2025:KER:11184

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 11TH DAY OF FEBRUARY 2025 / 22ND MAGHA, 1946

CRL.A NO. 704 OF 2018

(CRIME NO.569/2001 OF KASARAGOD POLICE STATION, KASARGOD. AGAINST THE JUDGMENT IN SC NO.111 OF 2011 OF SPECIAL JUDGE (SPE/CBI)-I, ERNAKULAM ARISING OUT OF THE ORDER/JUDGMENT IN CP NO.1 OF 2009 OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM)

APPELLANT/1ST ACCUSED:

MOHAMMED IQBAL @ IKKU
S/O.ABDUL KHADER, KOONIKUNNU, PADHOOR ROAD,
CHATTANCHAL,THEKKIL VILLAGE, THEKKIL FERRY
P.O,KASARAGODE.

BY ADVS.
SRUTHY K K
P.VIJAYA BHANU (SR.)(K/421/1984)
P.M.RAFIQ(K/45/2001)
M.REVIKRISHNAN(K/1268/2004)
AJEESH K.SASI(K/166/2006)
SRUTHY N. BHAT(K/000579/2017)
RAHUL SUNIL(K/000608/2017)
NIKITA J. MENDEZ(K/2364/2022)

RESPONDENT/COMPLAINANT:

STATE OF KERALA

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(DY.S.P, CBI/SCB/CHENNAI)REPRESENTED BY ITS STANDING COUNSEL,HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY ADV SREELAL WARRIAR

OTHER PRESENT:

SRI K P SATHEESHAN, SPL. PP. FOR CBI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06.02.2025, ALONG WITH CRL.A.1133/2018, THE COURT ON 11.02.2025 DELIVERED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

TUESDAY, THE 11TH DAY OF FEBRUARY 2025 / 22ND MAGHA, 1946

CRL.A NO. 1133 OF 2018

(AGAINST THE ORDER/JUDGMENT IN SC NO.111 OF 2011 OF ADDITIONAL SPECIAL SESSIONS COURT(SPE/CBI)-I/III, ERNAKULAM ARISING OUT OF THE ORDER/JUDGMENT IN CP NO.1 OF 2009 OF CHIEF JUDICIAL MAGISTRATE, ERNAKULAM)

APPELLANT/ACCUSED NO.2:

MOHAMMED HANEEF@JACKE HANEEF
AGED 50 YEARS
S/O ABDUL KHADER, K.A HOUSE, NEAR MALIK DINAR MASJID, THALANGARA P.O. KASARAGOD, KERALA

BY ADVS.
Rajendran T.G
T.R.TARIN(K/110/2007)

RESPONDENT/COMPLAINANT:

CBI REPRESENTED BY THE DY.S.P SCB
CHENNAI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 6.02.2025, ALONG WITH CRL.A.704/2018, THE COURT ON 11/2/2025 DELIVERED THE FOLLOWING:

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RAJA VIJAYARAGHAVAN V CR
&
P.V.BALAKRISHNAN,JJ.

Crl.Appeal Nos.704 and 1133 of 2018

Dated this the 11th day of February 2025

COMMON JUDGMENT

P.V.BALAKRISHNAN,J

Criminal Appeal No.704/2018 is filed by the 1st accused and Criminal Appeal No.1133/2018 is filed by the 2nd accused, challenging their conviction and sentence imposed under Sections 120B and 302 IPC in S.C.No.111/2011 by the Special Court (SPE/CBI)-I, Ernakulam.

The Prosecution Case:

2. The accused, five in number, entered into a criminal conspiracy to exterminate deceased Balakrishnan, who had married the daughter of the 5th accused Abubacker Haji without the consent of their family. Abubacker Haji was opposed to the marriage of his daughter Rasina with the deceased Balakrishnan

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and he was of the view that it brought dishonour to his family and community at large. Abubacker Haji decided to eliminate Balakrishnan once and for all and he engaged the first accused for the same. The first accused befriended Balakrishnan and with the help of the approver Abdul Hameed, got in touch with the second accused, who agreed to help the first accused for monetary consideration. Accordingly, at 10.30 pm on 18.09.2001, the first and second accused committed murder of the said Balakrishnan by stabbing him with a knife on his neck and body inside a Maruti car bearing registration No.CTA-2697 at the public road near Muhiyudheen Masjid, Pulikkunnu, Kasaragod. The third accused was one of the conspirators, who had arranged a party on 1.08.2001, which was attended by the first accused wherein the third accused assured all help to him. The fourth accused harboured the first accused in his house on the night of 18.09.2001 and thereafter, helped him to escape to Mangalore. Hence, the prosecution alleged that the accused had committed the offences punishable under Sections 120B r/w 302 IPC and Section 212 of IPC.

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Proceedings in the Trial Court:

3. From the side of the prosecution, PWs1 to 65 were marked and Exts.P1 to 104 and MO1 to MO12 were marked. From the side of the accused, D1 to D18 were marked through the prosecution witnesses. Exts.C1 and C1(b) were also marked as court exhibits. When the accused were examined under Section 313 Cr.PC, they denied all the incriminating circumstances appearing against them in evidence and contended that they were innocent. From the side of the accused, DW1 to DW8 were examined and Exts.D19 and D20 were marked. The Trial Court, on an appreciation of the evidence on record and after hearing both sides, found that the first and the second accused guilty of committing the offence punishable under Section 120B r/w 302 IPC and convicted them thereunder. It also found that accused Nos.3 to 5 were not guilty of the offences alleged against them and they were acquitted. The Trial Court sentenced the 1st and 2nd accused to undergo imprisonment for life for the offence under Section

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120B IPC and imprisonment for life and to pay a fine of Rs.1,00,000/- each for the offence under Section 302 IPC. In case of default, the accused were ordered to undergo rigorous imprisonment for two years.

A compendium of the prosecution evidence:

4. PW1 is the person who lodged Exts.P1 FIS. He deposed that, while he was working as Imam in Muhiyudheen Masjid, on 18.09.2001 at about 10.30 pm, he heard repeated cries and when he opened the door, he saw a person soaked in blood coming running. That person cried for help and requested him to take him to a hospital. He called the persons residing nearby, and one Shamsu, Asharaf, Ayyappan, Muhammed Kutti and Sakeer Husain came there. When he asked the victim as to who had stabbed him, he told him it was his friend Iqbal. The President and Secretary of the Mosque, who had come there, informed the Police and the Police came there. The victim fell down on the veranda and he was taken to the hospital in an ambulance. He identified his signature in Ext.P1 and stated that there was light available in the place from the electric tube. In

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his cross examination, he stated that the Police, who were present at the time of lifting the victim to the ambulance, were talking to him and the victim was replying.

5. PW2 was the Secretary of the Mosque at the relevant time. He deposed that on getting information about the incident, he went to the place of occurrence in his motorcycle and at that time, he saw a white Maruti car coming from the opposite direction. When he reached the spot, he saw a person lying on the veranda in a pool of blood and he went to call an ambulance. The Police came and took the victim in an ambulance to the Hospital. In his cross examination, Exts. D1 to D3 contradictions were marked. He also denied the suggestion that the victim was not in a position to talk at that time.

6. PW4 is the approver in this case. He deposed that he had given Ext.P4 statement before the Magistrate after fully understanding its pros and cons. He is acquainted with both the 1st and 2nd accused and the 1st accused is a person involved in sandalwood smuggling. In September 2001, the 1st accused took him in a motorcycle and told him that Balakrishnan had to

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be beaten up. When he refused, the 1st accused enquired about the availability of other persons for the same and he replied that he had talked to the 2nd accused. Later, the 1st and 2nd accused watched the movements of Balakrishnan and the 1st accused befriended him. On the date of the incident at about 6.00 pm, the 1st accused came in a white Maruti car and talked with the 2nd accused and both of them left in the car. On the next day, the 2nd accused told him that he and the first accused had committed the murder of Balakrishnan by stabbing him using a knife, after taking him in a car. The 2nd accused also showed him his right hand wherein he had sustained injuries during the commission of the crime. In his cross examination, he stated that the 1st and 2nd accused had, at one point of time, worked in Mumbai.

7. PW13 is the doctor, who conducted the post-mortem examination of the deceased and issued Ext.P9 certificate. During examination, he noted eight injuries on the body of the deceased and injury Nos.1 and 3 extends to the chest cavity. He opined that the death was due to shock due to internal

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hemorrhage and injury to vital organs like lungs and stomach. He also stated that injuries noted are sufficient to cause death in the ordinary course of nature. He further stated that the injuries can be caused by the weapon shown to him and even after sustaining the injuries, the victim can walk or run for a few minutes and talk. He further stated that, injury Nos.1 to 4 are stab injuries since they were penetrating and it ought to have been written as incised wound instead of lacerated wound. In his cross examination, he stated that it was on the insistence of the Circle Inspector, he conducted the Post-mortem and that the weapon was shown to him by the police when he was questioned.

8. PW14 is a witness to Ext.P10 scene mahazar. He stated that at the relevant time he had witnessed the police collecting samples of blood stains, from the wall of the mosque and the road.

9. PW15 deposed that he is acquainted with the first accused, who is residing nearby, and that on 18/9/2001 at about 11pm, he came to his house in a Maruti 800 car bearing

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registration number CTA-2697. The first accused requested him to park the car in his house and handed over its key to him with a further request to hand it over to its owner Arif. The first accused also called Arif from his landline and thereafter he made a call to Kaise. On the next day, the police came and took away the car. On 27/9/2006, he also gave a statement to the Magistrate. In his cross examination, Ext.D9 contradiction was marked. He also stated that he did not venture to see whether blood stains are there in the car.

10. PW21 is a witness to Ext.P23 mahazar and recovery of MO7 knife. He deposed that on 25/9/2001, at about 8.00-8.30 am, he had seen the second accused with police personnel and the police recovering MO7 from inside some wild grass, at the instance of the second accused. He also noticed blood stains in MO7 at that time. In his cross examination, Exts.D12 and D13 contradictions were marked from the side of the accused. He also stated that the weapon was broken at that time.

11. PW22 is an autorickshaw driver, who is acquainted with the deceased. On the day of the incident, he had seen the

deceased parking his bike near Carewell hospital at about 8 pm and at that time another person was also there as a pillion. Then the deceased came near the auto stand, where a car was parked, and talked with two people sitting inside it. Thereafter he took the motorcycle and left the place. After some time, the deceased came back in his motorcycle and parked it in the hospital compound.Thereafter, he left in a car which was waiting there, towards the town. The deceased sat in the front left seat. The registration number of the car was CTA-2697 and it was a white Maruti car. He identified the person, who was sitting in the back side of the car, as the second accused and the person, who was driving the car, as the first accused. In his cross examination, he stated that the National Highway is passing through the front of the hospital and that the car was parked very close to his autorickshaw.

12**.** PW23 deposed that during 2001,he was in possession of a white Maruti car bearing Registration No.CTA-2697, which he had purchased from PW20 Mohammed Kunji. On 17/9/2001, he had rented the car to one Iqbal for four days. On 18/9/2001

at about 12 pm, Iqbal called him and informed him that he had parked the car in the house of PW15 Shafi and has entrusted the key with him. But, he stated that he cannot identify Iqbal by sight. After declaring the witness hostile, the prosecution marked Exts.P24 & P25 contradictions. In his cross examination, Ext.D15 contradiction was marked by the accused.

13. PW27 is a friend of the deceased, who was conducting business in the room nearby. A week before the death of Balakrishnan, he had enquired with him whether sandalwood oil can be sent through courier. On 18/9/2001, while they were talking, the deceased received a phone call and they left in the motorcycle of the deceased to a place near Carewell Hospital. At about 8pm, they reached there and parked the bike inside the hospital compound. Thereafter, the deceased went near a car, which was parked outside, and talked with its occupants for about five minutes. It was a white Maruti 800 car and a person was standing near it. He could see them in the street light and from the light emanating from the hospital. The deceased came back and told him that the person, who talked with him, was the

one who enquired about sending sandalwood oil through a courier.The deceased also stated that he had to go to Chattanchal with them. The registration number of the car was CTA-2697. He also stated that he could not identify the persons who came in the car. During cross examination, Exts.D16 contradiction was marked.

14. PW28 was the Assistant Surgeon attached to the Taluk Hospital, Kasaragod, during 2001. He deposed that, on 18/9/2001 at about 10.45 pm, deceased Balakrishnan was brought in an ambulance with stab injuries and he was having breathing difficulties. He asked to take the victim to the hospitals in Mangalore. Later at 12.30 pm, he was brought back dead. At the time when he saw the victim, the injury was an incised wound and he suspected injury to the lungs.

15. PW37 was the Scientific Assistant attached to FSL, Mobile Unit, Kannur during 2001. He deposed that he examined a Maruti car bearing registration number CTA-2697 on 20/9/2001 and had found blood stains inside it. There were blood stains in the front left seat, back left side door glass,

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steering, the mat underneath the driver's seat, and driver's seat. He collected blood samples and the same were seized by the police as per Ext.P40 mahazar.

16. PW38 was the police constable attached to the Kasaragod Town Police station during 2001. He deposed that on 18/9/2001 at about 10.30 pm, on getting information he went to Pulikkunnu Mosque and saw the victim lying there with injuries. When he asked him as to what happened, the victim replied "ചങ്ങാതി ഇക്ബാൽ കുത്തി ഹ". The victim also requested to take him to the hospital. An ambulance came there and took the victim to Taluk Hospital and he followed them in his jeep. From there, the victim was taken to a hospital in Mangalore. At about 11.45 pm, he received information that the person had died and he, along with the Additional S.I, went to the Taluk Hospital and from the driving licence, which was in the body, identified the deceased. In his cross examination, Ext.D17 contradiction was marked from the side of the accused.

17. PW39 is a witness to the seizure of the Maruti car bearing Registration No.CTA-2697 from the house of

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Mohammed Shafi on 19/9/2001 and Ext.P40 is mahazar.

18. PW42 is a friend of the deceased. He deposed that during 2001, he was residing in a rented premise near Pulikkunnu Mosque. On a day in September 2001, some time between 10.15 -10.30 pm, he heard a commotion from the road and when he got out, he heard a cry "എന്നെ ഒന്നും ചെയ്യല്ലേ, എന്നെ ഒന്നും ചെയ്യല്ലേ". At that moment, a person got out of a car and started running, followed by another person. The person running in front was crying for help and the person behind him was holding a knife in his hand. They ran towards the Mosque and after some time, the person who was following came back. The person driving the car reversed it and from its head light, he identified the person returning back with a knife in his hand. It was a white Maruti car and at that time, light was also emanating from the street lamp. He has previous acquaintance with the person he thus saw and he identified him in the identification parade conducted by the Magistrate. On the next day, he understood that the person, who ran calling for help, was Balakrishnan. He identified the second accused as the

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person, who had followed the victim with a knife, and the knife as the MO7. In his cross examination he stated that he had studied with the deceased up to 10th standard in the very same school and that the road is about 30 to 40 metres away from the place of occurrence. The car was parked in front of his house and he had witnessed the incident from a place about 10 metres away. It is only when the car was reversed, from its headlight he saw the face of the assailant while he was returning. At that time, he had gone up to the gate.

19. PW46 is the SI of police, who registered Ext.P46 FIR on the basis of Ext.P1 FIS. PW48 is the Judicial Magistrate, who recorded Ext.P4 Section 164 statement of Abdul Hameed.

20. PW 52 is a witness to Ext.P49 mahazar and recovery of MO9 & MO10 dresses of the second accused. He deposed that on 25/9/2001 he had witnessed the recovery of MO9 and MO10 at the instance of the second accused.

21. PW58 is the Investigating Officer, who conducted a part of the investigation. On getting to know about the death of Balakrishnan, he along with the Dy.S.P., went to the place of

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occurrence and understood the details. He gave a request for conducting the postmortem examination and on the direction of the S.P, directed the same to be conducted in the Taluk hospital. At about 11 am on 19/9/2001, he prepared Ext.P10 scene mahazar and recovered MO12 series buttons, MO8 tester and MO3 chappal. He noticed an electric post with light at about 4.15 metres away from the place of occurrence. Thereafter, he went to the place where the car was parked and seized it as per Ext.P40 mahazar. At that time he noticed blood stains in the seats. At about 4.15 pm, he seized the motorcycle of the deceased after preparing Ext.P41 mahazar. On 20/9/2001, he received the samples taken by the scientific expert from the car by preparing Ext.P42 mahazar. On 24/9/2001, he filed Ext.P58 report adding the second and third accused. On 25/9/2001 at about 5.45 am, he arrested the third accused after preparing Ext.P59 series document. He also arrested the second accused after preparing Ext.P60 series document and at that time, he noticed injuries on his right thumb, index finger and right wrist. He also got the second accused examined by a doctor.

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Thereafter, on the basis of the information provided by the second accused, he recovered the dresses worn by him (MO9 & MO10) at the time of commission of the offence by preparing Ext.P61 mahazar and also recovered MO7 weapon by preparing Ext.P23 mahazar. At that time, he noticed blood stains in MO9 and MO10. The articles were produced before the court along with Exts.P64 series forwarding note and he obtained Ext.P65 chemical analysis report. He seized the ledgers and other documents from Victoria lodge and City Tower hotel, as per Exts.P45 and P36 mahazars, and also seized the vehicle which was used by the first accused as per Ext.P70 mahazar. He also received Ext.P73 site plan from the village office. Later, on 26/5/2002, he handed over the investigation to one Ravindran. In his cross examination, he stated that he found blood stains in the walls of the Mosque and in the road at about 108 metres away. He also noticed a blood puddle in the veranda of the Mosque and the same was washed away on the next day.

22. PW63 is the police officer, who completed the investigation and laid a charge on 11/6/2009.

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23. PW64 is the Superintendent of Taluk Hospital, Kasaragod through whom Ext.P104 wound certificate issued by one Dr.Santhosh Kumar was marked. He deposed that the certificate was issued with respect to one Muhammed Haneef and two injuries are noted in it. He also identified the signature of Dr.Santhosh Kumar in Ext.104.

A Conspectus of the Defence evidence

24. DW2 deposed that on the previous day of the incident, he had not seen the first and the second accused in the cricket ground and DW3 deposed that he had not seen them talking. DW3 also stated that in the party organized at Victoria lodge, he had not witnessed the first and the third accused talking to each other. DW4 deposed that he had not seen the first and the second accused talking with each other and DW5 deposed that he had not seen the first and the third accused in the party.

25. DW8 is the wife of PW42 Rajan. She deposed that during 2001 they were residing in Ramiyas road and that when she conceived her youngest child, Rajan had left her. On 5.1.2001, the date of birth of her youngest child, Rajan was not

with her.In her cross examination, she had stated that she was brought to the court by one Noushad and that her marriage with Rajan was a registered marriage. Till Rajan left her, they were residing in a house in Ceramic road, situated opposite to the shop rooms near to Pulikkunnu Muhiyudheen Masjid and it was a rented premise taken by her mother. She also stated that it was in 2001, Rajan had thus left her.

Contentions of the appellants

26. The learned senior counsel Adv.P.Vijayabhanu appearing for the first accused and learned senior counsel Adv.T.G.Rajendran appearing for the second accused contended that the prosecution has not proved the entire chain of circumstances against the accused so as to make an inference that they are guilty of the offences. They argued that, since the entire prosecution rests upon a conspiracy theory for eliminating deceased Balakrishnan, who had married a Muslim girl, and since the prosecution has failed in proving the conspiracy part of the appellants with the other accused, the conviction under Section 120B of the IPC cannot be sustained. They further, by

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relying upon the decision in **State of Kerala v. Anil Kumar@ Jacky & Anr. (2024 (3) KLJ 995)**, contended that the evidence of PW4, the approver, is not at all reliable and in the absence of supporting substantive evidence, the same is of no use. By relying on the decisions in **Union of India v. Shameer (2020 Cri.LJ 597**), **Chandrapal v. State of Chhattishgarh (AIR 2022 SC 2542)** and **Subramanya v. State of Karnataka [(2023) 11 SCC 255**] they argued that the extra judicial confession made by the co-accused can only be used as a corroborative piece of evidence and no conviction can be based solely upon it. The learned senior counsel for the second accused added that there is also considerable delay in recording the statement of the approver and the same is fatal to the prosecution case. They further submitted that the evidence of PW22 and PW42 identifying the accused in the circumstances narrated by them is questionable. They contended that the most important link, which is the Maruti car allegedly used in commission of the crime, has not been produced and identified by any of the material witnesses in this case, and no fingerprints

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have also been detected in the vehicle. While the learned senior counsel for the first accused submitted that, the name 'Iqbal' which has been allegedly mentioned by the deceased is a common name in that part of the world and cannot be relied upon to inculpate the first accused, the learned counsel for the second accused would submit that inculpating the second accused on the basis of a small word 'ഠ' is preposterous. The learned counsel for the first accused by relying upon the decisions in **State of Maharashtra v. Syed Umar Sayed Abbas [(2016) 4 SCC 735]**, **Soni v. State of Utter Pradesh [(1982) 3 SCC 368(1)]**, **Muthuswamy v. State of Madras [AIR 1954 SC 4]** and **K. Babu v. State of Kerala [2023 6 KLT 96]** further contended that the delay in holding the test identification parade in respect of the first accused, which took place nearly ten years after the incident, is fatal to the prosecution and same cannot be relied upon since the witnesses cannot, for such a long time, remember the facial expressions of him. The learned counsel for the second accused also added that, the version of the prosecution that the deceased after

sustaining injuries including lung collapse had spoken to PW1 and PW38 is not believable and that the evidence of DW8 would show that PW42 was not residing in the place at the relevant time. He further contended that PW13 is not competent to conduct the postmortem examination and his evidence is not reliable. He argued that PW13 himself has admitted the mistake committed by him in noting the nature of injuries and the same has caused considerable prejudice to the accused. Hence, they prayed that these appeals may be allowed.

Contentions of the Public Prosecutor

27. Learned special Public Prosecutor for CBI Sri.K.P.Satheeshan**,** on the other hand submitted that the prosecution has proved its case beyond reasonable doubt. He argued that the evidence of PW1 and PW38 regarding the deceased giving a statement just before his death inculpating Iqbal, the first accused, is cogent and reliable and the evidence of PW22, PW47 and PW15 would clearly go to show that it is the first accused, whom the deceased was referring to. He contended that, the evidence of PW22 identifying both the

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accused as the persons who took the deceased in the Maruti car just before the incident and the evidence of PW42 identifying the second accused chasing the deceased with MO7 knife is trustworthy. He further submitted that, the recovery of MO7-weapon and MO9 & MO10 dresses of the second accused, with the blood of deceased in them clinches the involvement of the second accused in the crime. He also contended that the nonproduction of the Maruti car and its non identification by the witnesses are not fatal since there is no challenge from the side of the accused regarding the involvement of the vehicle. He relied on the decisions in **Rakesh & another v. State of U.P.& another (AIR 2021 SC 3233)** and **Goverdhan v. State of Chhattisgarh (2025 KHC 6042 (SC)]** and contended that for convicting an accused, the recovery of weapon used in the commission of the offence is not *sine qua non*. The Learned Prosecutor further submitted that the evidence of the doctor fully supports the version of PW1 and PW38 and shows that the victim was not incapacitated to speak at the relevant time. Hence he prayed that these appeals may be dismissed.

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Evaluation of evidence

28. The first question to be considered is whether the death of Balakrishnan was homicidal. While appreciating the evidence on this aspect, the evidence of PW13 coupled with Ext.P9 assumes much relevance. It shows that the victim has suffered eight ante-mortem injuries, amongst which injury Nos.1 and 3 extend directly into the chest cavity. The left lung was completely collapsed and there is a cut injury on the lateral border of the base of the left lung. The stomach was also having a cut injury in its lateral border. PW13 opined that the cause of death was shock due to internal hemorrhage and injury to vital organs like lung and stomach. He also stated that injuries noted in Ext.P9 are sufficient to cause death in the ordinary course of nature and that injuries can be caused by the weapon used in this case. He further stated that injury Nos.1 to 4 are stab injuries, since they were penetrating and that they ought to have been written as incised wounds instead of lacerated wounds.

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29. Coming to the contention of the learned counsel for the appellants that, PW13 is not competent to conduct the postmortem examination and that the mistake in noting the nature of the injuries in Ext.P9 has caused considerable prejudice to the accused, we are of the considered view that there is no merit in them. First of all, it is to be seen that it was while working as an Assistant Surgeon in the Taluk Hospital, PW13 had conducted the postmortem examination. It is true that PW13 was also an ENT Specialist at the relevant time. But in his cross examination, he specifically stated that while doing MBBS Course, he had cleared a paper regarding Forensic Medicine and that it was during Post Graduation, he opted for ENT. There is absolutely no challenge from the side of the accused regarding these aspects. Secondly, it is to be seen that even though PW13 has been strenuously cross examined, nothing material could be brought out to show that he is not qualified in Forensic Medicine or is incompetent to conduct the postmortem examination. On the other hand, the result of the cross examination only reinforces the fact that PW13 is a fully

qualified and competent person to conduct the examination. Further, we will also take note of the fact that the Kerala Medico -Legal Code authorises all medical officers in health services to undertake postmortem examinations. As far as the contention regarding prejudice caused to the accused, it is true that PW13 has admitted that injuries Nos.1 to 4 ought to have been written as incised wound instead of lacerated wound, in Ext.P9. A perusal of Ext.P9 shows that the dimension of the injuries and its details have been specifically noted in it. The injuries noted are also not jagged and are clean and straight. Since the accused was fully aware of the afore details while facing trial, merely because the wounds were stated as lacerated wounds instead of incised wounds, it cannot be stated that prejudice will be caused to the accused. Hence, considering all the afore facts, we find no reason not to act upon the evidence of PW13 and Ext.P9 to reach a conclusion that the death of Balakrishnan is homicidal.

30. In order to rope in the first accused in this crime, the prosecution is heavily relying upon the dying declarations made

by the deceased to PW1 and PW38, who had reached the spot immediately. An appraisal of the evidence of PW1 would show that on hearing the commotion, when he opened the door of the Mosque, he saw a person soaked in blood, coming running, calling for help. When he enquired with the victim as to who had stabbed him, the victim told him that it was his friend Iqbal who had stabbed him. It is to be seen that, the recitals in Ext.P1 FIS, which was lodged immediately thereafter by PW1 (at 12am), also corroborates in material particulars with the testimony of PW1 regarding the events including the statement made by the victim. Even though PW1 has been cross examined in extenso by the learned counsel for the accused, nothing has been brought out to discredit his afore version. The evidence of PW38, who was a police constable attached to Kasaragod police station, reveals that on reaching the spot after getting information, he had seen the victim lying there with injuries. His evidence also shows that, when he asked the victim as to what happened, the victim had told him that it was his friend Iqbal who had stabbed him. The victim also requested PW38 to take

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him to a hospital. So, going by the evidence of PW1 and PW38, it can be seen that when they saw the victim immediately after the incident with injuries, the victim had stated to them that it was his friend Iqbal, who had stabbed him. Undoubtedly, the above statements are relevant under Section 32(1) of the Indian Evidence Act,1872 .

31. The learned counsel for the appellants have contended that, a person who has sustained injuries of this nature will not be able to speak a word and that the version of PW1 and PW38 are not believable. But, evidence of PW13, the doctor, clearly goes to show that even after sustaining such injuries, as described in Ext.P9, the victim can speak and also can run for a few minutes. The afore evidence of PW13, lends much support to the evidence of PW1 and PW38 that the victim had spoken to them regarding the incident.

32. The next question to be considered is whether the prosecution has been able to establish that the 'Iqbal', as referred to by the deceased, is the first accused in this case. It cannot be disputed that the name 'Iqbal', which was spoken to

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by the deceased, is a very common name and if so, it is the bounden duty of the prosecution to prove the identity of the person spoken to by the deceased. In the present case, the prosecution is heavily relying upon the evidence of PW22 to establish that it is the first accused, who is the 'Iqbal', mentioned by the deceased. The evidence of PW22, who is an auto driver, is to the effect that at about 8 pm, just before the incident, he had seen the deceased parking his motorbike in Carewell hospital and talking with two persons inside a car. Thereafter, the deceased left in his motorbike. After some time, the deceased came back and parked his motorcycle inside the hospital compound and came out and talked with him. Then the deceased stepped inside a white Maruti car bearing Registration No. CTA-2697, which was waiting there, and went towards the town. The deceased sat in the front left side seat and apart from the driver, there was another person sitting in the back. According to PW22, it is the first accused who was driving the car and it is the second accused who was sitting behind. It is to be taken note that PW22 has allegedly witnessed this incident

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much after 8 pm. It is also to be seen that PW22 has no case that the occupants of the car got outside the vehicle at any point of time and that he had only seen the deceased stepping inside the car through the front door. It is very difficult to comprehend that a person sitting in an auto rickshaw had seen the faces of persons sitting inside a small Maruti 800 car and that too during night time. PW22 has also not noted any distinguishing features of these persons in order to identify them subsequently. Further, no special or extraordinary event had taken place at that time when he allegedly saw the accused so as to specifically take note of the identity of the persons in the car and to remember them subsequently. Being an auto rickshaw driver, the events, which had transpired and spoken to by him, are ones which regularly take place around him daily and being uneventful, it cannot be believed that he had paid close attention to the occupants of the car and that too, their facial expressions. It is also not believable that PW22 had identified the first accused in the test identification parade, which took place nearly ten years thereafter since, it is highly

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doubtful whether he could have remembered the faces of the accused after such a long period. It is a settled law, as held by the Apex Court in Syed Umar's case, Soni's case, Muthuswami's case and this Court in K.Babu' case(cited supra) that undue delay in conducting a TIP has serious bearing on the credibility of the identification process and it will lose its significance. It was also held that it would be highly unsafe to accept such identification. At this juncture, we will further take note of the fact that the prosecution has no case that PW22 is having pre acquaintance with any of the accused. In such circumstances, we are of the view that no much reliance can be placed upon the evidence of PW22 regarding the identification of the first accused in the dock.

33. It is true that PW47, who is a receptionist in a hotel, has identified the first accused as the person who had come to his hotel at 9 pm to purchase three plates of chicken fry as a parcel. But it is to be seen that even though he had stated that at that time there were two other persons inside the white car in which the first accused came, he has not identified any of them.

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It is also true that, PW15 has stated that on 18/9/2001 at about 11 pm, the first accused had come to his house driving the white Maruti car bearing registration number CTA-2697 and had parked it in his house. But, at that time, no one was there inside the car. The afore circumstances proved thus, also will not in any manner enable this Court to infer that it is the first accused, who is the 'Iqbal', referred to by the deceased. At this juncture, we will also take note of the fact that even though the prosecution case, as deposed by the afore witnesses i.e., PW22, PW47 and PW15, pirouettes around a Maruti car bearing registration number CTA-2697 allegedly used by the accused, the said car has not been produced before the court and not identified by the afore witnesses. Therefore, considering all the afore facts, we may also say that the prosecution has not proved the entire chain of circumstances relied on by it to prove the involvement of the first accused in this crime.

34. Now coming to the second accused, the prosecution is relying upon the evidence of PW22, PW42, and the recovery of MO7, MO9 and MO10 and the presence of blood in these articles

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to prove the chain of circumstances against him. As stated earlier, we have already found that the evidence of PW22 regarding his identification of both the accused in the dock is doubtful. Coming to the evidence of PW42, it is to be seen that that on the fateful day at about 10.15-10.30 pm, on hearing a commotion in the road, he had come out of his house and has seen a person coming out of a car and running away, calling for help. He also saw another person following him with a knife and both of them ran towards the Mosque. The person, who drove the white Maruti car, did not alight from it and he reversed the car and drove towards the Mosque. At that time, the person holding the knife came back and he saw his face in the headlight of the car, which was proceeding towards the Mosque. The said person then disappeared into darkness near the curve in the road. PW42 identified the said person as the second accused in the dock. He also stated that it was a weapon resembling MO7, which was in the hands of the second accused. Now the prime question to be considered is whether the identification of the second accused by PW42 is believable or not. As stated earlier,

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PW42 has allegedly seen the second accused while he was returning back, when the headlight of the car fell upon him as it proceeded towards the Mosque after reversing. It is to be taken note that this incident is at about 10.30 pm and PW42 had allegedly seen this event from near the gate of his house. As evidenced by Ext.P95, the Maruti 800 car, which was allegedly used by the accused, is of the make 1987 and this event has taken place on 18/9/2001. The version of PW42 that he had an opportunity to identify the face of the second accused from the headlight of such an old Maruti car and that too in a moment of a few seconds, does not stand the test of a prudent man's mindset and hence is not believable. It would be preposterous to believe that from a gentle light emanating from the headlight of an old Maruti 800 car, PW42 would have seen the facial expressions of the second accused. This is more so, considering the fact that the distance between the house of PW42 and the bend in the road wherein the second accused allegedly moved into the darkness, is substantially far as evidenced by Ext.P73. In the afore circumstances, we are not inclined to believe the

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testimony of PW42 also regarding his identification of the second accused.

35. It is true that from the side of the accused DW8, the wife of PW42, has also been examined to show that PW42 was not residing at that place in order to witness the afore stated events. It is also true that DW8 has given evidence to the effect that PW42 had left her while she was carrying her youngest child and that he was not present with her when the child was born on 5/1/2001. The trial court did not place any reliance upon the evidence of DW8, since it was of the view that the same is hit by Section 153 of the Indian Evidence Act. The trial court also found DW8, a hired witness, making her evidence unworthy of credit. But, we are of the view that the finding arrived at by the trial court by relying upon Section 153 of the Evidence Act appears to be erroneous. Section 153 reads as follows:

> "**153.Exclusion of evidence to contradict answers to questions testing veracity.**- When a witness has been asked and has answered any question which is relevant to

> the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence."

36. This Section embodies the general rule that no witness shall be cited to contradict another witness, if the evidence is intended only to shake the credit of another witness. It is intended to prevent the enquiry from travelling too far into collateral matters which are relevant to credibility rather than the main issue. In short, we may say that as per this Section, when a question affects only the credit of the witness, and is not relevant to the matters in issue, the answer of the witness cannot be contradicted by other evidence except in exceptional cases as provided. But, when the issue is as to whether a particular witness was present at the scene of occurrence, evidence can be offered to show that at the very same time, he was at a different place. The evidence of that type is not aimed at shaking the credit of the witness by injuring his character and it only affects the veracity of his testimony irrespective of his

character (See **Vijayan v. State [(1999) 4 SCC 36]**, **Radhanandan v. State of Kerala [1990 1 KLJ 421]**, **State of Karnataka v. K.Yarappa Reddy [(1999) 8 SCC 715], Mani v. State of Tamil Nadu [(2009) 17 SCC 273]** and **Chandran v. State of Kerala (1992 KHC 311].** Illustration (c) to Section 153, which is extracted below, also confirms the afore view.

> "(c) A affirms that on a certain day he saw B at Lahore.
>
> A is asked whether he himself was not on that day at Calcutta. He denies it.
>
> Evidence is offered to show that A was on that day at Calcutta.
>
> The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore."

If so, it cannot be said that the evidence of DW8 has to be excluded, since the same is not at all intended to shake the credit of PW42, but it is intended to contradict the alleged fact that PW42 was not there at the relevant day.

37. Now even if the matter stands thus, we concur with

the finding of the learned Sessions Judge that the evidence of DW8 is not creditworthy since, she appears to be a hired witness. An appraisal of the evidence of DW8 shows that PW42 has abandoned her at a crucial stage of her life when she begot her youngest child in 2001. Her evidence also reveals that she had appeared before the Court even without getting summons from the court and she had come from Kasaragod along with her four children to give evidence. It is further discernible from her evidence that she was produced before the court by one Noushad who had brought them after meeting their entire expenses. In such circumstances, we are not inclined to place any reliance upon the testimony of DW8. But in the light of our finding that the evidence of PW42 identifying the second accused is not credible, we are of the view that the afore finding fades into oblivion.

38. It is true that, the evidence on record also shows that immediately after the arrest of the second accused, on the basis of the information provided by him, MO7 weapon was recovered. The evidence of PW58 coupled with Ext.P23 would go to show

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that on 25/9/2001 at about 9 am, MO7 which contained blood stains was recovered at the instance of the second accused from inside some wild grass in a coconut plantation. Ext.P65 chemical analysis report shows that MO7 contains human blood of A Group, which is also the blood group of the deceased. It is also true that, the evidence of PW58 coupled with Ext.P49 & Ext.P61 would go to show that on the basis of the information provided by the second accused, the dresses(MO9-shirt and MO10-pant) allegedly worn by him at the time of commission of the crime were seized. Ext.P65 chemical analysis report shows that the shirt thus seized contained blood of human origin of Group A. But, we are of the view that merely because the prosecution has recovered MO7, MO9 and MO10 at the instance of the second accused and that they contained blood of the group belonging to the deceased, are not sufficient to fasten the guilt against the second accused. First of all, it is to be seen that there is no substantive evidence available to show that the second accused was wearing MO9 and MO10 at the time of commission of the crime. Secondly, it is a settled law that disclosure statements

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are not so strong a piece of evidence sufficient on its own and without anything more to bring home the guilt of the accused beyond reasonable doubt. In the absence of other evidence, which could be taken as a connecting link about the use of these articles recovered, no much weightage can be given to such recoveries. In other words, in a case where almost all other evidence produced by the prosecution are disbelieved, these recoveries alone cannot help the prosecution to rope in the accused. (See **Manoj kumar Soni v. State of M.P.[(2023) SCC OnLine SC 984]**, **Bhupan v. State of M.P.[(2002) 2 SCC 556], Mani v. State of Tamil Nadu [(2009) 17 SCC 273]** and **Yohannan @ Biju v.State of Kerala[2016 (4) KHC 881]**.

39. It is true that the evidence of PW58 coupled with Ext.P60 goes to show that at the time when the second accused was arrested(25/9/2001), he was having incised wounds on his right thumb and forearm. The prosecution has also examined PW64 and has marked Ext.P104 wound certificate through him to prove the same. But, at the outset itself, we may say that

Ext.P104 has not been proved as required by law. No reason is forthcoming as to why the doctor, who issued Ext.P104 was not examined and there is nothing in the evidence of PW64 to show that he is acquainted with his handwriting and signature. Secondly, it is to be seen that the column relating to the history and alleged cause in Ext.P104 is kept blank. Thirdly, there is also no evidence to show that the injuries suffered by the second accused was from MO7 and it was not shown to PW64 and his opinion sought for. In the afore circumstances we are of the view that the fact that the second accused had injuries on his thumb and forearm while he was arrested, will not act as a link in the chain of circumstances relied on by the prosecution to inculpate him.

40. Be that as it may, one of the major infirmities in the prosecution and which snaps the link in the chain of circumstances, is the nonproduction and identification of the Maruti car bearing registration number CTA-2697 which is involved in the crime. As stated earlier, PW22, the auto driver, PW47, the receptionist in Milan hotel, PW15, the person with

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whom the car was allegedly entrusted after the crime, have all spoken to about the involvement of the afore car in the crime. Similarly, PW42 has also spoken about seeing a white Maruti 800 car during the commission of the offence. But the prosecution, for the reasons best known to them, did not choose to produce the Maruti car before the court or to get it identified through the afore witnesses to prove the occurrence. The same is the situation with regard to PW55, the fingerprint expert and PW37, the scientific assistant, who had examined the Maruti car on the next day of the incident and had taken samples from it, and also PW58 who had allegedly seized the vehicle. There is absolutely no explanation forthcoming from the side of the prosecution as to why the afore material object has not been produced before the court. The non production of the Maruti car will definitely cause considerable prejudice to the accused since they are disabled from challenging the identity of the vehicle. In such circumstances, we have no doubt in our mind that the non production of the Maruti car is fatal to the prosecution case.

41. As stated earlier, this case entirely rests upon

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circumstantial evidence. The law relating to appreciation of evidence in a case relating to circumstantial evidence has been laid down by the Apex Court in the decision in **Sharad Birdhichand Sarada v. State of Maharashtra [(1984) 4 SCC 116)]** wherein the Apex Court has held that the following conditions must be fulfilled before a case against an accused can be said to be fully established.

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> xxxxxxx xxxxxxx xxxxxxxxxx
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
>
> (3) the circumstances should be of a conclusive nature and tendency.
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

In the decision in **C.Chenga Reddy v. State of Andhra Pradesh [(1996) 10 SCC 193]**, the Hon'ble Apex Court has

held that in a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. All the circumstances should be complete and there should be no gap left in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

42. In the present case, keeping in mind the afore principles, we have no hesitation to find that the prosecution has not proved the entire chain of circumstances relied on by it to prove the guilt of the accused. The prosecution has thus failed to prove the identity of the person who has been referred to by the deceased, that the accused were seen with the deceased by PW22 just before the incident, that PW42 had seen the second accused chasing the deceased with MO7, and that the Maruti car bearing registration number CTA-2697 has been used in the commission of the crime. In such circumstances, we have no hesitation to find that the prosecution has failed to

establish a complete and unbroken chain of evidence leading to a conclusion that it is the accused who have committed the crime. The trial court has not properly appreciated the evidence on record and it has arrived at a wrong conclusion of guilt against the accused. Therefore, we find that the conviction and sentence against the appellants/accused cannot be sustained.

43. Before parting, we feel that it is our duty to point out and impress upon the trial courts the need to strictly adhere to the law and procedure regarding marking and proving contradictions. Even though the law and procedure is well settled in this area, still we come across umpteen number of proceedings before the trial court, wherein those norms are blatantly flouted. Unfortunately, one such instance is the case in hand. We notice that in almost all the contradictions marked and proved in this case, the law and procedure relating to the same has not been followed. We need not reiterate that, as per Section 145 of the Indian Evidence Act, if a witness is intended to be contradicted with his previous statements during cross examination, his attention must, before the writing can be

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proved, be called to those parts of it which are to be used for the purpose of contradicting him. Rule 56A(7),(8),(9) & (10) of the Criminal Rules of Practice Kerala, 1982 delineates the correct procedure for marking the contradictions and the same reads as follows:

> "(7) During cross examination, the relevant portion of the statements recorded under section 161 of the Code used for contradicting the respective witness shall be extracted. If it is not possible to extract the relevant part as aforesaid, the Presiding Officer, in his discretion, shall indicate specifically the opening and closing words of such relevant portion, while recording the deposition, through distinct marking.
>
> (8) In such cases, where the relevant portion is not extracted the portions only shall be distinctly marked as prosecution or defence exhibit as the case may be, so that other inadmissible portions of the evidence are not part of the record.
>
> (9) In cases, where the relevant portion is not extracted, the admissible portion shall be distinctly marked as prosecution or defence exhibit as the case may be.

> (10) The aforesaid rule applicable to the relevant statements under section 161 of the Code shall mutatis mutandis apply to statements recorded under section 164 of the Code when such portions of prior statements are used for contradiction/corroboration."

As per the afore Rule, during cross examination it is always preferable to extract the relevant portions of the statement recorded under Section 161 or Section 164 Cr.P.C used for contradicting the witness. Only if it is not possible to extract the relevant portion, a discretion is granted to the presiding officer to indicate specifically the opening and closing words of such relevant portion while recording the deposition and in such cases, the admissible portion has to be distinctly marked as prosecution or defence exhibit, as the case may be. The Hon'ble Apex Court in the decision in **Inadequacies and deficiencies in criminal trials, In Re.[(2023) 12 SCC 683]** has also considered this aspect and has held as follows:

> "Marking of contradictions—A healthy practice of marking the contradictions/omissions properly does not appear to exist in several States. Ideally the relevant portions of case diary

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> statement used for contradicting a witness must be extracted fully in the deposition. If the same is cumbersome at least the opening and closing words of the contradiction in the case diary statement must be referred to in the deposition and marked separately as a prosecution/defence exhibit."

In the present case, we notice that the trial court has without any seriousness and even without bringing the attention of the witness to his previous statement(which is intended to be contradicted), has proceeded to mark the contradictions by merely asking the witness as to whether he has given a statement relating to a particular fact to the investigating officer. The trial court also did not, after bringing the relevant portion of the statement to the attention of the witness, extract it in the deposition or mention the opening and closing words of the statement and mark it as an exhibit. This, as stated earlier, has been done in almost all the contradictions marked in the case. We urge and direct the trial courts to pay more attention and be earnest in addressing the afore issue while conducting trial.

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In the result, these appeals are allowed and the conviction and sentence passed against the appellants/accused Nos.1 and 2 in SC No.111/2011 by the Special Court (SPE/CBI)-I, Ernakulam, are set aside and they are set at liberty.

Sd/-

RAJA VIJAYARAGHAVAN V
JUDGE

Sd/-

P.V.BALAKRISHNAN
JUDGE

dpk