cannot be disputed that, in the case on hand, the witnesses were familiar with the assailants, if not all of them, at least a few of them. As already noticed, there are convincing and acceptable reasons for those witnesses in not disclosing the names to the police at the initial stage. The

conduct of P.W.4 in court speaks volumes about the issue. She admitted before court that she was very much frightened. The reluctance on the part of the witnesses to disclose the names at the initial stage has to be viewed in the light of the above facts. It is also true that there is disparity regarding the identification in court and identification parade during investigation. Except P.W.6, none of the other witnesses have been able to identify all the accused. It is not necessary for all the witnesses to identify all the accused. It is trite that the power of reception, retention and reproduction vary from person to person. What may catch the attention of one person may not catch the attention of another. What one person may see may not be seen by another person or their understanding of what they have seen may differ. One must remember that the witnesses are the eyes and ears of the court. It is through them that the court views the prosecution case. One has to note that PW.4 has identified accused No. 3. P.W.5 could not identify accused No. 4 in court. P.W.6 on the other hand identified all the five of them. As far as P.W.7 is concerned, he could not identify accused No. 5. His evidence shows that he could remember only four persons. The suggestion to some of the witnesses in cross-examination is that the accused are from the locality or nearby area and they were familiar to the witnesses. Of course, the witnesses have denied that suggestion. But that is only normal. The mere fact that they have denied the above fact need not deter this Court from considering the evidence of P.Ws. 4, 5, 6 and 7 in the proper perspective. What is significant is that there is no suggestion to P.Ws. 4 to 7 that they had any reason to falsely implicate the accused and let the real assailants escape.

30. It is true that the prosecution has to establish the case beyond reasonable doubt. If an element of doubt is created in the mind of the court, the accused are entitled to the benefit of the same. But it is also well settled that the doubt should be reasonable. Fanciful doubts and imaginations cannot take the place of reasonable doubt. One has also to notice that the witnesses are rustic and illiterate witnesses. They might not have disclosed several things to the investigating officer at the initial stage due to several reasons. It may be due to fear or it may be due to their lack of understanding as to what they should disclose to the investigating officer and also the failure of the investigating officer to extract information from them.

31. In the case on hand, it is true that there is no evidence regarding the actual infliction of injury on Ahamed. All that P.W.4 in her evidence says is that when she found Ahamed running towards her house and ran to the well with bleeding injuries and a few persons following him, she ran into her house and closed the doors. As far as P.Ws.5, 6 and 7 are concerned, they came after the incident had occurred, except P.W.6, who had seen the car halting in front of the house of his sister. It may not be possible for them to say whether all of them were carrying weapons or remember all of them. However, as the evidence shows that the witnesses were familiar with most of the assailants, but there was difficulty for them to identify the accused later. The court below has considered these aspects

in great detail and has found the evidence of these witnesses to be acceptable. The court below has also noticed the atmosphere that was prevailing at the relevant time and has chosen to accept the behaviour of the witnesses at the relevant time. Regarding the criticism levelled against the identification parade, it has already been noticed, it may not be of much significance in the case on hand.

32. The evidence discloses that the first accused was carrying M.O.1 and that the second accused was having an axe with him. It is true that M.O.1 chopper was found abandoned on the day and the weapon said to have been carried by the second accused had not been recovered. But the Forensic Surgeon, who conducted autopsy, namely, P.W.14 has stated that the injuries suffered by the deceased could have been caused by the use of a weapon like M.O.1. The fact however remains that the assailants had gone to the shop of Ahamed, attacked him and threw him out of the shop on the road. When he tried to escape and to save his life, he was followed by them and mercilessly attacked. The motive for doing so is not clear from the evidence. The only presumption is that it is only a retaliation of the previous day's incident. It is also to be noticed that Ahamed does not belong to that place at all. He hails from a place, which is 8 kms away from the place where he was running his business. In fact, while he was attacked, Ahamed told the assailants "I do not belong to this place". But it did not deter the assailants.

We find no reason to take a different view than the one taken by the court below. The court below has noticed the evidence in great detail and has come to the conclusion that the prosecution has succeeded in establishing the case against the accused. In the appeals, we find no ground to interfere with the said finding. The appeals are without merit and it is accordingly dismissed confirming the conviction and sentence passed by the court below.