

Narayanan and ors. Vs. the State

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Court : Kerala

Decided On : Nov-16-1983

Reported in : 1984CriLJ528

Judge : K.K. Narendran and; M. Fathima Beevi, JJ.

Appellant : Narayanan and ors.

Respondent : The State

Judgement :

K.K. Narendran, J.

1. Accused 1, 2 and 4 in Sessions Case No. 02 of 1981 of the Additional Sessions Court, Kottayam, are the appellants in this criminal appeal. The challenge is against the conviction passed by the learned Sessions Judge under Section 302, I. P. C, of accused 1 and under Section 302 read with Section 34, I. P. C, of accused 2 and 4, and sentence for imprisonment for life of all the 3 accused. Accused 3 was acquitted in the case. Briefly stated, the prosecution case is : The occurrence took place on the night of 9-3-1981. On that day, Thankachan, the deceased, went to the house of P, W. 1 to collect his share of profits in the bus service of which he was a partner, and received Rs. 5000/-. At about 12.30 in the night, he reached Nellickal junction where accused 4 was having a tea-shop. Thankachan was sitting on a table in the adjoining shop, and on the table there was a plastic can. There was an altercation between accused 1 and 4 and Thankachan, and, at that time.

P. Ws. 7 and 8 came there. When Thankachan was about to beat accused 1, P. W. 7 interfered and requested him to go home. Then Thankachan went to the house of P. W. 9. paid Rs. 500/- to him and returned by about 10 clock. Accused 1 to 4 with the intention of causing hurt and death of Thankachan came in search of him with arms. The 2nd accused is the wife of accused 1, and accused 3 is their son. The 4th accused is a neighbour of theirs. P. W. 2 and her mother, who were sleeping in their house, got out of their house since the mother wanted to attend the calls of nature. P. W. 3, the father of P. W. 2, was then sleeping inside the house. When P. W. 2 and her mother were about to go into the house, the accused reached the court-yard. The 1st accused asked whether Thankachan came there, Accused 2 and 4 entered the house of P. W. 2, searching for Thankachan. They got out since they could not find him there. Hearing the noise, P. W. 3 came. Then the accused went on the road. They saw Thankachan there when accused 4 flashed his torch, Then the accused ran towards Thankachan. The 1st accused stabbed Thankachan with a knife, accused 2 gave him blows with M. O. 4 chopper and accused 3 inflicted injuries on him with M. O. 3 table knife while accused 4 beat Thankachan with torch light. Thankachan fell down, and the accused went away.

2. P. W. 1, a cousin of the deceased Thankachan, on coming to know that Thankachan was lying dead by the side of Nellickal Perumcherikkadavu road, immediately went to the place. Then, he went to the Kottayam East Police Station and gave Ext. P1 First Information Statement at 8.15 a.m. on 10-3-1981. A crime was registered by P. W. 10. Sub-Inspector of Police, and Ext. P1(a) is the First Information Report. P. W. 16. Circle Inspector of Police took over the investigation on 10-3-1981, He held the inquest over the dead body of Thankachan at the scene of occurrence and Ext. P10 is the inquest report. M.Os. 1, 2, 12, 13, 14 and 15 were recovered from the dead body and M. Os. 3, 5, 6, 7, 8, 9, 10, 11, 16 and 17 from the scene of occurrence. P. W. 1, a tutor in forensic medicine of the Medical College, Kottayam, conducted the post mortem and Ext. P2 is the post mortem certificate.

3. The 2nd accused who sustained an injury was taken to the District Hospital, Kottayam. P. W. 5, the Doctor, examined accused 2 at the hospital and Ext. P4 is

the wound certificate. On intimation from P. W. 5, P. W. 16 a Head Constable attached to the Kottayam West Police Station, went to the hospital and recorded her statement, Ext. P9. On the basis of Ext. P9, Crime No. 07 of 1981 under Sections 452 and 324, I. P. C, was registered and Ext. P9 (a) is the First Information Report. The 2nd accused was discharged from the hospital on 16-3-1981 when she was arrested.

4. On information given by accused 2. M. O. 4 chopper was recovered as per Ext. P8 mahazar. Accused, 1, 3, and 4 appeared before court on 24-3-1981 and they were enlarged on bail.

5. Crime No. 67 of 1981 was referred as per Ext. P-12 refer report. After completing the investigation in the case the charge was laid against the accused under Section 302 read with Section 34. I. P. C, before the Judicial Magistrate of the Second Class, Kottayam, who committed the case for trial to the Court of Session, Kottayam. .

6. Before the Court of Session, Exts. P1 to P13 were marked and P. Ws. 1 to 15 were examined on the prosecution side. M. Os. 1 to 17 are the material objects produced.

7. The accused in their statement under Section 313, Cri. P. C. denied the incident and asserted that the prosecution case was false. The case of accused 2 was that the deceased Thankachan on that night went to her house, broke open the door and inflicted the injury mentioned in Ext. P4 wound certificate.

8. The Court of Session acquitted, accused 3 and convicted accused 1 under Section 302 and accused 2 and 4 under Section 302 read with Section 34, I.P.C., and sentenced all the accused to imprisonment for life. It is the above conviction and sentence that are challenged by the accused in this appeal.

9. The fact that Thankachan died is not disputed. It is clear from the evidence of P. W. 4 and Ext. P2 post mortem certificate that injuries Nos. 9, 10, 11, 26, 29 and 30 mentioned in Ext. P2 were fatal. So, it has been established in the case that Thankachan died because of the above injuries.

10. A motive has been alleged by the prosecution. The motive alleged is that on that fateful night, earlier there was an altercation between the deceased Thankachan and accused 1 and 4 at Nellickal junction, and Thankachan raised his hand to beat accused 1. This is spoken to by P. Ws. 7 and 8. The learned Counsel for the appellants contended that the motive alleged is too feeble to be made use of against the accused. The learned Public Prosecutor took up the stand that this is not a case where a motive was alleged and not proved. But, going by the charge framed against the accused it cannot be said that no motive was alleged by the prosecution. But, at the same time, the prosecution could not prove the motive.

11. The learned Counsel for the appellants contended that the injuries on the deceased which are fatal according to P. W. 4 Doctor, can only be caused by a double edged weapon like a dagger and none of the accused was alleged to be armed with a dagger. It was pointed out that injuries Nos. 9, 10, 11, 26, 28, 29, 30, 33, 36 and 37 were incised wounds showing splitting at one end. According to the learned Counsel, the fatal injuries Nos. 9 and 26 can only be caused by a dagger. The learned Public Prosecutor contended that an injury with a split-end can be caused with the blunt end of a weapon also. It was pointed out that P. W. 4 Doctor has deposed that both injuries Nos. 9 and 26 could be caused by stabbing with a single edged weapon. The learned Public Prosecutor contended that the court can discard the medical evidence and accept the oral evidence if the medical evidence is against the oral evidence. In this connection, reliance was placed on *Solanki Chimabhni Ukabhai v. State of Gujarat* : 1983 CriLJ822 . In this case, there is no reason to come to the conclusion that the medical evidence is in any way against the prosecution case. The injuries on the body of the deceased were injuries which could very well be caused by the weapons alleged to have been used by the accused. Hence the contentions of the learned Counsel for the accused are rejected.

12. The learned Counsel for the appellants then referred to the evidence of P. Ws. 2 and 3, the only eye witnesses in the case, and contended that P. Ws. 2 and 3 contradict each other in material particulars regarding the occurrence and hence the Court of Session ought to have disbelieved both. According to the learned Counsel, it was wrong on the part of the court to have disbelieved P. W. 3 in part,

and accepted the evidence of P. W. 2 and used some facts spoken to by P. W. 3 to corroborate P. W. 2. The learned Counsel pointed out that P. Ws. 2 and 3 are witnesses who were made to modulate their version to suit the prosecution case and hence it is not safe to convict the accused on their evidence. In support of his contentions, the learned Counsel referred to *Badri v. State of Rajasthan* : 1976 CriLJ496 . The learned Counsel contended that at any rate, P. Ws. 2 and 3 are not witnesses who are wholly reliable and hence a conviction on the strength of their evidence is not possible. Reference was made to *Phool Chand v. State of Rajasthan* AIR 1977 SC 315 : 1977 Cri LJ 207. According to the learned Counsel, the conduct of P. Ws. 2 and, 3 after the occurrence, was highly abnormal and for this reason alone it is not safe to base a conviction on what they have said. The learned Counsel pointed out that though the deceased was a person known to them and living within two furlongs from their house, they locked the house and went away the next morning to the house of a relative without even passing on the information to his house that he was killed. In this connection, reference was made to *Chanan Singh v. State of Haryana* : AIR 1971 SC1554 and *Salvaraj v. State of T.N.* : 1976 CriLJ1541 . The learned Counsel also contended that P. W. 2 is guilty of giving one version to the Police and another version in Court and this reason by itself is enough to disbelieve the witness.

13. The learned Public Prosecutor contended that P. Ws. 2 and 3 are natural witnesses in view of the fact that the occurrence took place on the road in front of their house. According to the learned Public Prosecutor, as the occurrence took place late in the night, it was not likely that others in the neighbourhood might have seen it. It was pointed out that no ill-will for the witnesses towards the accused has been brought out in the case. According to the learned Public Prosecutor, the contention that the evidence of P. Ws. 2 and 3 contains a number of contradictions cannot stand in view of the fact that none of the contradictions was put to the witnesses in cross-examination. In this connection, reliance was made to *Krishnan Nair v. State of Kerala* 1971 Ker LT 326 and *Tahsildar v. State of U.P.* : 1959 CriLJ1231 . It was then contended that there was no reason for the Court of Session to disbelieve P.W. 2, and regarding the identity of the accused there is corroboration by P. W. 3. According to the learned Public Prosecutor, the subsequent conduct of a witness is irrelevant and even if it was a little abnormal,

that cannot be a reason to discard his evidence. In support of his contention, the learned Counsel relied on State of Maharashtra v. Manglya Dhavu Kongil : 1972 CriLJ570 .

14. The learned Counsel for the appellants in his reply to the arguments of the Public Prosecutor pointed out that it is fruitless to search for motives which might have actuated the witnesses to come forward to give evidence against the accused if the evidence of the witnesses is not convincing. Reference was made in this connection to In re R. Naganna : AIR 1961 AP70 .

15. P. W. 2 has deposed before Court: She knows the accused. Had seen the incident which took place on the night of 9-3-1981. Her mother wanted to answer calls of nature. With a torch they got out. When they were about to return to the house, then the accused came from south and asked whether Thankachan came there. A1 was having a knife in hand. A2 had a chopper. A4 had a torch and A3 had a table knife. A2 and A4 got into the house and searched for Thankachan. In the meanwhile, P. W. 3 father got up, hearing the noise. The accused went back to the road. Flashing the torch, A4 said 'There Thankachan stands'. They ran to the place where Thankachan was. A1 stabbed Thankachan with the pen-knife. The other three accused surrounded Thankachan beat, stabbed and cut Thankachan. Even after Thankachan fell down, A1 stabbed Thankachan. The accused A1 left, with pen-knife in hand and A2 with M. O. 4 chopper. She saw the incident with the help of the torch lighted by P. W. 3. Herself and other inmates of the house slept after the accused left the place. Early morning she woke up, went to the place where Thankachan was lying dead, had a look at the dead body and went to the house of, a relative Varkey. In the cross-examination, the witness said: 'They went away because of fear. She did not remember whether she told the Police that A1 had a knife with him. She told the Police that she saw the incident with the help of street light. All the accused came running together to the court-yard She did not tell the Police that the accused said that they will stab to death if they saw Thankachan. The first injury was the stab inflicted by A1. They told Pattathil Kuriachan about the incident before they went to Kuzhimattom. Pattathil Kuriachan lived about 4 kms. away. She has not filed a petition for divorce. Her husband Thampy lives at Quilon, She has not so far gone to her husband's house. She did

not know the names of the father and mother of the husband. Kuzhimattath Varkey lives about 3 to 4 furlongs away. On the way to his house, she narrated the incident to all those who asked her about the same. She was not paying visits to the house of A2 but used to talk to her when seen on the road. She did not remember that she told the police that she narrated the incident to Varkey the next day.

16. P. W. 3, the father of P. W. 2, has deposed: on the night on which the incident took place his daughter P. W. 2 and his wife came out of the house and went to the court-yard. Hearing the noise of some others he also got out. A1 asked whether Thankachan came there. A2, A3 and A4 were also with him. A2 had a chopper with her, it was not M O. 4. He told them they can search the house. They went on the road. A4 lighted the torch. Then they saw Thankachan standing, and ran to him. A1 hit Thankachan on the head with the torch. A1 stabbed. Then A2, A3 and A4 all beat and stabbed Thankachan a number of times. The accused went away. He saw the incident with the help of the torch. There was street light also. In cross-examination the witness has said: First A4 beat Thankachan, then A1 stabbed. He had told the Police that after Thankachan fell down A1 inflicted two stabs. He has eye-sight, nothing wrong with his eye-sight. Thankachan lives three fourth of a mile away from his house. He knew Thankachan for the last ten years. He was afraid of going to the Police Station to report the incident. He left the house in the morning because he was afraid. M. O. 4 chopper was with A3. M. O. 3 was with A1. He has told the Police also like that. The first injury was inflicted on Thankachan by A4. All the inmates together decided that they should leave the house the next morning. The daughter who had only delivered a baby 10 to 15 days ago was also, taken. He went to the scene of occurrence the next day.

17. P. W. 16 Investigating Officer has in cross-examination, stated: P. W. 2 did not tell him when questioned that she saw a knife in the hands of A1 when he was returning after the incident. P. W. 2 did not tell him that she saw M. O. 4 chopper in the hands of A2 when she left the place. She also did not tell him that she saw the broken parts of a torch at the place of occurrence. She did not tell him that she saw the incident in the street light that was there. P. W. 3 did not tell him that he heard A1 asking whether Thankachan came there. He did not tell him that he

allowed the accused to enter the house and search. He did not tell him that A4 lighted the torch when the accused entered the road.

18. As per Ext, P7 plan of the place of occurrence the point on the road where the occurrence took place was 48 metres away from the light post PN. 5 and 25.50 metres away from the light post P. N. 6.

19. P. W. 9 was examined to prove that a little before the incident on that night the deceased had been to his house to pay Rs. 500/-. But P. W. 9 has been rightly disbelieved by the Court of Session. P. W. 12 was examined to prove that he saw the accused that night going along the Perumcherikkadavu road. The Court of Session did not accept his version as true for the reason that the version he gave to P. W. 16 the Investigating Officer could not be reconciled with his version in Court.

20. In *Badri v. State of Rajasthan* : 1976 CriLJ496 the Supreme Court has held:

Since under the Evidence Act no particular number of witnesses are required for the proof of any fact, it is a sound and well-established rule of law that quality and not quantity of evidence matters. In each case the court has to consider whether it can be reasonably satisfied to act even upon the testimony of a single witness for the purpose of convicting a person.

In para 18 of the above judgment the Court further held:

If a witness, who is the only witness against the accused to prove a serious charge of murder can modulate his evidence to suit a particular prosecution theory for the deliberate purpose of securing a conviction, such a witness cannot be considered as a reliable person and no conviction can be based on his sole testimony.

In the above case, after discussing the evidence of the sole eye-witness Patram, the Supreme Court was not prepared to hold that he is an absolutely reliable witness. The Court pointed out that the trial court was justified in observing that Patram could be influenced by the Police to change his statement to suit the prosecution. In *Badri's case* : 1976 CriLJ496 the Supreme Court has referred to an earlier decision of the Court in' *Vadivelu Thevar v. State of Madras* : 1957

CriLJ1000 where the oral testimony of a witness was classified into three categories, namely, (1) wholly reliable, (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable and observed (at p. 1005):

It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

In *Salvaraj v. State of T.N.* : 1976 CriLJ1541 a three Judges Bench of the Supreme Court refused to believe two eye-witnesses whose evidence was accepted and acted upon by both the trial court and the High Court on the ground that their conduct was abnormal. The Court observed:

Then again, look at the conduct of Natesan on seeing this highly explosive situation. He finds that the appellant is demanding sexual intercourse with his wife and is threatening her with a knife in his hand. And yet, he does not step out of the house and shout for help. He does not even try to go to the rescue of the deceased. He silently and shamefacedly watches his wife being murdered by the appellant. He is not alone in the house. Manisekaran has come in the meantime, with the result that there are two persons on his side and yet, both of them quietly watch the proceedings without making any attempt to save the deceased. This conduct is highly unnatural and we find it difficult to accept it.

In *Chanan Singh v. State of Haryana* : AIR 1971 SC1554 the Supreme Court refused to believe two witnesses because of their abnormal conduct after the occurrence. The Court said:

Two questions arise. First, whether Shangara Singh actually saw Chanan, Singh fire twice at Mohinder Singh; secondly, whether Shangara Singh told the truth. Shangara Singh's conduct after the occurrence appears to be abnormal. It was said on behalf of the prosecution that he ran away out of fear. There is no evidence whatever to suggest that Shangara Singh was struck by terror or fear. No one pursued or chased Shangara Singh. There was no threat to him. It would be strange to expect so many persons to stand silent and watch Chanan Singh fire at Mohinder Singh and none would offer any resistance. Shangara Singh's slipping

away unnoticed by the others particularly after the alleged shooting by Chanan Singh would be utterly unbelievable. It appears unreal. The second surprising and significant feature in the evidence of Shangara Singh is that at that hour of the night he went through the fields to his house. If Shangara Singh's evidence were at all true that he saw Mohinder Singh being shot twice by Chanan Singh and he also saw Chanan Singh and Kala Singh dragging Lachhman Singh inside the house, he would go at once to Lachhman Singh's house which was 25 karams, i.e., 75 feet away from the house of Chanan Singh. It would be normal and natural for Shangara Singh to run to Lachhman Singh's house immediately and inform the members of the house and get others to try to save the life of Lachhman Singh. The third reason why Shangara Singh's evidence is not believable is that if he saw Chanan Singh fire twice at Mohinder Singh, Shangara Singh would normally go to Pishora Singh brother of Mohinder Singh and tell him that Mohinder Singh had been shot by Chanan Singh. The fourth reason for not accepting Shangara Singh as a trustful witness is that his alleged statement to his father Suba Singh at about 11 at night that Chanan Singh had shot Mohinder Singh does not get any support from conduct. Neither Shangara Singh nor his father went to the police station. The first thing that would occur to Shangara Singh would be to go to the police station. He did not do that. His father also followed suit. The reason given by Shangara Singh was that his father did not move out of fear of the accused. The aspect of fear is without any foundation and is not supported by any evidence of act or conduct. These features indicate the infirmities as to truthful evidence of Shangara Singh.

In *Phool Chand v. State of Rajasthan* AIR 1977 SC 315 : 1977 Cri LJ 207 the case of the appellant accused hinged to a very large extent on the testimony of a witness. Allowing the appeal and acquitting the accused the Supreme Court held:

The evidence of the witness was neither wholly unacceptable nor wholly impeccable. There were certain features in this case which should put the Court on its guard not to rely on his bare word, without some assurance from independent sources. As there was no independent evidence on the record to confirm the oral testimony of the witness in regard to the identity, and connection of the appellant with the murder, the Court would, as a matter of abundant caution,

refrain from accepting the uncorroborated, infirm testimony of the witness, and accord the appellant the benefit of doubt and acquit him.

However, in *State of Maharashtra v. Manglya Dhapu Kongil* : 1972 CriLJ570 the Supreme Court has cautioned against rejecting the evidence of an eye-witness on the ground of abnormal conduct after the incident in the following terms:

When courts purport to disbelieve an eye-witness by reference to his subsequent conduct they have to be careful not to substitute their own norms of behaviour in a given situation for the norms of behaviour of that witness. Secondly people react to situations not always in a uniform way, A city dweller, a villager or an Adivasi will react differently according to the degree of their sophistication. Moreover, even in the case of individuals of the same class the reaction would vary with the physical courage, mental equipment and social awareness of the individual. What is to be seen is whether the subsequent conduct of the witness is so incongruous with his evidence that it is impossible to believe that what he says is true. Therefore, subsequent conduct cannot be the sole test of the reliability of a witness.

The facts of the above case are: Kamalabai, an unmarried woman aged 26, a Field Worker in the Family Planning Department, was the victim of the murder. Kamalabai was collecting cases for a vasectomy camp. Along with the accused, her guide, Kamalabai went to see one Pandu and his wife. On coming to know that Pandu was not there, she turned back and started for another place. The route was through a hilly jungle. Sometime after they left, the witness Balu Bhau Patil also proceeded along the same route to go to his field. He heard the cry of a woman from the direction in which Kamalabai and the accused went. He went further and saw the accused molesting the woman. The witness shouted to the accused to leave the woman. The accused then picked up a stone to attack the witness. So he ran away. He ran towards the house of the father of the accused which was at the foot of the hill, hardly a furlong away, to request the father to intervene and prevent further molestation of the woman. He saw the accused's brother Janu Kingil and told him about the incident. The brother then proceeded in the direction shown by the witness. A neighbour Ziparya who was also told about the incident proceeded in the same direction. The witness did not go back to the

place of occurrence since he was tired. He told his nephew Gan-pat and Ziparya's brother Janu Marad about the incident and waited for the return of Janu Kongil and Ziparya. Since they were not seen, the witness, Ganpat and Janu Marad went to the place where the woman was seen molested by the accused. They did not see anybody. They returned to their huts. In the meantime, Ziparya returned and told the witness that the woman was dead and they were in for trouble. With Ziparya they went to the place again and saw the dead body of the woman under a teak tree. The witness went to inform the Sarpanch of the village. But he was told that Sarpanch was not there. So, he went back to his house. The High Court sought to discount the evidence of this witness and the other witnesses Shantabai and Shivram on the ground that their reaction and subsequent' conduct were unnatural and unsatisfactory, but the Supreme Court interfered and held that the conduct of the witness Balu Bhau Patil could not be described as unusual or unnatural. The Supreme Court also relied on the evidence of the other witness Shantabai as there was nothing to doubt her integrity and truthfulness. But the above decision is distinguishable on the facts because the conduct of the witness Balu Bhau Patil was not similar to the subsequent conduct of P. Ws. 2 and 3 in this case.

21. P. W. 2 and P. W. 3, her father, are the only two eye-witnesses in the case. A reading of their evidence will make it clear that these witnesses contradict each other in material particulars of the occurrence. Regarding the weapons carried by the accused. both the witnesses give different versions. Then, regarding the attack on the accused also, the versions given by them are different. When P. W. 2 says that A2 was having M. O. 4 chopper with her, according to P. W. 3 the chopper she had with her was not M. O. 4. Going by the version of P. W. 2 it was A1 who inflicted the first injury on the deceased. But, according to P. W. 3. it was A4 who first hit the deceased with the torch. The Court of Session has ignored the contradictions by disbelieving P. W. 3 partly on the ground that he being old, his eye-sight might be weak. But. P. W. 3 has in his evidence said that there was nothing wrong with his eye-sight. He is a tailor also. Regarding the sequence of the events also P. Ws. 2 and 3 contradict According to P. W. 2, P. W. 3 woke up by the noise created by the search made by the accused inside the house. But, according to P. W, 3, it was with his permission that search was made,

22. It is clear from the evidence of P. W. 16 the Investigating Officer that both P, Ws. 2 and 3 have improved upon the version given when they were questioned by the Police, in their evidence before court. So, it cannot be said that they are not witnesses who are not guilty of modulation. In that case, they are not witnesses who are wholly reliable. It was also wrong on the part of the court of session to have partly disbelieved P. W. 3 and used part of his evidence to corroborate P. W. 2. The court of session ought to have disbelieved both P. Ws. 2 and 3.

23. The subsequent conduct of P. Ws. 2 and 3 by itself is enough not to accept their evidence. The deceased Thankachan was a person known to them. He lived three fourth of a mile away from their house. They did not inform his house at least the next day. Both P. Ws. 2 and 3 went to the place where the dead body was lying and simply slipped away to the house of their relative Varkey three to four furlongs away carrying with them a lady who was under confinement. P. W. 2, according to her, did not get into the house and closed the doors when the accused started the attack on the deceased. She stood there and watched the whole incident in the torch light. In the normal course, a woman would not have done this. Why should such a woman be timid the next morning to go away from the place. The subsequent conduct of P. Ws, 2 and 3 was quite unnatural and abnormal. This cannot but have its impact on the veracity of their versions.

24. There is yet another aspect of the case which cannot be ignored. Even if it is taken for granted that there was some altercation between the deceased and A3 and A4 earlier on that fateful night, why should the accused go in search of the deceased that night itself and so late in the night. Why should the woman A2 also join them. Even without her, they were three in number. To deal with the deceased who was alone, why should A1 take his wife A2 also. Not only that, the prosecution evidence is that the accused were exhibiting all their weapons even when they were searching for the deceased as if they were marching to a battlefield to encounter the enemy. Why should the accused go to the house of P. Ws, 2 and 3 to search for the deceased. It is not in evidence that they went to the house of deceased before that. There is another aspect also. According to P. Ws. 2 and 3 the deceased Thankachan was simply standing on the road in front of their house when the accused got out. Why should he come and wait for the accused there

unless he was very particular that he should end his life at the hands of the accused. These are all highly improbable.

25. The background of P. W. 2 as revealed in the case is also relevant. She was a woman practically living in separation. After marriage, she has not gone to the husband's house. She did not know the names of her in-laws. She has filed a petition for maintenance for her children. Is it safe for a court to convict the accused on her testimony. At least, P. W. 2 is a witness who is not wholly reliable. The reason given by the court of session for disbelieving P. W. 3 in part is not correct also. In that case, the eyewitnesses P. Ws. 2 and 3 contradict each other on material particulars of the occurrence.

26. For the reasons stated above, it cannot be said that the prosecution has succeeded in proving the case against the accused beyond reasonable doubt. Hence the appeal is allowed. The conviction and sentence against the accused appellants are set aside and they are set at liberty forthwith.

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