Kerala High Court
State Of Kerala vs Renjith Kumar Alias Renjith And ... on 26 November, 2002
Equivalent citations: 2003 CriLJ 1509
Author: G Sasidharan
Bench: G Sasidharan, K Joseph
JUDGMENT G. Sasidharan, J.

1. This appeal arises out of the order of acquittal made by the Second Additional Sessions Judge, Kollam in S. C. 411 of 1998 in which the allegation was that the appellants committed the offences under Sections 302, 323 and 201 read with Section 34, I.P.C. The accusation is that the appellants were having enemity towards Abdul Rasheed for having caused hurt to them at 1.30 p.m. on 8-12-1997 and out of that enemity they were having the common intention to cause the death of Abdul Rasheed and to cause hurt to P.W. 1 and in prosecution of the above common object at 8.30 p.m. on 18-12-1997 assaulted Abdul Rasheed and P.W. 1 at a place on the southern side of Chettithadam culvert. The place of occurrence is a way which leads from Chandanathope to Karunappan temple. The allegation is that the first respondent saw the first accused stabbing Abdul Rasheed with a knife on the left side of his chest and below the left armpit inflicting injuries on him. The overt acts alleged against respondents 2 and 3 who are accused 2 and 3 respectively is that they caused hurt to P.W. 1 by beating him with hand. From the place of occurrence Abdul Rasheed was taken to the District Hospital, Kollam and he died on the way.

2. Prosecution has a case that at 1.30 p.m. on 18-12-1997 there was an incident in which the respondents were assaulted by Abdul Rasheed and his associates. It is stated that one Noushad who is the cousin of Abdul Rasheed was riding a bicycle and, then the second accused crossed the road in front of the bicycle. Then the second respondent abused Noushad on getting down from the bicycle. At that time, respondents 1 and 3 came there and an altercation took place there. Abdul Rasheed reached the place running and beat respondents 1 and 3. By that time a number of persons assembled there and then the respondents went away from there by saying that they would wreak vengeance. The prosecution relies on the evidence of P.W. 4 mainly for proving that there was such an occurrence took place at 1.30 p.m. on the date of occurrence.

3. The occurrence took place at 8.30 p.m. on 18-12-1997 and the prosecution would say that Abdul Rasheed and P.W. 1 were going to their houses through the way on the southern side of Chettithadam culvert and when they reached near the culvert on the southern side, the respondents were sitting on the culvert. On seeing Abdul Rasheed and P.W. 1, the respondents went near them and the first respondent inflicted stab injury twice with a knife on the left side of the chest of Abdul Rasheed. When P.W. 1 intervened, respondents 2 and 3 beat him. According to the prosecution, the second respondent exorted to do away with Abdul Rasheed and it was then the first respondent stabbed him with knife. There is also allegation by the prosecution that when stabbing Abdul Rasheed the first respondent said that he should not beat anybody thereafter. P.Ws. 1 to 3 speak about the occurrence. As stated earlier, P.W. 1 says that he was going along with Abdul Rasheed to their houses and it was at that time the respondents assaulted them. P.W. 2 says that he saw the occurrence by standing near the shop of one Rahman which is about 15 feet away from the place of occurrence. His version is that he along with C.W. 3 went to the shop of Rahman purchased

cigarattes from there and stood there smoking cigarattes. Then the occurrence took place and he saw the first respondent inflicting stab injuries on the left side of the chest of Abdul Rasheed and respondents 2 and 3 beating P.W. 1 with hand. The version of P.W. 3 is that he was coming back after seeing Manager Sajeevan and by 8.30 p.m. he reached near Chettithadam culvert and he saw the occurrence. This witness also says that the first respondent inflicted stab injury on the left chest of Abdul Rasheed and respondents 2 and 3 beat P.W. 1 with hand.

4. P.W. 1 gave Ext. P-1 First Information before P.W. 8, the Sub-Inspector of Police, Kilikolloor on the basis of which a crime was registered against the respondents. P.W. 6 is the Doctor in the District Hospital, Kollam who conducted post-mortem examination of the dead body of Abdul Rasheed and prepared Ext. P-3 post-mortem certificate. Investigation of the crime was conducted by P.W. 9, the Circle Inspector of Police and at 8 a.m. On 19-12-1997 he held inquest on the dead body and prepared Ext. P-7 inquest report. Ext. P-8 is the scene mahazar prepared by P.W. 9.

5. The learned Sessions Judge found that the prosecution did not prove that the respondents committed the offences and acquitted them. In the judgment the learned Sessions Judge says that the investigation of the crime had not been properly conducted and that the Investigating Officer committed certain irregularities which were sufficient to disbelieve the case of the prosecution. In respect of the evidence of P.W. 1 the learned Sessions Judge said that for going to his house, it was not necessary for him to go to the place of occurrence on the road leading to Karunappan temple. The evidence of P.Ws. 2 and 3 was not accepted by the learned Sessions Judge by saying that the reasons given by P.Ws. 2 and 3 for their presence at the place of occurrence is suspicious. The learned Sessions Judge says in the judgment that in the cross-examination P.W. 3 said that his residence was near to the residence of the deceased Abdul Rasheed and hence his version was that he was going home after seeing Manager Sajeevan, the presence of that witness also at the place of occurrence had to be doubted. It was the finding of the trial Judge that the evidence available on records would go to show that the prosecution has no consistent case regarding the place of occurrence. Referring to the evidence given by P.W. 9. the Circle Inspector of Police, the learned Sessions Judge went on to observe that the evidence was sufficient to hold that he had not conducted the investigation of the case properly as expected from a responsible police officer.

6. P.Ws. 1 to 3 would say that from the place of occurrence, Abdul Rasheed was taken in a car to hospital. He was taken to the District Hospital, Kollam. The Doctor who examined Abdul Rasheed said that he was dead. P.W. 6 is the Doctor who conducted post-mortem examination of the dead body of Abdul Rasheed. The ante-mortem injuries found on the dead body were noted in Ext. P-3 post-mortem certificate. The Doctor says that the death was due to injury No. 1 sustained on the chest. According to him injury No. 1 was fatal. There is evidence in this case to show that from the place of occurrence Abdul Rasheed was taken to the District Hospital, Kollam and that he died on the way to the hospital as a result of the injuries suffered by him at the place of occurrence.

7. According to the learned Public Prosecutor, there is convincing evidence in this case to prove that the first respondent inflicted stab injuries on the chest of Abdul Rasheed as a result of which he died and that respondents 2 and 3 caused hurt to P.W. 1 by beating him with hand. P.Ws. 1 to 3 speak about the occurrence. P.W. 1 is a person who was there at the place of occurrence and prosecution

has a case that he was assaulted by respondents 2 and 3, It is the version of P.W. 1 that he was going to his house along with Abdul Rasheed who was also going to his house. Both of them reached the way on the southern side of Chettithadam culvert and then the respondents assaulted them. The evidence of P.W. 1 as to how Abdul Rasheed was assaulted and he was beaten up is corroborated by the evidence of P.Ws. 2 and 3. During the cross-examination of P.Ws. 1 to 3 nothing was brought out to show that the evidence given by these witnesses is not reliable.

8. The reason given by the trial Court for not accepting the evidence of P.Ws. 1 to 3 is that there was no possibility of those witnesses being present at the place of occurrence. The learned Sessions Judge says in the judgment that for going to the house of P.W. 1 it was not necessary for him to go through the way on the southern side of the Chettithadam culvert. It appears that ac- , cording to the learned Sessions Judge, a person who is going home will have to go through the shortest way to the house and because of that there was no possibility of P.W. 1 going along with Abdul Rasheed through the road on the southern side of Chettithadam culvert. In paragraph 10 of the judgment the learned Sessions Judge says that P.Ws. 1 to 3 are the witnesses supporting the prosecution and that P.Ws. 1 to 3 had given evidence in consonance with the statements in Ext. P-1 First Information Statement. After saying that these witnesses gave evidence supporting the case of the prosecution, the reason given for not accepting the evidence is that their presence at the place of occurrence has to be doubted. On going through the evidence of these witnesses it is seen that they give reasons for their presence at the place of occurrence or near to the place of occurrence. The evidence of P.W. 2 that he went to the shop of one Rahman along with C.W. 3 and they purchased cigaratte from there and stood there smoking cigaratte was not accepted by the trial Court. According to the trial Court, such a statement was given by P.W. 2 when he was examined only for the purpose of giving some reason for him presence near the place of occurrence. It is not possible to understand why the learned Sessions Judge found that what P.W. 2 said about the above fact was only for the purpose of showing that there was possibility of him being present at the place of occurrence. No reason is given by the learned Sessions Judge for not accepting the statement made by P.W. 2 that he was standing in front of the shop of Rahman along with C.W. 3 smoking cigaratte. There is nothing improbable in such a statement given by P.W. 2 and insofar as there is nothing to show that such a version of P.W. 2 is not correct, there is no justification for not accepting that portion of evidence regarding his presence near the place of occurrence.

9. In the words of the learned Sessions Judge the evidence of P.W. 3 during cross-examination would show that the reasons stated by him for his presence is a concocted story. It appears that such an observation was made by the learned Sessions Judge for the reason that in the cross-examination P.W. 3 said that he was residing near the house of deceased Abdul Rasheed and ' he was going home after seeing Manager Sajeevan. Even if P.W. 3 is a person who is residing in the neighbourhood of the house of Abdul Rasheed that cannot be said to be a reason for concluding that the version of P.W. 3 that he was present near the place of occurrence is not correct. The time of occurrence according to the prosecution was 8.30 p.m. and it is quite probable that the persons residing in the locality would have been there on the way to their house from Chandanathoppe and near the shops from where they would purchase cigaratte or other articles. So it cannot be said that P.Ws. 1 to 3 would not have been there at the place of occurrence. When those witnesses say that they were near the place of occurrence when the occurrence took place, there must be sufficient reason to say that

their evidence in that regard cannot be accepted. It may not be correct for the Court to say that the presence of the witnesses at the place of occurrence has to be doubted merely on the basis of surmises and conjectures. The Court will be justified in saying that there is possibility of the witnesses not being present at the place of occurrence if there are sufficient materials on records which would clearly indicate that in all probability they would not have been there at the place of occurrence. To disbelieve a witness by saying that he was going to his house and he would have chosen to go through the shortest way and for that reason his presence would not have been there at the place of occurrence which was not anywhere in the shortest way to his house is not proper appreciation of the evidence.

10. Learned counsel for the respondents would submit that the prosecution has not succeeded in proving that the occurrence took place at the place of occurrence pointed out by the prosecution. The finding by the learned Sessions Judge is that the prosecution has no consistent case regarding the place of occurrence. P.Ws. 1 to 3 say that the occurrence took place near Chettithadam culvert. The case of the prosecution is that the occurrence took place on the southern side of Chettithadam culvert on the way which goes from Chandanathoppe to Karunappan temple. Ext. P-8 is the scene mahazar and a reading of Ext. P-8 would go to show that according to the prosecution the occurrence took place on the southern side of Chettithadam culvert. On the northern side of the way which leads from Chandanathoppe to Karunappan temple there is a canal and the culvert is across the canal immediately on the northern side of the way from Chandanathoppe to Karunappan temple. There is a slab put across the canal and one can go to the panchayat road on the northern side of the canal through the slab crossing that canal. That panchayat way goes north and reaches Chandanakkulam-Chathanadu road. There is evidence of the witnesses that Chandanakkulam-Chathanadu road is a tarred road. Even though the above road is not a bus route, that road is suitable for vehicular traffic. This is the evidence of P.Ws. 1 to 3.

11. The submission made by the learned counsel for the respondents is that P.Ws. 1 to 3 are not definite in saying that the occurrence took place on the way from Chandanathoppe to Karunappan temple. Learned counsel relies on the version of P.W. 3 who said in the cross-examination that the occurrence took place in the road which leads from Chandanakkulam to Chathanadu. He went on to say that Tra-Plast Company is on the side of the above road and it is about 3 or 5 kilometres away from the place of occurrence. Tra-Plast Company according to him is on the opposite side of his house. P.W. 1 said in the cross-examination that the occurrence took place near the culvert where the way is not tarred. It is submitted that such a statement made by P.W. 1 in the cross-examination would go to show that according to him the occurrence took place in the road on the northern side which leads from Chandanathoppe to Chathanakulam. In Ext. P-5 plan the road on the northern side from Chandanathoppe to Chathanakulam is shown. The place of occurrence is shown on the southern side of the culvert across the canal. On going through the cross-examination of P.W. 1 it is seen that he gave the description of the tarred road on the northern side which goes from Chandanathoppe to Chathanakulam and said that on both sides of that road there are portions having 4 feet width and that those portions were not tarred. The submission made by the learned counsel for the respondents is that when P.W. 1 said that the occurrence took place at the portion which was not tarred, he meant that it was on the northern side of the tarred road, the side of which was not tarred. But a close reading of the deposition would go to show that after saying that the road

on the northern side which leads from Chandanathoppe to Chathanakulam was the tarred road and that on both sides of that road four feet width portion is not tarred, the witness said that the electric post was about six feet away from the culvert. The culvert mentioned by the witness is the culvert on the northern side of the way which leads from Chandanathoppe to Karunappan temple which is not a tarred road. Then the witness said that the occurrence took place near the culvert on the way which was not tarred and that can only be about the road from Chandanathoppe to Karunappan temple where according to the prosecution the occurrence took place. In respect of the statement made by P.W. 3 that the occurrence took place in the road from Chandanathoppe to Chathanakulam it has to be pointed out that in the chief examination this witness said that the occurrence took place at a place near Chettithadam culvert and the statement that the road goes to Chathanakulam from Chandanathoppe cannot be understood as a statement made by him that the occurrence took place in another road on the northern side which goes from Chandanathoppe to Chathanakulam. It is pointed out that the road on the southern side of the culvert from Chandanathoppe goes beyond Karunappan temple to Chathanakulam. The witnesses P.Ws. 1 to 3 have no confusion regarding the place of occurrence and a close scrutiny of their evidence would indicate that they are definite about the place of occurrence, that is, in the road from Chandanathoppe to Karunappan temple on the southern side of the culvert.

12. Another submission made by the learned counsel for the respondents is that the time of occurrence given by the prosecution as 8.30 p.m. cannot be correct in the light of the materials available on record. According to the respondents, the occurrence would have taken place before 8.30 p.m. Learned counsel for the respondents made an attempt to rely on the statements recorded by the Circle Inspector of Police on questioning the witnesses at the time of preparing inquest report. The statements made by the witnesses cannot be taken as evidence regarding the time of occurrence. The witnesses who had seen the occurrence say in Court that the occurrence took place at 8.30 p.m. on the date of the occurrence and there is no reason for not accepting their evidence regarding the time of occurrence.

13. The respondents would-submit that there is no evidence in this case to show that at the place of occurrence there was sufficient light so that the occurrence witnesses could see the occurrence. P.Ws. 1 to 3 speak about the presence of sufficient light at the place of occurrence. P.W. 1 says in the chief examination that there were two electric posts near to the place of occurrence and at the time of occurrence there was sufficient light from those electric posts in which there were electric lights. In the cross-examination, this witness would say that this electric post is about six feet away from the culvert. He went on to say in the cross-examination that one electric post was very near to the place of occurrence and the other electric light was about 20 feet away from the place of occurrence. The evidence of P.W. 1 regarding the presence of sufficient light at the place of occurrence from the electric post is corroborated by the evidence of P.Ws. 2 and 3. All these witnesses were definite in saying that there was sufficient light at the place of occurrence from the light of the electric post.

14. Learned counsel for the respondents would submit that there was load-shedding from 8 to 8.30 p.m. and the occurrence would have been before 8.30 p.m. and there was no possibility of there being sufficient light at the place of occurrence. The attempt made by the learned counsel relying on the statements in the inquest report and the evidence of D.W. 1, the Assistant Engineer, Electricity

Department, is to show that the occurrence took place before 8.30 p.m. and since there was load-shadding from 8 to 8.30 p.m. there would not have been light at the place of occurrence. In respect of the case of the prosecution that there was moonlight as spoken to by P.Ws. 1 to 3 at the place of occurrence, the submission made is that the date of occurrence was the fourth day after full moon and the moon light on that day would have been only after 9 p.m. There is no materials on record to show that on 18-12-1997 the moon light would have been available only after 9 p.m. Without any materials, we are not able to say definitely that there was no possibility of there being moon light at the place of occurrence before 9 p.m.

15. D.W. 1, the Assistant Engineer, proved Ext. D-4, a register maintained in his office, from which it could be seen that on 18-12-1997 Perinad feeder was switched off from 8 p.m. to 8.30 p.m. According to D.W. 1, Ext. D-4 register was kept in his custody and the entries in that register were made by operator. In the cross-examination D.W. 1 says that it is possible to give electric supply to the area of Kundara sub-station from other sub-stations and he cannot say definitely that on that day electric supply was given from any other sub-station. This witness was giving evidence before Court on the basis of the entries in Ext. D-4 register. In the cross-examination he said that he did not know about the place of occurrence in this case. On the basis of the evidence of D.W. 4 it cannot be said that the load-shadding on the date of occurrence was from 8 p.m. to 8.30 p.m. at the place of occurrence. What he said was that there was entry in Ext. D-4 which would go to show that on 18-12-1997 Perinad feeder was switched off at 8 p.m. and it was switched on only at 8.30 p.m. Moreover, this is a case in which the witnesses who speak about the occurrence say that the occurrence took place at 8.30 p.m. and there was sufficient light at the place of occurrence. So the evidence adduced by the respondents in the trial Court will not in any way go to prove that there was no sufficient light at the place of occurrence at the time, when the occurrence is alleged to have taken place.

16. Prosecution relies on the evidence regarding recovery of weapon on the basis of the information given by the first respondent. P.W. 5 is the witness who says that at the time when the weapon was recovered a mahazar was prepared and in that mahazar, Ext. P-2, he was a witness. According to him on seeing that the police came to the place of occurrence along with the first respondent, he went there and then the first respondent pointed out the place where the weapon was lying and since there was nobody to take the weapon from the canal, he picked out three pieces of weapon from the place pointed out by the first respondent. The three pieces of weapon are marked as M.O. 1 series. The case of the prosecution is that when the first respondent along with other respondents went away from the place of occurrence, he broke the weapon into three pieces and put it in the canal in a bid to conceal the evidence. The allegation against the respondents regarding the commission of the offence punishable under Section 201 of the Indian Penal Code is that for causing disappearance of evidence regarding the commission of the offence, they in furtherance of their common intention destroyed the weapon and by breaking it into pieces threw the pieces into the canal. But there is no evidence to show that it was for the purpose of destroying evidence regarding the commission of the offence that the respondents threw the broken pieces of the weapon into the canal. The evidence regarding the recovery of weapon on the basis of the information given by the first respondent cannot be accepted for the reason that in the disclosure statement Ext. P-2(a) it is not stated that, the first respondent was the person who threw the burden pieces of the weapon into

the canal. In order to accept the evidence regarding the recovery of weapon on the basis of the information alleged to have been given by an accused in a case it is necessary that there will have to be evidence regarding the authorship of concealment. Insofar as there is no evidence to show that the first respondent told the police officer who questioned him that it was he who concealed the broken pieces of weapon by throwing the same in the canal, the evidence regarding recovery cannot be said to be one by which the involvement of the first respondent in the commission of the crime is established.

17. Ext. D1 is the copy of the FIR in Crime 339 of 1997 of Kilikolloor Police Station. That crime was registered under Sections 143, 147 and 436 read with Section 149, IPC on the basis of the information given by the mother of the first respondent. In the judgment of the trial Court, the learned Sessions Judge says that even though the house of the first respondent was destroyed by fire in the night on 18-12-1997, the crime was registered only on 20-12-1997 and finds fault with the Sub-Inspector of Police, P.W. 8 and the Circle Inspector of Police, P:W. 9 for not coming to know of the destruction of the house of the first respondent in spite of the fact that they visited the place of occurrence in this case on a number of occasions. What is seen from Ext. D1 is that there was no destruction of the house of the first respondent. The house of the first respondent is near to the place of occurrence in this case. The First Information given by the mother of the first respondent was that somebody threw lighted torches on the roof of the house and the tiles of the roof broke and the lighted torches fell inside the house and the window curtains and mattress were destroyed by fire. The allegation in the FIR, Ext. D1, is also that the first informant suffered a loss of Rs. 1,000/- as a result of the destruction of window curtains and mattress by fire. Since the house was not destroyed by fire and what were destroyed were the window curtain and mattress, it was not possible for the police officers who went to the place of occurrence in this case to know about the destruction of some articles kept inside the house of the first respondent. The police officers would say that immediately after the occurrence in this case, arrangements were made for posting sufficient number of police officers near the place of occurrence to avoid any untoward incident taking place in the locality where the occurrence took place. The submission is that even though the police personnel were posted near the place of occurrence for avoiding communal clash, those officers did not know about the destruction by fire of articles kept inside the house of the first respondent. The approach made by the learned Sessions Judge in blaming PWs. 8 and 9 for not taking note of the fact that destruction was caused to the house of the first respondent and initiating legal proceedings does not appear to be correct. Ext. D1 would show that the information which led to the registring of the crime was given by the mother of the first respondent only at 9 a.m. on 20-12-1997 and immediately after that the crime was registered. It is submitted that a refer report was filed in the Court in connection with the above crime.

18. When the respondents were questioned under Section 313, Cr. P.C. the first respondent said that his house was set on fire due to the enmity on account of the occurrence in which an altercation took place between Abdul Rasheed, his associates and the respondents and when the first respondent came out seeing the fire in his house, the saw a number of persons in the courtyard of his house armed with deadly weapons and Abdul Rasheed was also among them. What the first respondent said was that he snatched away the knife which Abdul Rasheed was having and brandished the knife in exercise of his right of private defence and Abdul Rasheed would have sustained injury by them.

The above submission made by the first respondent would go to show that he would admit that he was present at the place of occurrence when Abdul Rasheed suffered injuries. When the statements made by the accused in a case when he is questioned under Section 313, Cr. P.C. lend support to the evidence adduced by the prosecution for proving the occurrence the inculpatory portion of that statement can be taken into.account by the Court. It is not correct to base the conviction solely on the statement made by an accused when he is questioned under Section 313, Cr. P.C. The inculpatory portion of the statement made by the accused when questioned under Section 313, Cr. P.C. can be separated from the exculpatory portion and if that inculpatory portion is in support of the case of the prosecution it would lend support to the evidence adduced by the prosecution and there is no harm in relying on that portion of the statement also.

19. In Ext. D1 there is the First Information given by the mother of the first respondent. The First Information was given at 9 a.m. on 20-12-1997. According to the mother of the first respondent, the accused in that case threw lighted torches on the roof of the house and because of the breaking of the tiles, the lighted torches fell inside the house and damage was caused to the window curtains and mattress. An attempt was made by the learned counsel for the respondents to establish that the house of the first respondent was set on fire before the occurrence in this case. In the first place the mother of the first respondent did not inform the police that her house was destroyed by fire. In the First Information there is statement that she knew that the occurrence in which Abdul Rasheed died took place at 8.30 p.m. on 18-12-1997. She would also say that certain persons went to her house and threw lighted torches on the roof of the house as a sequel to the occurrence in which Abdul Rasheed suffered injuries as a result of which he died. In the light of the above fact, there is no merit in the submission that the occurrence would have taken place before 8.30 p.m. on 18-12-1997 and certain persons threw lighted torches on the roof of the house of the first respondent after the occurrence in this case. P.W. 2 would also say that he knew that somebody set fire to the house of the first respondent after the incident in this case.

20. In Ext. P1 First Information stated to have been given at 10.30 p.m. on 18-12-1997 all the names of the accused are given. The First Information Report reached the Court at 2.30 p.m. on 20-12-1997. There is some delay in the First Information reaching the Court.

21. In Ravinder Kumar v. State of Pun-Jab, 2001 SCC (Cri) 1384 : (2001 Cri LJ 4242) the Supreme Court considered the consequence of the delay in lodging the FIR. In the above decision it is said that it is to be noted that law has not fixed any time for lodging the FIR and hence a delayed FIR is not illegal. After saying that prompt and immediate lodging of the FIR is ideal as that would give the prosecution a twin advantage that it affords commencement of the investigation without any time lapse and it expels the opportunity for any possible concoction of a false version, the Supreme Court proceeded on to observe that barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case and that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein. The delay in the FIR reaching the Court alone cannot be a ground for saying that the case of the prosecution is not correct. When there is something to show that there is possibility of concoction of a false version, the delay in the FIR reaching the Court can strengthen the possibility of there being concoction of a false version. The mere delay in the FIR reaching the Court by itself may not be

sufficient for saying that the case of the prosecution is not correct especially when there is cogent and convincing evidence regarding the fact that the occurrence took place in the manner alleged by the prosecution and there is no circumstance which would indicate that there is concoction of a false version.

22. This is a case in which as adverted to earlier there is cogent, convincing and trustworthy evidence of P.Ws. 1 to 3 who are wholly reliable witnesses. On going through the judgment of the learned Sessions Judge, we find that much is said about the irregularities in the investigation of the crime. It appears that the learned Sessions Judge said that there is irregularity in the investigation of the crime by referring to what police did in connection with the incident in which the house of the first respondent is stated to have been set on fire. But there is nothing to show that the house of the first respondent was destroyed by fire and it is not possible to blame the police officers by saying that they did not take prompt action in connection with the incident in which the articles kept inside the house of the first respondent were destroyed by fire. The police is expected to initiate proceedings only on getting information regarding the commission of the offence and here in respect of the alleged destruction of the articles kept in the house of the first respondent, the police got information only at 9 a.m. on 20-12-1997. There is nothing to show that the police got the information about that incident earlier and what the materials available would go to show is that the police officers got the information only at the time when Ext. D1 First Information was given by the mother of the first respondent. In Ext. D1 First Information the mother of the first respondent would say that even though the articles kept inside the house were destroyed by fire at 11.30 p.m. on 18-12-1997, she could go to the police station and give information only on 20-12-1997. She did not go to the police station earlier for the reason that tension was prevailing in the locality because murder of Abdul Rasheed was committed. She would also say that after picking up quarrel with Abdul Rasheed, the first respondent, her son, had absconded.

23. The learned Sessions Judge says in the judgment that considering the entire facts and circumstances, she found that the prosecution had failed to conduct the investigation properly and thereby failed to get the real culprits. It is not possible to understand why the learned Sessions Judge made an observation that the police officers failed to get the real culprits. According to the learned Sessions Judge, it was not the respondents who committed the offence but it was somebody else who committed the offence. In the case evidence was adduced by the prosecution to prove that the respondents were the persons who committed the offence. On the basis of the evidence. the Court may be justified in finding that the respondents were the persons who committed the offence or that the prosecution had not succeeded in proving that they committed the offence. When the prosecution fails to prove that the accused in a case committed the offence, that does not mean that somebody other than the accused is the person who committed the offence. What the Court is expected to do in appreciating the evidence adduced in a case is to decide whether the evidence adduced would prove that the accused committed the offence.

24. On observing that the police officers failed to get the real culprits, the learned Sessions Judge says that she is of the view that the investigating officer who conducted the investigation in this case is not at all fit to continue in office and that unless necessary action is taken against those officers, the Courts will not be able to convict real culprits and that will ultimately lead to severe

consequences jeopardisting the whole institution. The above observation made by the learned Sessions Judge was unwarranted and we feel that the Court would have shown some restraint in making such observations against the investitgating officers. We do not see that there was that much irregularity in the investigation conducted in the crime so as to make such observation against the investigating officers. It was not necessary that such observations had to be made by the Court for the decision of the case. Harsh, disparaging and scathing remarks are not expected to be made against persons or authorities whose conduct comes into consideration before Court unless it is really necessary for the decision of the case.

25. This is a case in which the evidence of P.Ws. 1 to 3 would clearly prove that it was the first respondent who inflicted two stab injuries on Abdul Rasheed as a result of which he died. The case of the prosecution is that the assault was made on Abdul Rasheed in furtherance of the common intention of all the respondents to cause his death. What is seen from the evidence is that all the respondents were sitting on a culvert on the side of the way from Chanthana-thoppe to Karunappan temple and When Abdul Rasheed and P.W. 1 reached the culvert, all of them together went near him and the first respondent inflicted stab injuries on Abdul Rasheed. It cannot be said on the basis of the evidence available on records that all the respondents were sitting on the culvert knowing that Abdul Rasheed and P.W. 1 would come that way and then they could assault Abdul Rasheed for causing his death. Hence, it cannot be said that the assault on Abdul Rasheed was made by the first respondent in furtherance of the common intention of all the accused. The first respondent was having the intention to cause the death of Abdul Rasheed is clear from the evidence available on records. Even though the witnesses would say that the second respondent on seeing Abdul Rasheed said that he had to be killed, we do not see any reason to give much weight on that so as to implicate him also by saying that he was having the intention to cause the death of Abdul Rasheed along with the first respondent. The first respondent stabbed Abdul Rasheed with a knife and that too on the vital portions of the body. The medical evidence would indicate that as a result of the stabbing with knife, the weapon penetrated through the Vth intercostal space and the pericardial cavity and terminated in the chamber of right ventricle after piercing its front wall. Even though the first respondent did not know that Abdul Rasheed would come that way on seeing Abdul Rasheed coming through the way on the southern side of the culvert, he stood up and inflicted the injuries. The intention to cause the death of Abdul Rasheed could develop at the place of occurrence on seeing him especially in the light of the evidence available on records to show that at 1.30 p.m. on the same day there was a quarrel between them and Abdul Rasheed beat the first respondent. There was intention on the part of the first respondent to cause the death of Abdul Rasheed is clear from the above facts. We do not find any convincing evidence to show that the respondents 2 and 3 were also having the intention to cause the death of Abdul Rasheed. But they are liable for their individual overt acts. P.Ws. 1 to 3 would say that respondents 2 and 3 beat P.W. 1 with hand. The evidence of P.Ws. 1 to 3 regarding the overt acts on the part of respondents 2 and 3 stand unchallenged. We find that the first respondent committed the offence punishable under Section 302 of the Indian Penal Code and respondents 2 and 3 committed the offence punishable under Section 323 of the Indian Penal Code.

26. We allow the appeal on setting aside the order of acquittal made by the learned Sessions Judge. We convict the first respondent under Section 302, IPC and respondents 2 and 3 under Section 323

IPC The first respondent is sentenced to undergo imprisonment for life under Section 302, IPC. The respondents 2 and 3 are sentenced to undergo simple imprisonment for six months each under Section 323, IPC. If the competent authority commutes the life imprisonment to a term of imprisonment, the period of detention, if any, the first respondent had already undergone during investigation, inquiry or trial of this case shall be set off against such term of imprisonment. The period of detention, if any, the respondents 2 and 3 had undergone during investigation, inquiry or trial shall be set off against the term of the imprisonment now imposed on them on conviction. The trial Judge will see that the respondents are apprehended and committed to prison for undergoing the sentence.