

Talish vs State

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Court : Kerala

Decided On : Jul-30-2024

Judge : Honourable Mr. Justice Raja Vijayaraghavan V, Honourable Mr. Justice G.Girish

Appeal No. : CRL.A/1165/2019

Appellant : Talish

Respondent : STATE

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V & THE HONOURABLE MR. JUSTICE G.GIRISH
TH TUESDAY, THE 30 DAY OF JULY 2024 / 8TH SRAVANA, 1946
CRL.A NO. 1405 OF 2019 AGAINST THE JUDGMENT AND ORDER OF
CONVICTION AND SENTENCE DATED 03.08.2019 IN SC NO.601 OF
2016 OF ADDITIONAL SESSIONS JUDGE - III, ALAPPUZHA
APPELLANT/ACCUSED NO.3:

SIBU @ THUMPI AGED 42 YEARS S/O PURUSHAN, OCC. DRIVER,
R/AT -ILLATHUVELIVEEDU, CHERTHAL P.O, WARD -X, CHERTHALA

MUNICIPALITY , CHERTHALA TALUK, ALAPPUZHA DISTRICT.(PRESENTLY LODGED AT CENTRAL PRISON POOJAPPURA, THIRUVANANTHAPURAM) BY ADVS. VIVEK NAIR P C.UNNIKRISHNAN (KOLLAM)(K/864/1994) UTHARA A.S(K/514/2019) ANANDA PADMANABHAN(K/597/2017) VIJAYKRISHNAN S. MENON(K/001627/2019) MAHESH CHANDRAN(K001557/2019)

RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR , HIGH COURT OF KERALA , ERNAKULAM, KOCHI- 18 ALEX M THOMBRA, SR PP THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 30.07.2024, ALONG WITH CRL.A.1406/2019, 1165/2019 AND

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V & THE HONOURABLE MR. JUSTICE G.GIRISH TH TUESDAY, THE 30 DAY OF JULY 2024 / 8TH SRAVANA, 1946 CRL.A NO. 1406 OF 2019 AGAINST THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 03.08.2019 IN SC NO.601 OF 2016 OF ADDITIONAL SESSIONS JUDGE - III, ALAPPUZHA APPELLANTS/ACCUSED NO.4 & 5: 1 AJESH

AGED 27 YEARS OCC. MAZON, S/O.CHANDRAN, MELEPOKKATHUCHIRA, WARD NO.22, THANNEERMUKKAM PANCHAYATH, VARANADU P.O., CHERTHALA, ALAPUZZHA DISTRICT. (PRESENTLY LODGED AT CENTRAL PRISON, POOJAPPURA, THIRUVANANTHAPURAM). 2 VIJESH, AGED 32 YEARS OCC.DRIVER, S/O.CHANDRAN, MELEPOKKATHUCHIRA, WARD NO.22, THANNEERMUKKAM PANCHAYATH, VARANADU P.O., CHERTHALA, ALAPUZZHA DISTRICT. (PRESENTLY LODGED AT CENTRAL PRISON, POOJAPPURA, THIRUVANANTHAPURAM). BY ADV SRI.T.U.SUJITH KUMAR

RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 018. ALEX M THOMBRA, SR PP THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 30.07.2024, ALONG WITH CRL.A.1405/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V & THE HONOURABLE MR. JUSTICE G.GIRISH TH TUESDAY, THE 30 DAY OF JULY 2024 / 8TH SRAVANA, 1946 CRL.A NO. 1165 OF 2019 AGAINST THE JUDGMENT OF CONVICTION AND SENTENCE DATED 03.08.2019 IN SC NO.601 OF 2016 (CORRESPONDING TO CRIME NO.1090/15 OF PATTANAKKAD POLICE STATION) PASSED BY THE COURT OF THE ADDITIONAL SESSIONS JUDGE - III, ALAPPUZHA APPELLANT/ACCUSED NO.2:

TALISH AGED 34 YEARS S/O JACOB, THAYYILVEEDU, WARD XVII, ANDHAKARANAZHI P.O., PATTANAKKAD PANCHAYATH, ALAPPUZHA DISTRICT. BY ADVS. SRI.RENJITH B.MARAR SMT.LAKSHMI.N.KAIMAL RESPONDENT/COMPLAINANT: STATE REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. ALEX M THOMBRA, SR PP THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 30.07.2024, ALONG WITH CRL.A.1405/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V & THE HONOURABLE MR. JUSTICE G.GIRISH TH TUESDAY, THE 30 DAY OF JULY 2024 / 8TH SRAVANA, 1946

CRL.A NO. 1174 OF 2019 AGAINST THE JUDGMENT OF CONVICTION AND SENTENCE DATED 03.08.2019 IN SC NO.601 OF 2016 (CORRESPONDING TO CRIME NO.1090/15 OF PATTANAKKAD POLICE STATION)PASSED BY THE COURT OF THE ADDITIONAL SESSIONS JUDGE - III, ALAPPUZHA

APPELLANT/ACCUSED NO.1: PAULSON, AGED 32 YEARS S/O.JACOB, THAYYILVEEDU, WARD XVII, ANDHAKARANAZHI P.O., PATTANAKKAD PANCHAYATH, ALAPPUZHA DISTRICT. BY ADVS. K.K.DHEERENDRAKRISHNAN N.P.ASHA(K/1605/2003)

RESPONDENT/COMPLAINANT: STATE REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. ALEX M THOMBRA, SR PP THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 30.07.2024, ALONG WITH CRL.A.1405/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CR

JUDGMENT

G.Girish, J.

The judgment dated 03.08.2019 of the Court of Additional Sessions Judge-III, Alappuzha in S.C.No.601/2016 convicting and sentencing accused Nos.1 to 5 for the offences under Sections 143, 147, 148, 149, 120(B) and 302 of the Indian Penal Code, is under challenge in these appeals filed by the aforesaid accused.

2. Two youths by name Johnson and Justin, while they were

travelling in the motorcycle with Reg.No.KL-32 D-9428, with Justin riding the vehicle and Johnson in the pillion seat, from South to North through Thykkal-Andhakaranazhi coastal road, were hit by a lorry with Reg.No.KL-02 AN 5563, from behind at about 6:15 p.m on 13.11.2015, near St.Peters bus stop at the place called Chanthakkadavu, resulting in the fall of the above persons to the road and suffering fatal injuries. The offending lorry sped away towards the North without stopping. Though the above victims were taken to Taluk Headquarters Hospital,

Cherthala shortly after the incident, they were declared dead by the Medical Officer who attended them.

3. PW1, the brother of deceased Johnson, was informed about the

incident by a person by name Kunjumon at about 6:30 p.m on the same day. He immediately rushed to Taluk Headquarters Hospital, Cherthala and came to know about the death of his brother and the co-traveller. The local people who witnessed the incident, are said to have conveyed the information to

PW1 that it was not an accident, but a deliberate act of dashing the lorry upon the motorcycle ridden by the victims. Those local people are also said to have informed PW1 that the accused Nos.1 and 2 and two other identifiable persons were there in the cabin of that lorry driven by the 3rd accused, and that the aforesaid lorry was found parked near the place of occurrence from noon onwards, obviously awaiting the arrival of the victims who were engaged in masonry work in a nearby house. It is stated that accused Nos.1 and 2 nurtured bitter enmity with deceased Johnson in connection with earlier issues in between them, and that the incident involved in this case was the outcome of a conspiracy hatched by accused Nos.1 and 2 with the other accused to eliminate Johnson.

4. Having known that the death of his brother and his colleague,

was homicide perpetrated by the aforesaid five persons, PW1 went to the Pattanakkad Police Station and tendered Ext.P1 First Information Statement to PW47, the Sub Inspector of Police concerned, at about 10:00 p.m. on 13.11.2015, on the basis of which Ext.P52 First Information Report was registered in respect of the commission of offence under Sections 143, 147,

148 and 302 I.P.C. read with Section 149 I.P.C. In the meanwhile, the Inspector of Police, Kuthiyathodu, upon getting information about the abovesaid hit and run case, passed over instructions to PW40, a Grade S.I on patrol duty to keep a watch on the lorry which sped away from the scene of crime, after hitting down two motorcyclists. The local people also were on

alert upon getting information about the aforesaid incident, which eventually resulted in the capture of the rogue lorry at a place called Karayathode, more than 10 Kms. towards the North of the scene of crime, where it was blocked by placing wooden logs in the road. There also, the aforesaid lorry had hit a private car driven by PW24 during the desperate attempt of the 3rd accused to drive away with that lorry. However, the 3rd accused, and the lorry driven by him were taken into custody by PW40.

5. PW51, the Inspector of Police, Kuthiyathodu, took over the

investigation and swung into action. The arrest of the 3rd accused was recorded on 14.11.2015, and he was remanded to judicial custody. Inquest and autopsy of the bodies were done as usual. Upon getting information that the accused No.6 had harboured and given shelter to accused Nos.1, 2, 4 and 5 at his house in the night of 13.11.2015, the Investigating Officer booked him for the commission of offence under Section 212 of the Indian Penal Code. So also, accused Nos.7 and 8 were booked for the same offence for harbouring and arranging shelter to accused Nos.1, 2, 4 and 5 in the night of 14.11.2015 at an uninhabited house in Perumpalam Panchayat. Accused Nos.6 and 7 were arrested on 21.11.2015, and accused No.8 on

22.11.2015. Later on, accused Nos.1, 4 and 5 were arrested by the Investigating Officer from Mettupalayam in Tamil Nadu on 26.11.2015, and the 2nd accused from Changanacherry, on the same day. Accused Nos.6 to 8 were released on bail. However, accused Nos.1 to 5 remained in judicial

custody. The Investigating Officer found that accused Nos.1, 3, 4 and 5 had assembled in a Toddy shop near Thykkal junction at about 2:00 p.m. on 13.11.2015 and conspired for the commission of the crime. Accordingly, the investigation was focused on that direction, and the statements of the Manager and Storeman of the said Toddy shop were recorded and a Mahazar of the room in that Toddy shop where the above accused assembled, was prepared. After the completion of the routine procedures of investigation, PW51 laid the final report before the Magistrate concerned.

6. The learned Sessions Judge, before whom the case came up

following committal, framed charge in respect of the offences under Sections 143, 147, 148, 302 & 120(B) I.P.C. read with Section 149 I.P.C. against accused Nos.1 to 5, and the offences under Sections 120(B) & 212 I.P.C. against accused Nos.6 to 8. The case was made over to the learned Additional Sessions Judge-III, Alappuzha, who proceeded with the trial, in which 51 witnesses were examined from the part of the prosecution as PW1 to PW51 and 88 documents marked as Exts.P1 to P88. Six material objects

were identified as MO-I to MO-VI. After recording the statements under Section 313(1)(b) Cr.P.C., and completion of hearing and finding against acquittal under Section 232 of the Code of Criminal Procedure, two witnesses were examined from the part of the defence as DW1 and DW2. In addition to two contradictions marked as Exts.D1 and D2, three other defence documents were brought on record as Exts.D3 series, D4 and D5. After the

evaluation of the aforesaid evidence, the learned Additional Sessions Judge-III, Alappuzha convicted accused Nos.1 to 5 under Sections 143, 147, 148, 149, 120(B) & 302 I.P.C. The sentence of life imprisonment and fine Rs.1 lakh each with a default clause of rigorous imprisonment for one year was awarded for the offence under Section 302 I.P.C., and imprisonment for various terms for the other offences mentioned above. However, accused Nos.6 to 8 were acquitted of the offence under Sections 212 I.P.C and 120(B) I.P.C charged against them.

7. Aggrieved by the aforesaid conviction and sentence, accused Nos.1 to 5 are now before this Court with the present appeals.

8. Heard Adv.Mr.C.Unnikrishnan for the appellant in Crl.A.No.1405/2019, Adv.Mr.Ranjith Marar for the appellant in Crl.A.No.1165/2019, Adv.Mr.K.K.Dheerendra Krishnan for the appellant in

Crl.A.No.1174/2019, Adv.Mr.T.U.Sujith Kumar for the appellants in Crl.A.No.1406/2019, and Adv.Mr.Alex M. Thombra, the learned Senior Public Prosecutor for the State of Kerala.

9. Before the trial court, the prosecution built up their case relying exclusively on direct ocular evidence of the chance witnesses who are said to

have seen the incident. The learned Sessions Judge reposed confidence upon the evidence so tendered by the prosecution through the oral testimonies of PW2, PW3, PW7 and PW8 who were projected as eyewitnesses to the incident. In addition to the above witnesses, there is the evidence of PW24 whose motorcar was said to have been hit by the offending lorry while the accused were allegedly fleeing from the scene of crime in that vehicle.

10. The evidence let in by the prosecution through the aforesaid

witnesses has been strongly challenged in this appeal stating the reason that all the above witnesses were planted by the prosecution to see that the accused are put behind the bars. It is the further challenge of the appellants that all the above witnesses are either close relatives or friends of the deceased persons and their family, and that they reside far away from the scene of crime, making it impossible for them to witness the crime involved in this case. The bitter enmity that prevailed between deceased Johnson and accused Nos.1 and 2 in connection with earlier issues leading to the registration of Crime No.929/2015 of Pattanakkad Police Station against deceased Johnson; and the filing of complaints by Johnson and his family members against accused Nos.1 and 2, as revealed from the evidence of the Police Officers (PW35, PW48 & PW51), are pointed out by the defence counsel to show that a road accident case has been moulded as a case of homicide either deliberately or due to misunderstanding, to wreak vengeance upon the accused. According to the learned counsel appearing for the appellants, a meticulous analysis of the evidence tendered by the above witnesses would reveal that they were totally unreliable. Having regard to the nature of the challenge raised by the appellants in the above regard, it is

highly necessary to have a close scrutiny of the evidence of the abovesaid witnesses.

11. PW2 is closely related to the deceased Subin Alias Justin as the

husband of his mothers sister, a fact which he did not disclose to the investigating officer. According to PW2, he had the occasion to see accused Nos.1 to 5 talking in front of the offending lorry which was found parked by the side of the road near Chanthakkadavu in the evening of 13.11.2015. PW2 would state that he started from his house on a bicycle at about 5:00 p.m to Thykkal beach in order to meet one Jerome from whom he wanted to purchase a country boat. The aforementioned place by name Thykkal beach was towards the further south of the place called Chanthakkadavu in Thykkal - Andhakaranazhi coastal road, which according to PW2, was about 9 Kms away from his residence, and he would take half an hour to 45 minutes in bicycle to reach the house of Jerome in that place. As per the version of PW2 in chief examination, shortly after he saw accused Nos.1 to 5 talking in front of the offending lorry, all the above five accused hurriedly boarded the said lorry and got it moved at a tremendous speed towards the North. He would further add that while he was returning after talks with the abovesaid Jerome, he found the deceased lying soaked with blood at the road near St.Peters bus stop, and their motorcycle lying on the western side of that

road. Thus, what the prosecution proposed to bring out through the evidence of PW2 was that the said witness had the occasion to see the accused and the offending lorry shortly before the said lorry hit the motorcycle in which the deceased were travelling. True that the evidence of PW2 in the above regard has got relevancy under Section 9 of the Indian Evidence Act if it is shown that his testimony is otherwise trustworthy.

12. Now the task before us is to analyse the evidence of PW2 and to

find whether his testimony is trustworthy or not. Being the person who also had the occasion to see the victims lying in the road shortly after the incident, it is of much relevance to ascertain whether PW2 came to know at that time that the above victims whom he found lying in a pool of blood at the road, were his close relative Justin and his friend Johnson. To the above question asked by the learned counsel for the 1st accused during cross-examination, PW2 is seen to have given mutually inconsistent and contradictory answers. At the first instance, PW2 stated that he came to know about the identity of the victims as Johnson and Subin only

after he

reached the hospital. In the same breath, PW2 stated during the cross-examination that he had given statement to the police that he understood at the scene of crime that it was Subin and Johnson who died in the accident. Immediately thereafter, PW2 had stated that it was only after reaching hospital that he came to know that it was Subin and Johnson who died in the accident, and that the above statement is the one which is correct. It is too hard to reconcile the above divergent versions of PW2,

spoken one after another, as a mere mistake that happened during the recollection of memories.

13. To the question whether PW2 had seen the accused Nos.1 to 5

talking in front of the lorry and thereafter suddenly boarding the lorry before it being driven swiftly towards the North, during his onward journey to Thykkal beach or during his return journey after meeting Jerome, PW2 is seen to have tendered mutually contradictory and inconsistent versions many a times. The question in the above regard assumes much importance since there is absolutely no possibility of the above witness seeing the victims lying in the road after the accident if he had seen the accused and the lorry while he was proceeding towards the house of Jerome at Thykkal beach. This is because of the reason that, even according to PW2, the person by name Jerome, in search of whom he proceeded to Thykkal beach, was not there at his house when he reached there, and that he claims to have returned to Chanthakkadavu in search of the above said Jerome on the basis of the information received from the wife of Jerome. PW2 has also stated during cross-examination that he took five minutes walk to meet Jerome at the place near Chanthakkadavu and thereafter talked to Jerome for about 10

minutes. PW2 again stated that he took five minutes to return to Chanthakkadavu from the place where he met Jerome. Thus, it is apparent from the above statement of PW2 that he took about 20 minutes after returning from Thykkal beach for meeting Jerome at a place near

Chanthakkadavu. If the above version of PW2 is taken as correct, it was not possible for him to see the victims lying in the road during his return journey, since he claims to have seen the accused driving away the lorry from Chanthakkadavu during his onward journey to Thykkal, which would definitely be half an hour prior to his return journey.

14. A reading of the testimony of PW2 during cross-examination

would reveal that there is absolutely no consistency in the version of that witness as to the exact point of time when he had seen the accused talking in front of the offending lorry, and thereafter, the alleged act of the accused boarding the lorry and proceeding towards North at a tremendous speed. It is pertinent to note that the staggering testimony of PW2 in the above regard is not a mistake due to a slip of the tongue, lack of proper understanding of the question of the cross-examiner, or inability to recollect that pertinent aspect. If it was due to any of the above reasons, PW2 would not have persistently deviated from his versions several times as seen in his testimony during cross-examination. Thus, it is not possible to decipher from the testimony of PW2 as to the exact point of time when he is said to have seen and identified accused Nos.1 to 5 and the offending lorry shortly before the incident.

15. Another important aspect to be noted in respect of the testimony of PW2 is that the above witness did not care to inform the matter to Police at any time on 13.11.2015 notwithstanding the fact that he is said

to have understood that his close relative and another person were brutally killed under the pretext of a road traffic accident. It is only on the next day evening that his statement is seen to have been recorded by the Investigating Officer. There is also no proper explanation for the delay in this regard. Taking into account the above shortcomings in the evidence of PW2 in the backdrop of his close relationship with one of the deceased and his place of residence which is admittedly far away from the scene of crime, it would be highly unsafe and improper to rely on the evidence tendered by the aforesaid witness.

16. PW3 admittedly is a close relative of deceased Johnson and a

friend of deceased Subin @ Justin. According to PW3, he had been involved in the business of selling fish at the market at Thykkal and other nearby places for the past more than 20 years. On the evening of 13.11.2015, PW3 claims to have witnessed the incident while he was standing at the bus stop after the completion of the sale of fish to return home which is far away from the place where the incident took place. It is the version of PW3 during chief examination that he saw accused Nos.1, 2, 4 and 5 coming in the lorry driven by the 3rd accused from South to North near St.Peters Bus Stop, and that the victims were found travelling in the same direction just in front of

the said lorry. PW3 stated during chief examination that he saw the 1st accused putting his head outside at the left door of the cabin of the lorry, and commanding with a loud voice to finish-off the two persons who were

travelling in the motor bike in front of that lorry, as if he was oblivious of the fact that the person who was to execute that command was the person on wheels sitting by his side in the driver seat of the lorry. Shortly thereafter, the lorry is said to have swerved towards the left and knocked down the deceased who were travelling on the motorbike. It is the further statement of PW3 that even he had to dodge away to escape from being hit by the lorry. As per the version of PW3, he had identified accused Nos.1 to 5 as well as the deceased at the time of the incident, and proceeded to the hospital after leaving his fish container at the bus stop. From the hospital, PW3 is said to have returned home after confirming the death of his close relative and friend.

17. The first and foremost vitiating circumstance which would

eclipse the reliability of the evidence of PW3 in the above regard is the long delay of six days which he took to give a statement to the Investigating Officer about the horrific incident which he is said to have witnessed at the

dusk of 13.11.2015. There is absolutely no explanation offered by the Investigating Officer (PW51) for the failure to record the statement of PW3 at the earliest opportunity after the evening of 13.11.2015, when he is said to have seen the incident. However, PW3 would contend that the delay in the above regard

happened since he was virtually shaken by the incident

which he happened to witness. The explanation offered by PW3 in the above regard can be accepted only with a pinch of salt in view of the fact that he is admittedly the zonal President of a youth organization of a political party at that time and that he had stated before the Trial Court in unequivocal terms that he used to visit Police Stations for various purposes relating to his public work. That apart, it has been revealed from the evidence that PW3 was present at the hospital at the time of inquest on

14.11.2015. Still, PW3 did not find it necessary to disclose to the Police about the blatant murder that he is said to have witnessed the prior evening. The conduct of PW3, a person who is admittedly having much public exposure, contacts and indulgence with the Police in his capacity as the zonal President of a youth organization affiliated to a political party, getting scared of disclosing to the Police at the earliest opportunity about the dastardly murder of his relative and friend, which he happened to see in close proximity, is an aspect beyond the comprehension of ordinary prudence. Needless to say, the above aspect would cast a shadow of doubt upon the evidence tendered by the above witness about seeing the crime involved in this case.

18. The testimony of PW3 about his presence at the scene of crime,

is further shrouded with suspicion due to the reason that he had adopted the mode of evading from pertinent questions in cross-examination with regard to his familiarity with that place where he is said to have been frequenting for the past more than twenty years in connection with his avocation of fish sale. It is stated by PW3 in answer to the specific question put by the

learned counsel for the 1st accused during cross-examination that he is not aware whether the fish auction hall where he used to sell fish was near to his house or not. Again the said witness has stated that he is not aware of the distance from his house to the place where the incident happened. PW3, who stated that he used to come to that place in bus, answered to the specific question put to him during cross-examination, that he did not count the number of bus stops from his house

to the place of occurrence. He was not able to say even the name of a single bus stop in between

Andhakaranazhi and Chanthakkadavu. He would state that he does not know the distance between Chanthakkadavu and the auction hall at Thykkal where he used to sell fish. He has made it clear in cross-examination that he is not aware of the distance between Chanthakkadavu and the place where the incident involved in this case happened. PW3 is not even able to say the bus fare that he paid to reach Chanthakkadavu from his house. It is the further statement of PW3 during cross-examination that he is not aware of the houses or the people of that locality or the location of the St.Peters Church which is said to be existing in that place. As regards the lorry that hit the deceased, PW3 is not able to say whether it was a mini lorry or an ordinary lorry. He does not know the width of the road at that place or the existence of an electric post there. Again, it is stated by PW3 that he is not able to say the part of the motorbike where the lorry had hit. When asked about the helmet worn by the motorcycle riders, PW3 stated that he did not

note whether Subin was wearing a helmet at the time when the incident happened. Contrary to the version of PW2 about the tremendous speed in which the lorry was found driven away, PW3 stated during cross-examination that the lorry came at a very slow speed. It is the further statement of PW3 that he does not know whether the local people chased the lorry after the incident. The contradiction in the prior statement of PW3 to the police about the act of the local people chasing the lorry has been marked as Ext.D1 during cross-examination. The above nature of the evidence tendered by PW3 in a recalcitrant manner during cross-examination would further shatter the credibility of that witness.

19. Another suspicious circumstance looming large in the testimony

of PW3 is that he did not say anything to anybody about the incident though he claims to have visited the house of deceased Johnson in the night of 13.11.2015. The statement tendered by PW3 that he was able to identify deceased Subin, driving the motorcycle with helmet worn, at the time when the incident occurred, is also strange and suspicious. So also, the version of PW3 that he was able to identify all the accused sitting inside the cabin of the running lorry at the crucial

time of incident, is too hard to accept. PW3 is seen to have stated at a later stage during cross-examination that he does not remember whether he had gone in a bus from the place of occurrence. The above witness who stated the date of incident, the registration number of the offending lorry etc. with accurate precision, confided during

cross-examination that he is not able to say his date of birth, marriage date or the dates of birth of his children. The above strange and unnatural way in which PW3 had given evidence, when taken along with the unexplained delay of about six days in giving a statement to the investigating officer, would render the evidence tendered by the said witness totally unreliable.

20. As in the case of PW2 and PW3, the witnesses examined from the part of prosecution as PW7 and PW8, are also persons residing far away from the place of occurrence. PW7 is admittedly the godfather of the daughter of deceased Johnson. So also, PW8 is admittedly the cousin of

deceased Johnson. Both the above witnesses claim to have seen the incident while they were standing by the side of the road. According to PW7 and PW8, they came to that place to offer gratitude to the residents of that locality for casting vote to PW8 who is said to have contested the local authority election as a candidate for the left democratic front. However, the cross examination of PW7 would reveal that he was totally unaware of the address or even name of a single person of that locality, whom they are said to have approached for offering gratitude. According to PW7, they retreated from their mission of offering gratitude after sunset, when the normal darkness started spreading. Thus, the evidence of PW7 is to the effect that they had seen the incident at a time when the normal daylight was not

there. Still, PW7 claims to have identified accused Nos.1 to 5 who were sitting inside the cabin of a moving lorry which is said to have dashed

against a motorcycle, that went in front of it. As per the version of PW7 during cross-examination, after seeing the incident, they went to the hospital and spent about half an hour there. Thereafter, PW7 would contend that he along with PW8 returned to their respective houses. But the version of PW8 during chief

examination is that from the hospital they went to the houses to

inform the relatives about the incident. During cross examination, PW8 deviated from the above version and stated that after their return from hospital, they did not go for informing the relatives, and instead, went back to their own houses. Thus, the above witnesses could not give a consistent version about their presence at the scene of crime. Coupled with the above infirmities, PW7 and PW8 who claim to be active politicians with social commitment, are seen to have given a statement to the Investigating Officer about the horrific incident they witnessed, only on the next night, i.e., after 7.30 p.m. on 14.11.2015. There is no plausible explanation offered by PW7 and PW8 for the above delay in reporting the matter to the Police as

responsible citizens. Taking into account of the fragile nature of the evidence tendered by PW7 and PW8 in the above regard, it would be highly unsafe and improper to place reliance on their evidence.

21. The remaining witness who is said to have seen the offending

lorry with the accused travelling inside its cabin, is PW24. According to him, while he was travelling in his car along with his family towards Ernakulam through Ottamassery in the evening of 13.11.2015, he had to stop his car

near the bridge at Pallikkal Thodu seeing crowd in the road. At that time, he is said to have seen through rear-view mirror a lorry stopped behind his vehicle, and several persons indulged in a scuffle to pull out the driver of the said lorry from his cabin. Shortly thereafter, the aforesaid lorry is said to have moved forward after hitting the right-side rear door and glass of his

vehicle. At that time, PW24 claims to have seen accused Nos.1 and 3 travelling in that lorry. Admittedly, the place where PW24 is said to have seen the aforesaid lorry and accused Nos.1 and 3, was far towards the north of the place of occurrence. That apart, it has been revealed from the cross-examination of the said witness that his version regarding the observation of the lorry involved in this case through rear-view mirror, was

not stated when questioned by the Investigating Officer. Above all, the version of PW24 about seeing accused Nos.1 and 3 through the rear-view mirror of his vehicle at the time when it stopped behind his vehicle, and at the time when the said lorry sped away after hitting his vehicle, cannot be accepted without a pinch of salt. By no stretch of imagination, could it be said that PW24 is a natural witness who had identified accused Nos.1 and 3 travelling in the lorry shortly after the incident.

22. It is true that PW20, the Manager of the Toddy-shop at Thykkal

Beach had tendered evidence to the effect that accused Nos.1, 3, 4 and 5 had consumed toddy from that shop at about 2:00 p.m. on 13.11.2015 and left without making payment. But the evidence in the above regard, even if

accepted as such, could not bring out anything to establish the conspiracy alleged to have hatched by the accused for the commission of crime. That apart, it is too hard to believe that the persons who assembled at the Toddy shop and conspired to commit the murder, might have created a scene there by leaving the Toddy-shop without making payment. The version of PW20 that accused Nos.1, 4 and 5 left the Toddy-shop first by saying that the 3rd accused who remained there would make payment, and that thereafter the 3rd accused skulked by crawling beneath the fencing on the rear side of the Toddy-shop, would further render the story of conspiracy at Toddy-shop unbelievable.

23. As the evidence of PW2, PW3, PW7, PW8 and PW24, which the

prosecution has relied on, is found to be vitiated by suspicious circumstances, and impossibility of their presence at the scene of crime and nearby places, the findings of the learned Additional Sessions Judge relying on the above evidence, cannot be said to be legally sustainable.

24. As already stated above, PW3, PW7 and PW8, who are said to

have witnessed the incident, and PW2 who is said to have seen the accused proceeding with the lorry in the direction towards the scene of crime shortly before the incident, are chance witnesses whose presence in the scene of crime is stated

to be under the peculiar circumstances deposed by those witnesses. As far as PW2 is concerned, in the discussions in paragraph Nos. 12, 13, 14 and 15, we have pointed out the circumstances which render the

possibility of the above witness seeing the accused shortly before the incident, and the deceased shortly after the incident, highly improbable. The credibility of the evidence of the above witness is also at stake in view of the inconsistency in his evidence which is dealt with in paragraph No.14 hereinabove.

25. As far as PW3 is concerned, the vitiating circumstances which would eclipse the reliability of the evidence of the said witness, have been

dealt with in paragraph Nos.17, 18 and 19 hereinabove. Likewise, the frailties in the evidence of PW7 and PW8 which cast serious suspicion about their presence in the scene of crime, have been pointed out in paragraph

No.20. The improbability of PW24 identifying accused Nos.1 and 3, by observing through the rear-view mirror of his car, and by a sudden glimpse when the above accused drove away the lorry past his vehicle after hitting its rear right side, at a place about 10 Kms towards the North of the scene of crime, has been discussed in paragraph No.21 hereinabove.

26. As regards the evidence of chance witnesses, it is the settled

position of law that it has to be analysed meticulously to ascertain whether it is trustworthy to be acted upon. Following the law laid down in *Satbir v. Surat Singh* [(1997) 4 SCC 192], *Harjinder Singh v. State of Punjab* [(2004) 11 SCC 253], *Acharaparambath Pradeepan v. State of Kerala* [(2006) 13 SCC 643] and *Sarvesh Narain Shukla v. Daroga Singh* [(2007) 13 SCC 360], the Apex Court held in *Jarnail Singh v.*

State of Punjab [(2009) 9 SCC 719] that the evidence of a chance witness requires a very cautious and close scrutiny, and a chance witness must adequately explain his presence at the place of occurrence. It is further held by the Honble Supreme Court in the aforesaid decision that the deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded.

27. Very recently, the Honble Supreme Court had the occasion to

delve upon the question of reliability of chance witnesses in Pradeep Kumar v. State of Haryana [(2024) 3 SCC 324]. In the aforesaid case, the Apex Court, while dealing with the evidence of PW11, a chance witness who is said to have noticed the registration number of the vehicle in which the accused were travelling and the blood stain on the pants of the deceased, observed in paragraph Nos.19 and 20 of the said judgment as follows:

19. PW11-His evidence is relied on by the trial court as well as the High Court. He is admittedly a chance witness. In fact, he chances the episode twice over, first on 10.04.2004 at about 10:30 p.m when he was going from Chandigarh to Hisar. His version is that at about 1.5 Km near Karnal bypass, his car tyre got punctured and when he was putting the stepney, he saw four people on motorcycle armed with dandas. He noticed blood stain on the deceaseds pants and also records the registration number of the motorcycle. Secondly, he again chances the police party standing with the accused on his way

back to Chandigarh. He stops and gets the incident of 10.04.2004 recorded by the police.

20. This witness is completely unreliable. It is his own

statement that he started from Chandigarh at 6:00 p.m on 10.04.2004. The distance between Chandigarh and the place of occurrence is about 120 Kms and takes about two hours to cover the distance even by car. There is no explanation as to how he took more than four hours to reach the scene of offence. This uncertainty is compounded when he admits his ignorance about the person in whose name the car is registered. Further, upon being questioned about where he stayed in Chandigarh the night of 09.04.2004, his answer is simply that he does not remember the name of the lodge. He could not even remember the shops nearby the lodge. It is rather surprising that this witness while engrossed in

changing the wheel of his car at 10:30 p.m manages to note the blood stains on the pant and also recorded the registration number of the motorcycle. There is nothing to indicate that he had a pen or paper to readily note the registration number. His statement is to be contrasted with the version of Ramkumar I.O (PW24) who stated that, I did not see any arrangement of the light on the Karnal bypass road especially the alleged place where the car of Rajesh Kumar got punctured and he saw the accused while riding the motorcycle. It is correct that there is no light arrangement on the place of occurrence because it is an agriculture area. We are not at all impressed with the evidence of PW11. There are too many coincidences in his

version and his story is improbable in the context of the facts

and circumstances of the case. He is certainly an unreliable witness. (emphasis supplied)

28. The strange and dubious circumstances which compelled the

Honble Supreme Court to disbelieve the version of PW11 in Pradeep Kumar (supra) are analogous to the strange and dubious circumstances in the evidence of PW2, PW3, PW7, PW8 and PW24 which we have discussed in the foregoing paragraphs. Therefore, we are of the view that the evidence of the aforesaid witnesses ought not have been relied on by the learned Additional Sessions Judge for arriving at a finding about the guilt of the accused.

29. Another important aspect to be pondered upon is the legal

implication of the inordinate delay of six days which occasioned in recording the statement of PW3, a pivotal witness projected by the prosecution to establish the offence alleged against the accused. The explanation of PW3 for the aforesaid delay is found to be untenable for the reason stated in the

concluding portion of paragraph No.17 hereinabove. The Investigating Officer who was examined as PW51 was also not able to offer any explanation for the aforesaid delay. In this context, the law laid down by the Apex Court in Shahid

Khan v. State of Rajasthan [(2016) 4 SCC 96], is having much significance. While dealing with the unexplained delay of three days in recording the statement of eyewitnesses, the Apex Court held that the aforesaid delay in recording statements would cast serious doubt about they being eyewitnesses to the occurrence. It is further held thereunder that unexplained silence and delayed statements would render the evidence of

those witnesses wholly unreliable, and that it is unsafe to rely upon their evidence only, to uphold the conviction of appellants.

30. Coupled with the anomalies discussed above in respect of the

evidence of PW2, PW3, PW7, and PW8, the fact that those witnesses were close relatives and friends of the deceased, is to be taken note of while evaluating their evidence. It is true that the evidence of partisan witnesses cannot be brushed aside for the sole reason that they are interested witnesses having affiliation of one sort or another to the victims of the crime. However, the courts dealing with the evidence of those witnesses are to be remindful of the precaution laid down by the Apex Court in State of U.P v. Ballabh Das & Ors. [(1985) 3 SCC 703] that, what the law requires is that if the witnesses are interested, the court should approach their evidence with care and caution in order to exclude the possibility of false implication. In State of Rajasthan v. Smt.Kalki & Anr. [(1981) 2 SCC 752], the Honble Supreme Court classified material discrepancies as those which are

not normal and not expected of a normal person. It has been further observed in that decision that a witness who is a natural one and is the only possible eyewitness in the circumstances of a case, cannot be said to be interested. In Masalti v. State of U.P [AIR 1965 SC 202], the Apex Court held that no hard and fast rule can be laid down as to how much evidence of an interested witness should be appreciated, and that judicial approach has to be cautious in dealing with such evidence, but the plea that

such evidence should be rejected because it is partisan, cannot be accepted as correct.

31. In respect of discrepancies, contradictions and embellishments in the evidence of witnesses, the Apex Court has held in *Sohrab & Anr. v. State of Madhyapradesh* [(1972) 3 SCC 751] as follows :

It is only after exercising caution and care and sifting evidence to separate the truth from untruth, exaggeration, embellishments and improvement, the court comes to the conclusion that what can be accepted implicates the appellants, it will convict them. This Court has

held that falsus in uno falsus in omnibus, is not a sound rule for the

reason that hardly one come across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments.

32. As far as the present case is concerned, the anomalies in the

evidence of PW2, PW3, PW7, PW8 and PW24 are of such a pervading nature that it is not possible to segregate the same from any portion of their evidence which could be safely relied on for the purpose of arriving at a finding as to the involvement of the accused in the commission of the crime. Therefore, we are of the view that the evidence of the aforesaid witnesses, are not worth to be acted upon.

33. At the most, the only conclusion which could have been drawn

on the basis of the evidence pertaining to the capture of the 3rd accused and the offending lorry from a place near Pallikkal bridge, which was several kilometres towards the north of the scene of the crime, is that the 3rd

accused might have tried to escape from the wrath of the local people after getting involved in an accident of collision of his lorry with a motorcycle. In that case, the offence which would come into play can only be one under Section 304A I.P.C, and not an offence under Section 302 I.P.C. However, it is not possible to convict and sentence the 3rd accused for the commission of offence under Section 304A I.P.C., after trial for the offence under Section 302 I.P.C., since the offence under

Section 304A I.P.C., cannot be termed as a minor offence of the same species as that of Section 302 I.P.C for invoking Section 222(2) of the Code of Criminal Procedure. Thus, it has to be stated that the charge against accused Nos.1 to 5 in respect of any of the said offences, as framed in the instant case, could not be said to have been established by the evidence adduced by the prosecution. Needless to say that the conviction and sentence resorted to by the learned Additional Sessions Judge upon accused Nos.1 to 5, are liable to be set aside, and the said accused are to be acquitted of the charges levelled against them.

In the result, the appeals stand allowed as follows :

(i) The conviction and sentence of the appellants/accused

Nos.1 to 5 in respect of the offences under Sections 143, 147, 148, 149, 120(B) and Section 302 I.P.C., are hereby set aside, and they are acquitted thereunder under Section 386(b)(i) of the Code of Criminal Procedure.

(ii) The appellants/accused shall be released forthwith, if their custody is not required in connection with any other cases. Transmit a certified copy of this judgment to the Trial Court and

the Prison where the accused/appellants are lodged. (sd/-) RAJA VIJAYARAGHAVAN V, JUDGE (sd/-) G.GIRISH, JUDGE jsr/vgd APPENDIX OF CRL.A 1405/2019 PETITIONERS ANNEXURES Annexure-A A TRUE COPY OF THE CONSULTING TICKET AND MEDICAL CERTIFICATE Annexure-1 TRUE COPY OF THE ORDER DATED 20.12.2021 Annexure-2 TRUE COPY OF THE MEDICAL DOCUMENTS APPENDIX OF CRL.A 1165/2019 PETITIONERS ANNEXURES Annexure-A1 TRUE COPY OF THE DEPOSITION OF PW3 Annexure-A2 TRUE COPY OF THE DEPOSITION OF PW7 Annexure-A3 TRUE COPY OF THE DEPOSITION OF PW8 Annexure-A4 TRUE COPY OF THE DEPOSITION OF PW23 Annexure-A5 TRUE COPY OF THE INTERIM ORDER DATED 02.07.2020 BY THIS COURT Annexure-A6 TRUE COPY OF THE DEATH CERTIFICATE DATED 24.02.2020 ISSUED BY THE CHERTHALA MUNICIPALITY. ANNEXURE-A7 TRUE COPY OF THE INTERIM ORDER DATED 02.02.2021 IN CRL.M.A.NO.1 OF 2021 IN CRL.A.NO.1165 OF 2019

PASSED BY THIS COURT ANNEXURE-A8 TRUE COPY OF THE ORDER
DATED 09.03.2021 IN CRL.M.A.NO.2 OF 2019 IN CRL.A.NO.1406 OF 2019
PASSED BY THIS COURT. APPENDIX OF CRL.A 1174/2019 PETITIONER
ANNEXURES Annexure-I A TRUE COPY OF THE MRI SCAN REPORT
Annexure-II A TRUE COPY OF THE OP CARD OF MEDICAL COLLEGE
HOSPITAL, KOTTAYAM

Annexure-II A TRUE COPY OF THE OP CARD OF SPECIALIST HOSPITAL

26.09.2022

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