2025:KER:42853

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 18TH DAY OF JUNE 2025/28TH JYAISHTA, 1947

CRL.A NO. 333 OF 2024

AGAINST THE JUDGMENT DATED 11.01.2024 IN SC NO.101 OF 2019 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - II, NORTH PARAVUR

APPELLANT/ACCUSED (IN CUSTODY FROM 30.07.2018):

BIJU MOLLA
AGED 34 YEARS
S/O. GULMAJAN MOLLA, SURLABARPARA, MR. JALANGI POLICE STATION, MURSHIDABAD, WEST BENGAL, PIN - 742305

BY ADVS.
SRI.P.MOHAMED SABAH
SRI.LIBIN STANLEY
SMT.SAIPOOJA
SRI.SADIK ISMAYIL
SMT.R.GAYATHRI
SRI.M.MAHIN HAMZA
SHRI.RAYEES P.
SHRI.ALWIN JOSEPH

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN – 682031

BY ADV.SMT.AMBIKA DEVI S., SPL.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.06.2025, THE COURT ON 18.06.2025 DELIVERED THE FOLLOWING:

2025:KER:42853

C.R.

P.B.SURESH KUMAR & JOBIN SEBASTIAN, JJ.

Crl.Appeal No.333 of 2024

Dated this the 18th day of June, 2025

JUDGMENT

P.B.Suresh Kumar, J.

The appellant is the sole accused in S.C.No.101 of 2019 on the files of the Additional Sessions Court-II, North Paravur. He stands convicted and sentenced for offences punishable under Sections 449, 392, 397, 307 and 302 of the Indian Penal Code (IPC).

2. The appellant hails from the State of West Bengal. He was employed as a cleaning staff under one Hasbul Ali Mulla in a factory at Kizhakkambalam. The crime that forms the subject matter of the case was registered on 30.07.2018 at Thadiyittaparambu Police Station. As per the final report filed in the case, at about 9.45 a.m. on 30.07.2018, the appellant,

with the intention of committing robbery, trespassed into the house of one Thambi and attempted to snatch the gold chain worn by the mother of Thambi. When Nimisha, the daughter of Thambi, tried to prevent the appellant from doing so, he grabbed the kitchen knife that Nimisha was carrying then and killed her by slitting her throat. He then forcibly snatched the gold chain worn by Mariyamma, the mother of Thambi. At that point, Elias, the elder brother of Thambi, tried to intervene. The appellant then attempted to kill him also by trying to slit his throat with the knife. When Elias knocked the knife out of the hand of the appellant and attempted to overpower him, the appellant repeatedly stabbed him aiming at his chest with another knife which he found in the kitchen slab of the house. As Elias warded off the blows, the stabs landed on his left hand. The appellant thereafter fled from the scene with a piece of the gold chain snatched by him.

3. Pursuant to the final report, when the appellant was committed to trial, the Court of Session framed charges against him under Sections 449, 392, 397, 307 and 302 IPC. The appellant denied the charges. The prosecution

thereupon adduced evidence to establish the guilt of the accused. The evidence comprises of the oral testimony of 40 witnesses and 68 documents. A large number of material objects were also produced during the trial. When the incriminating evidence were put to the appellant in terms of the provisions contained in Section 313 of the Code of Criminal Procedure (the Code), he denied the same and maintained that he is innocent. Thereupon, on a consideration of the evidence, the Court of Session found the appellant guilty of the offences, convicted him and sentenced, among others, to undergo imprisonment for life. The appellant is aggrieved by his conviction and sentence.

4. Adv.Sai Pooja addressed arguments on behalf of the appellant and Smt.Ambika Devi, the Special Public Prosecutor addressed arguments on behalf of the state.

5. The essence of the elaborate submissions made by the learned counsel for the appellant is that the evidence let in by the prosecution does not establish that it was the appellant who caused the death of Nimisha and injured Elias. Alternatively, it was argued by the learned

counsel that even if it is assumed that it was the appellant who caused the death of Nimisha and injured Elias, there are no materials to come to the conclusion that the appellant is guilty of the offences punishable under Sections 302 and 307 IPC.

6. The point that arises for consideration is whether the conviction of the appellant for the offences charged, and the sentences passed against him, are sustainable in law.

7. In order to adjudicate the point formulated for decision, it is apposite to refer to the evidence in the case. As noted, the elder brother of Thambi namely, Elias who suffered serious injuries in the occurrence is one of the crucial witnesses in the case. Elias was examined as PW2. PW2 was a headload worker residing close to the house of Thambi. The evidence of PW2 is that he used to go to his house for tea everyday at about 10.00 a.m.; that on the relevant day, his friend namely, Abbas and he went to his house at the usual time for tea in his motorcycle and that Abbas thereupon left for his house in the same motorcycle. It was deposed by PW2 that while he was handing over to his wife, the fish which he

brought home, they heard the scream of Nimisha and when he rushed to the house of Thambi on hearing the scream, he found the appellant, who was identified by him in court, in the kitchen of the house attempting to snatch the chain of his mother with his left hand, while holding a bloodstained knife in his right hand. It was deposed by PW2 that when he attempted to knock down the knife held by the appellant, even though the appellant brandished the knife towards his neck, PW2 was able to knock down the knife and push the appellant to a corner of the kitchen. It was also deposed by PW2 that the appellant then stabbed him repeatedly with another knife which the latter found on a slab in the kitchen. According to PW2, although the stabs were aiming at his abdomen, the same landed on his left hand when he warded off the same. It was deposed by PW2 that he then observed that his mother was crying aloud and that Nimisha was leaning against a wall, covering her neck with a shawl. It was also deposed by PW2 that at the relevant time, the clothes of Nimisha were drenched in blood. According to PW2, blood was flowing across the kitchen floor and the floors of the adjoining hall and work

area. It was deposed by PW2 that there was no one els e then in the house other than him, his wife, his mother and Nimisha. It was deposed by PW2 that it was at that point of time, Abbas came to the scene and when Abbas required the appellant to drop down the knife by raising a chair in a threatening manner, the appellant dropped the knife. According to PW2, when the appellant dropped the knife, Abbas overpowered him and kept him in a room adjoining the hall. It was deposed by PW2 that thereafter, Abbas took him and Nimisha to the sit-out of the house and made him sit on a chair while Nimisha was laid down on the floor. PW2 identified MO3 as the knife held by the appellant at the time when PW2 came to the scene and MO4 as the knife with which the appellant stabbed him. PW2 also identified MO12 as the T-shirt and MO13 as the jeans worn by the appellant at the time of occurrence. Similarly, PW2 also identified MO5 as the piece of gold chain snatched by the appellant from his mother and MO11 as the remaining piece of the same chain.

8. PW3 is Abbas referred to by PW2. According to PW3, he came to the house of Thambi on hearing the screams

of the residents therein on his way to pick up PW2 from his house and on reaching the scene, PW3 saw the appellant stabbing PW2. PW3 gave evidence more or less on similar lines as the evidence tendered by PW2 as regards the occurrence that took place after his arrival at the scene. In addition, it was deposed by PW3 that even though he was able to overpower the appellant and keep him in a room adjoining the hall, he could not lock the room since there was no latch on its door. It was also deposed by PW3 that while he took Nimisha and PW2 to the sit-out of the house, the appellant escaped from the room through the kitchen door. In cross-examination, PW3 asserted that he saw the appellant in the locality on an earlier occasion as well.

9. PW1, namely the wife of PW2 reached the scene after PW2. PW1 also gave evidence more or less on similar lines as the evidence tendered by PW2 and PW3. In addition, it was deposed by PW1 that when she reached the scene, the mother of PW2 was crying saying "എന്നെ രക്ഷിക്കാ® വന്നതുകൊണ്ടാണല്ലോ നിമിഷ മോ® ക്ക് ഇത് സംഭവിച്ചത്" and it was whilst so, that the appellant was simultaneously stabbing her husband. PW1

affirmed that it was she who gave Ext.P1 First Information Statement to the police at about 11.30 a.m. on the relevant day and also identified the material objects as identified by PW2. PW1 clarified in her evidence that the gold chain snatched by the appellant from Mariyamma was not available in full at the scene and that only a portion thereof was available there and she identified the same as MO5.

10. PW4 is a lady residing close to the house of Thambi. PW4 deposed that when she rushed to the scene on hearing the screams, she found Nimisha lying in the sit-out of the house drenched in blood and that PW2 was sitting on a chair by her side with his left hand covered with a towel. It was deposed by PW4 that there was nobody else in the house at that point of time other than PWs 1 and 3 and PW3 among them was found loudly calling out to catch the North Indian wearing a red shirt who ran out of the house. PW5 is another lady residing in the neighbourhood of the house of Thambi. PW5 deposed that on the relevant day, at about 10 a.m., she was standing near her house talking with her friend Nazeema and whilst so, she saw the appellant, who was identified by her

in court, running away towards the south with a knife in his hand. According to PW5, he was wearing MO12 red T-shirt and MO13 black pants at the relevant time. It was also deposed by PW5 that the appellant was a person residing in the neighbourhood and that she had occasion to see him earlier as well, even though she does not know him personally. It was affirmed by PW5 that she gave a statement to the police to the said effect on the same day itself.

11. PW6 is also a person residing in the locality. PW6 deposed that on the relevant day, while he was waiting at Edathikaad Junction, two persons namely Basheer and Ansar, who came there in a motorcycle and ascertained from him as to whether he saw a North Indian wearing a red T-shirt passing through the road. It was the version of PW6 that when he answered their query in the negative, they informed him that the said person has caused injuries to the brother and daughter of Thambi and also that he snatched the gold chain of the mother of Thambi. It was deposed by PW6 that he too then followed them in his motorcycle and whilst so, they saw a few persons gathered near a partly constructed house.

According to PW6, the persons there informed him that a North Indian has gone inside that house and that he was carrying a knife. It was deposed by PW6 that when he entered the house alone with a stick, he saw the appellant, who was identified by him in court, standing inside one of the bathrooms in the said house. According to PW6, when he brandished the stick carried by him at the appellant, the appellant attempted to hit him back with a piece of cladding stone which he took from that place and while doing so, he lost his balance and fell down. It was the version of PW6 that on the appellant falling down, PW6 took control over him and by that time, all those who had gathered there also came inside the house, caught hold of the appellant and handed him over to the police. PW6 identified MO12 and MO13 as the clothes worn by the appellant at the relevant time.

12. PW22 is the police surgeon who conducted the postmortem examination on the dead body of Nimisha and issued Ext.P.16 postmortem certificate. The following were the ante-mortem injuries found at the time of postmortem examination as deposed by PW22:

> “1. Superficial incised wound, 3.5x0.2cm, in a curved state with convexity facing upwards, almost horizontal, on front of chin, 1cm below lip margin across the midline.
>
> 2. Superficial incised wound, 2x0.2cm, obliquely placed on front of chin, 1cm above tip of chin across the midline.
>
> 3. Incised wound, 15.5x4.2cm, 3.5cm deep (at the midline), on front of neck across the midline. The wound was lying almost horizontal, below the level of Adam's apple, with its right end relatively at a lower level. The major portion of the wound was seen lying to the right of midline (6.5cm on left side and 9cm on the right of midline) and the right outer end was seen 7cm below the lower jaw margin and left outer end being 5cm below the lower jaw margin. No hesitation cuts were seen at either ends of the injury. The right half of the lower edge of the wound showed minimal stepping at a distance of 4.5cm inner to the right outer end. Both ends of the wound were in sharply cut state. The wound was seen transecting the trachea (wind pipe) completely and the esophagus in its partial thickness on its front wall, exposing the lumen. The strap muscles in the region were seen cleanly cut. The inner border of front aspect of left sterno-mastoid muscle showed a partial cut. The right sterno-mastoid muscle was seen cut in half of its thickness. The right external jugular vein was in a cut opened state. Other structures and blood vessels in the anterior triangle of neck were in a severed state at the level of the injury (Flap dissection technique under bloodless field was employed for the examination of neck structures).
>
> 4. Superficial incised wound, 7 x 0.1cm, obliquely placed on outer aspect of right knee.
>
> 5. Abrasion, 0.5 x 0.5cm, on top of left shoulder near its tip.
>
> 6. Abrasion, 1 x 1cm, on inner aspect of left knee.
>
> 7. Abrasion, 1.5 x 0.2cm, on inner aspect of left ankle.”

PW22 opined that the death of Nimisha was due to the incised cut throat injury namely, Injury 3, noted by him and that the said injury could be caused with MO3 knife. It was also opined by PW22 that the width of an injury depends on the location of

the injury on the body and only the length and depth of the injury can be related to the weapon. It was deposed by PW22 that considering the site, location, nature and characteristics of the injury, it can be concluded that injury 3 is not a self-inflicted injury for, had it been a self-inflicted injury, there would have been hesitation cuts on either side of the injury.

13. PW23 was the doctor who examined PW2 on 30.07.2018 at Rajagiri Hospital, Aluva. It was deposed by PW23 that PW2 stated to her that he sustained injuries while trying to save Nimisha and that the assailant initially inflicted injuries on his abdomen with a sharp weapon and thereupon he took another knife and caused injuries on his left upper limb. Ext.P17 is the accident register-cum-wound certificate issued by PW23. The following were the injuries noted by PW23 on the body of PW2 as deposed by PW23:

> “1. Abrasion to the right of navel (3cm long near horizontal slash wound 7 cm lateral to umbilicus).
>
> 2. Cut wound on left elbow (near horizontal, 5cm x 4cm muscle deep).
>
> 3. Cut wound below left elbow (vertical 4.5cm x 2cm x muscle deep).
>
> 4. Cut wound on middle of left forearm (vertical 3.8cm x 1.5cm x muscle deep).

5. Two slash wounds 1 cm apart below left elbow (each 1.5 cm long).

6. One slash wound on the base of left thumb (1.5cm long).”

It was deposed by PW23 that the injuries noted by her on the body of PW2 could be caused with MO4 knife. It was also deposed by PW23 that PW2 underwent two surgeries thereupon in the hospital, the first one was on 30.07.2018 and the second one was on 07.08.2018. Ext.P18 is the discharge summary issued to PW2. It was also deposed by PW23 that the injury sustained by PW2 on the left elbow was deep; that the major blood vessel was injured and that the bleeding from such an injury is sufficient in the ordinary course of nature to cause death.

14. PW24 is the scientific officer attached to the District Crime Records Bureau who inspected the scene of occurrence on 30.07.2018 and collected various objects for forensic examination. It was deposed by PW24 that it was he who collected the swab from the hands of the appellant at the police station and handed over the same to the police. PW36 is an ex-service man who is proficient in Hindi. It was PW36 who acted as an interpreter for the investigating officer to

interrogate the appellant in the case on his arrest. PW36 identified the appellant in court and affirmed the said fact.

15. PW39 was the inspector attached to Thadiyittaparambu Police Station during the relevant period. It was deposed by PW39 that on the relevant day at about 10.10 a.m., he received information about the crime and that he immediately proceeded to that place where the appellant was detained by the people, apprehended him, and brought him to the police station. It was also deposed by PW39 that he then proceeded to the scene of occurrence, recorded Ext.P1 First Information Statement from PW1, registered the crime and held the inquest. It was also deposed by PW39 that later, he proceeded to the scene of occurrence again along with the Scientific Officer, prepared Ext.P9 scene mahazar and seized, among others, a bloodstained knife, a gold coloured chain etc.

16. PW40 is the police officer who conducted the investigation in the case. PW40 deposed that he recorded the arrest of the appellant at 7.16 p.m. on 30.07.2018 and seized, at the time of arrest, among others, MO12 shirt and MO13 jeans worn by the appellant as also MO11 piece of a gold chain

carried by him, as per Ext.P28 mahazar. It was deposed by PW40 that in the course of the interrogation, it was disclosed by the appellant that he has concealed a knife and that he can handover the same if he is taken to the place where it is concealed and on the basis of the said disclosure, when the appellant was taken to the place mentioned by him, namely the place from where he was apprehended by PW6, the appellant took out from there, MO4 knife and handed over the same to PW40 and he seized the same as per Ext.P10 mahazar. Ext.P10(a), according to PW40, is the disclosure which led to the recovery of MO4 knife. It was deposed by PW40 that MO4 knife, at the time of seizure, contained bloodstains and that the Scientific Officer who accompanied him while effecting the recovery, collected the samples of blood in cotton gauzes from MO4 knife and handed over the same to PW40 for forensic examination. It was also deposed by PW40 that the various material objects collected/recovered during the investigation have been produced before the jurisdictional Magistrate for forwarding the same to the Forensic Science Laboratory, Thiruvananthapuram.

17. PW19 was the doctor who collected the hair samples and nail clippings of the appellant and handed over the same to the police for forensic examination. PW19 deposed the said fact in his evidence. PW20 is a gold appraiser engaged by the police to examine MO5 and MO11 pieces of gold chain and he deposed that on examination, he found the same to be parts of the same gold chain. PW13 is a person who witnessed the recovery of MO4 knife as per Ext.P10 mahazar. He deposed the said fact in his evidence.

18. Ext.P60 is the report of the forensic science laboratory obtained by the jurisdictional Magistrate in respect of the material objects collected and recovered in the case. Item 27 in Ext.P60 is the blood sample of Nimisha collected at the time of postmortem examination and item 44(a) is the blood sample of PW2 collected by PW23 while he was undergoing treatment at Rajagiri Hospital. It is reported in Ext.P60 that item 27 belongs to Group 'A' and item 44(a) belongs to Group 'O'. Item 39 in Ext.P60 is MO4 knife and it is reported therein that the bloodstain therein belongs to both group 'A' and group 'O'. Items 9, 10 and 11 are the hair

samples collected from the house where the occurrence took place and item 47(c) therein is the hair samples of the appellant. It is reported in Ext.P60 that 6 out of 20 hairs in item 9 and 13 out of 20 hairs in item 10 are human scalp hairs similar to the hairs in item 47(c). Items 21 and 22 in Ext.P60 report are MO12 T-shirt and MO13 jeans worn by the appellant at the time of occurrence and item 30 therein is the swab taken by PW24 from the hands of the appellant on the date of his arrest. It is reported in Ext.P60, after DNA profiling, that the bloodstain contained in MO13 jeans is that of the blood of Nimisha and the bloodstains in MO12 T-shirt and in the swab collected from the hands of the appellant on the date of his arrest, are a mixture of the stains of the blood of Nimisha and the appellant. Item 14 in Ext.P60 is MO3 and item 39 therein is MO4. It is reported in Ext.P60, after DNA profiling, that the bloodstains in those items are also a mixture of the stains of the blood of Nimisha and the blood of PW2. Item 47(b) in Ext.P60 report is the nail clippings of the appellant. It is reported in Ext.P60 that item 47(b) contained cells and tissues belonging to Nimisha and also the cells and tissues of the

appellant.

19. The tenability of the various arguments advanced by the learned counsel for the appellant as regards the acceptability of the evidence let in by the prosecution needs to be considered at this stage. It was argued generally by the learned counsel for the appellant that there are variations, omissions, embellishments and material discrepancies in the oral account of the crucial witnesses and the same shall not therefore be the basis of a conviction. As regards the evidence tendered by PW1, the contention raised is that the same is not consistent with Ext.P1 First Information Statement and as regards the evidence tendered by PW2, the contention is that the same is not consistent with the evidence of PW3. We do not find any merit in the arguments aforesaid. The discrepancy highlighted by the learned counsel for the appellant in the evidence of PW1 is as regards what was seen by her upon reaching the scene. PW1 reached the scene only after PW2. The version of PW1 was that when she reached the scene, she found the appellant in the kitchen of the house of Thambi, attempting to snatch the chain of his mother with his

left hand while holding a bloodstained knife in his right hand. PW2 also deposed on the same lines. It was clarified by PW1 in her evidence that what was stated by her in Ext.P1 First Information Statement was that when she reached the scene, the appellant was holding in one hand a shawl wrapped around the neck of Nimisha and a bloodstained knife in the other hand and the same was a mistake that arose on account of her state of mind then following the death of Nimisha and the attack on her husband and that she has later clarified that aspect to the police. The discrepancy aforesaid, according to us, is not sufficient, on the facts and circumstances of the present case, to doubt the veracity of the evidence given by PW1, especially in the light of the explanation offered by her that it occurred on account of her state of mind following the death of Nimisha as also the attack on her husband. The discrepancy highlighted by the learned counsel for the appellant in the evidence of PW2 is that his evidence is not consistent as regards the time at which PW3 arrived at the scene. We do not think that the discrepancy, if any, in the evidence of PW2 as regards the time at which PW3 reached the scene is a reason, in the peculiar

facts and circumstances of this case to doubt the veracity of the evidence tendered by PW2.

20. It was also argued by the learned counsel that the prosecution has omitted to examine the most crucial witness namely, Mariyamma, the grandmother of Nimisha who, according to the prosecution, witnessed the attack on Nimisha by the appellant. According to the learned counsel, the best evidence in a case of this nature to prove as to how Nimisha sustained the fatal injury would have been the oral account of Mariyamma and the decision of the prosecution to withhold her evidence, makes the entire evidence let in by the prosecution to prove the said fact, suspicious. The materials on record indicate that at the time of occurrence, Mariyamma was aged 85 years. Evidence was taken after almost five years from the date of occurrence. In other words, Mariyamma would have been 90 years at the time when the trial commenced. It has come out from the evidence of PW1 that at the time when the trial had commenced, Mariyamma did not have any memory. There is nothing to infer that the evidence tendered by PW1 in this regard is incorrect. That apart, there was no impediment

for the appellant to examine Mariyamma on his side, if she was capable of giving evidence in the case. In the circumstances, we do not find any merit in the said argument as well.

21. Another argument pressed into service by the learned counsel is as regards the disclosure stated to have been made by the appellant on the basis of which it was deposed by PW40 that MO4 knife was recovered. According to the learned counsel, the evidence tendered by PW40 in this regard would not fall within the scope of Section 27 of the Indian Evidence Act. We find force in this argument. In **Sanjay Oraon v. State of Kerala**, 2021 (5) KLT 30, this Court held that the disclosures of accused persons which could be proved under Section 27 should be clearly and carefully recorded by the police officer in first person in his own language and then, only so much of the information as is necessary and sufficient to cause the discovery, will be admissible. It is seen that later in **Siju Kurian v. State of Karnataka**, 2023 KLT Online 1329 (SC), the Apex Court has clarified that merely because the disclosure made by the accused is translated from one language to another language and recorded in a third language, it cannot

be contended that it is not admissible in evidence, if the translator comes forward and gives evidence in the case. Reverting to the facts, the disclosure on the basis of which MO4 knife is stated to have been recovered, was deposed to by the investigating officer in Malayalam. The appellant is not a person who is proficient in Malayalam. Even according to the prosecution, the appellant was interrogated with the help of an interpreter. PW36 was the interpreter. PW36 has no case that the disclosure stated to have been made by the appellant on the basis of which MO4 knife was recovered has been translated by him nor has he a case that he witnessed the recovery based on the disclosure, when the appellant was taken to the place mentioned by him as deposed by PW40. In the circumstances, we are constrained to hold that the evidence tendered by PW40 as regards the disclosure on the basis of which MO4 knife is stated to have been recovered, would not fall within the scope of Section 27 of the Indian Evidence Act. However, at this stage it has to be clarified that inasmuch as there is satisfactory evidence before the Court to infer that it was the appellant who took out MO4 knife from the

house from where he was apprehended and handed over the same to the police, the evidence tendered by the Investing Officer in this regard is admissible as a subsequent conduct of the accused falling under Section 8 of the Indian Evidence Act.

22. As noted, it was deposed by PW1 that when she reached the scene, Mariyamma was crying saying "എന്നെ രക്ഷിക്കാ® വന്നതുകൊണ്ടാണല്ലോ നിമിഷ മോ® ക്ക് ഇത് സംഭവിച്ചത്". According to the prosecution, the evidence tendered by PW1 in this regard is *res gestae* and is therefore, relevant and admissible under Section 6 of the Indian Evidence Act. One of the arguments pressed into service by the learned counsel for the appellant in this regard is that inasmuch as PW1 had not seen the appellant slitting the throat of Nimisha, the utterance stated to have been made by Mariyamma as deposed by PW1 after the commission of the alleged act as referred to above, would not fall within the scope of Section 6. In other words, according to the learned counsel, the evidence tendered by PW1 in this regard is only hearsay and, therefore, not admissible under Section 6 of the Indian Evidence Act. One of us had occasion to deal with the scope of Section 6 of the Indian Evidence Act in

Mohanan v. State of Kerala, (2023) SCC OnLine Ker 6326. The relevant passage of the judgment reads thus:

> "20. Section 6 of the Indian Evidence Act provides that facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Section 6 recognizes the principle of *res* gestae which enables the court to admit facts which are otherwise not admissible. Section 6 reads thus:
>
> > "6. **Relevancy of facts forming part of same transaction.**—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.
> >
> > Illustrations
> >
> > (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.
> >
> > (b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.
> >
> > (c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.
> >
> > (d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact."
>
> The facts admissible under Section 6 as relevant are facts which are so connected with the fact in issue, if not the fact in issue, so as to form part of the same transaction, whether they occur at the same time and place or at different times and places. The rationale in making such facts admissible in evidence is on account of the spontaneity and immediacy of

> such facts in relation to the fact in issue. In other words, it is necessary that such facts must be part of the same transaction and if it is in relation to a statement, the same must have been made contemporaneous with the transaction or at least immediately thereafter. The illustrations to Section 6 demonstrates the different contexts of the application of the provision. It is trite that an illustration to a statutory provision is a useful aid in the interpretation of the provision, though the same does not exhaust the full content of the Section which it illustrates nor does it curtail or expand the ambit of the Section [See **Shambhu Nath Mehra v. State of Ajmer**, AIR 1956 SC 404]. If the provision is understood keeping in mind illustration (a), it could be seen that whatever is said and done by PW4 at the time of occurrence or so shortly after the occurrence as to form part of the occurrence, is admissible. In other words, the statement of PW4 would be admissible only had the statement been made contemporaneous to the occurrence and interwoven with the fact in issue. ....."

No doubt, if the transaction is terminated and thereafter a statement is made narrating the transaction, the same would not fall under Section 6 of the Indian Evidence Act. As clarified in **Mohanan**, whatever said and done by the accused, victim or bystanders in the course of commission of a crime, or so shortly thereafter would fall within the scope of Section 6. The term *'transaction'* used in Section 6 of the Indian Evidence Act must be interpreted, according to us, broadly and flexibly to encompass not merely a single act, but the entire sequence of closely connected acts that collectively constitute the occurrence. In the present case, the acts alleged against the appellant namely, the trespass into the house of Thambi, the

attempt on his part to snatch the gold chain from Mariyamma, the manner in which the appellant dealt with Nimisha, Elias and Abbas when they sought to prevent the commission of the intended act, and the act of the appellant in fleeing from the scene with a piece of the snatched chain, are a series of acts forming the same transaction. These acts are inextricably linked in terms of time, place, continuity, and intent, and were clearly committed in close and immediate succession in furtherance of a single objective. In other words, the appellant cannot be heard to contend that the transaction was terminated. Even assuming that the appellant is entitled to contend that the transaction was terminated when PW1 reached the scene, he still cannot be heard to contend that the utterance of Mariyamma as deposed by PW1 is not one that falls within the scope of Section 6 for, the utterance was one made so shortly after the transaction. We take this view on account of circumstances namely that the house of Thambi is located close to the house of PW1; that PW1 rushed to the house of Thambi immediately on hearing the scream of Nimisha; that PW1 heard the utterance of Mariyamma on

reaching the house of Thambi; that the appellant was very much present in the house at the relevant time with a bloodstained knife in his hand and that he was still pursuing the attempt to snatch the gold chain worn by Mariyamma.

23. Another argument advanced by the learned counsel for the appellant is as regards the acceptability of Ext.P60 report of the Forensic Science Laboratory. According to the learned counsel, inasmuch as the various material objects forwarded for forensic examination, including the knives, clothes, nail clippings etc. were not properly packed, labelled and sealed, the report cannot be relied on. We do not find any merit in this argument also for, there is no evidence to substantiate the said argument. It is all the more so since the appellant has not cross-examined PW40, the investigating officer who tendered evidence as regards the production of the material objects before the Jurisdictional Magistrate and matters related to the same.

24. We have meticulously examined the evidence tendered by the witnesses examined on the side of the prosecution. Among the witnesses, PW2 is an injured witness.

It is well settled that the injured witness stands on a high pedestal than an ordinary witness and the testimony of an injured witness is generally considered to be very reliable, and that convincing evidence is required to discredit an injured witness. PW3 is the witness who overpowered the appellant and kept him in a room. PW5 is the witness who saw the appellant escaping from the scene with a knife in his hand. PW6 is the witness who apprehended the appellant and handed over his custody to the police. The oral account made by PWs 1 to 3 was corroborated in material particulars by the oral account of PWs 5 and 6. As noted, it is reported by the Forensic Science Laboratory in Ext.P60 report that some of the hair samples collected from the house where the occurrence took place are human scalp hairs similar to the human scalp hair of the appellant; that the bloodstains found in MO13 jeans worn by the appellant at the time of occurrence are the bloodstains of Nimisha; that the bloodstains found on MO12 T-shirt worn by the appellant at the time of occurrence and the bloodstains in the swab taken by PW24 from the hands of the appellant on the date of his arrest are a mixture of the blood of

Nimisha and the appellant; that the bloodstains on MO3 and MO4 knives are a mixture of the bloodstains of Nimisha and PW2 and that the nail clippings of the appellant contained cells and tissues belonging to Nimisha as also the cells and tissues of the appellant. In the absence of any explanation from the appellant as to how the hairs similar to his hair happened to be present at the scene of occurrence, as to how the blood of Nimisha happened to be present in the jeans worn by the appellant at the time when he was apprehended within hours after the occurrence, as to how the blood of Nimisha happened to be present in the T-shirt worn by the appellant at the time when he was apprehended as also in the hand swab of the appellant taken within hours after the occurrence, as to how a mixture of the blood of Nimisha and PW2 happened to be in MO3 and MO4 knives and as to how cells and tissues of Nimisha happened to be present in the nail clippings of the appellant, Ext.P60 also corroborates the oral account of PWs 1 to 3. That apart, even though it is found that there is no satisfactory evidence to support the case of the prosecution that MO4 knife was recovered based on a disclosure made by

the appellant, the evidence tendered by PW40 that it was the appellant who took out MO4 knife from the house where he was apprehended and handed over to the police, is admissible in evidence as a subsequent conduct of the accused falling under Section 8 of the Indian Evidence Act. The said evidence together with the evidence that the bloodstains contained in MO4 knife is a mixture of the blood belonging to Nimisha and PW2 also corroborates the oral account of PWs 1 to 3. As noted, MO5 is the piece of the gold chain snatched by the appellant from Mariyamma as recovered from the scene of occurrence and MO11 is the remaining piece of the same gold chain recovered from the appellant at the time of his arrest. The evidence tendered by PW20 that MOs 5 and 11 are parts of the same gold chain, also corroborate the oral account of PWs 1 to 3.

25. At this stage, it is necessary to consider the crucial contention taken by the learned counsel for the appellant that there is no evidence to show that the death of Nimisha took place in the transaction in which PW2 sustained injuries. It was persuasively argued by the learned counsel that

none of the witnesses saw the appellant causing the fatal injury on Nimisha. It was also argued that the proved circumstances do not establish that the fatal injury of Nimisha had been caused by the appellant. No doubt, even according to the prosecution, there is no direct evidence to prove how Nimisha sustained the fatal injury and that the prosecution relies only on circumstances to establish that it was the appellant who caused the fatal injury on Nimisha. The question, therefore, is whether the circumstances proved in the case are sufficient to establish beyond reasonable doubt that the fatal injury sustained by Nimisha was one caused by the appellant. Following are the circumstances proved in the case through the evidence of witnesses examined:

(i) that PW1, PW2 and PW3 saw the appellant in the kitchen of the house upon reaching there on hearing the scream of Nimisha;

(ii) that when PW1 and PW2 entered the kitchen though at different times, both of them saw the appellant attempting to snatch the chain of Mariyamma with his left hand, while holding a

bloodstained knife in his right hand;

(iii) that when PW1 and PW2 entered the kitchen, there was no one else in the house other than them and the appellant, Nimisha and Mariyamma;

(iv) that while PW2 was attempting to overpower the appellant, he saw his mother crying aloud, Nimisha leaning against a wall covering her neck with a shawl, her clothes drenched in blood and blood flowing through the floor of the kitchen as also floors of the hall and workarea;

(v) that when PW1 entered the kitchen, Mariyamma was crying loud saying "എന്നെ രക്ഷിക്കാ® വന്നതുകൊണ്ടാണല്ലോ നിമിഷ മോ® ക്ക് ഇത് സംഭവിച്ചത്";

(vi) that PW22, the doctor who conducted the post-mortem examination on the body of Nimisha, opined that the fatal injury sustained by her is not a self-inflicted injury, but one that could be caused with MO3 knife;

(vii) that MO3 knife was one seized from the kitchen of the house immediately after the

occurrence;

(viii) that the bloodstains contained in MO13 jeans worn by the appellant at the time of occurrence, belong to Nimisha and that the bloodstains contained in MO12 T-shirt worn by the appellant at the time of occurrence and in the swab taken from the hands of the appellant on the date of occurrence, after his arrest, are a mixture of blood belonging to Nimisha and the appellant; and

(ix) that the nail clippings of the appellant contained cells and tissues belonging to Nimisha as also the appellant.

The circumstances enumerated above, according to us, would form a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and would show in all human probability that the act has been committed by the appellant. Needless to say, the death of Nimisha was caused by the appellant, in the course of the same transaction in which PW2 sustained injuries.

26. From the above evidence, according to us, it can be safely concluded that the appellant trespassed into the house of Thambi with the intention of committing robbery of the gold chain of Mariyamma and attempted to snatch the same; that the appellant slit the throat of Nimisha with MO3 knife when she tried to intervene; that when PW2 knocked down MO3 knife out of the hand of the appellant and attempted to overpower him, the appellant repeatedly stabbed him with MO4 knife and that the appellant, thereafter, fled from the scene with MO11 piece of gold chain.

27. What remains to be considered is the question as to whether the proved facts would make out the offences punishable under Sections 449, 392, 397, 307 and 302 IPC. The learned counsel for the appellant has not raised any contention as regards the offences punishable under Sections 449, 392 and 397 IPC. The arguments were raised only in respect of the offences punishable under Sections 307 and 302 IPC. As far as the offence punishable under Section 307 IPC is concerned, the argument was that the evidence on record would only establish that the appellant inflicted multiple stab

injuries on the left hand of PW2 and the said act on the part of the appellant, would not attract the offence punishable under Section 307 IPC.

28. In order to constitute the offence punishable under Section 307 IPC, it has to be established that the accused had the intention or knowledge necessary to constitute the offence of murder and committed the act towards his intention or knowledge. The consequence of the actual act done for the purpose of carrying out the intention, is irrelevant [See **Parsuram Pandey v. State of Bihar**, (2004) 13 SCC 189]. If the appellant had intended to cause the death of the injured or had the requisite knowledge that his act would amount to murder, the offence under Section 307 is made out. The intention, however, has to be gathered from the circumstances like motive, the nature of the weapon, nature of injury, severity of the blow etc.

29. The charge framed against the appellant for the offence punishable under Section 307 IPC reads thus:

> "Fourthly, that you on the above date, time and place in the course of the same transaction attempted to cause death of Elias, husband of Leela by stabbing him with another knife taken from the kitchen which blow was blocked by Elias which

> resulted in injury to his left hand and thereby committed offence punishable under Section 307 of the above Code."

As revealed from the charge, the case of the prosecution is that the injuries inflicted by the appellant on PW2 were injuries intended to cause his death and it is on that basis, he was charged under Section 307 IPC. As found by us, the appellant trespassed into the house of Thambi with the intention of snatching the gold chain of Mariyamma and when Nimisha attempted to prevent the appellant from doing so, the appellant even went to the extent of slitting the throat of Nimisha. The evidence tendered by PW22 reveals that the appellant slit the throat of Nimisha to a depth of 3.5 cms. The said act on the part of the appellant would show that the appellant intended to cause the death of the person who stood in his way in snatching the gold chain. It was at the point of time when the appellant again attempted to snatch the gold chain after disabling Nimisha, that PW2 intervened and knocked down the knife carried by him and pushed him to a corner of the kitchen. It was at that point of time, the appellant stabbed PW2 at his abdomen. The evidence tendered by PW2 in this regard reads thus:

"ഞാ® ആ കത്തി തട്ടി തെറിപ്പിച്ചു. കത്തി തറയി® വീണു. പ്രതിയും ഞാനുമായി മ® പ്പിടുത്തം നടന്നു. ഞാ® അയാളെ അടുക്കളയുടെ ഭാഗത്തേക്ക് ഒതുക്കി നി® ത്തി. സ്ലാബി® മേ® കത്തി ഇരിക്കുന്നത് ഞാ® കണ്ടില്ലായിരുന്നു. ആ കത്തിയെടുത്ത് പ്രതി എന്നെ കുത്തി . കുത്തിയത് എന്റെ പള്ളയ്ക്കാണ് . ഞാ® ഇടതു കൈകൊണ്ട് തടുത്തു. പ്രതി അതേ കയ്യി® തന്നെ പലതവണ കുത്തി . ഞാ® കൈ മാറ്റിയില്ലായിരുന്നു. അവ® കുത്തിയത് എന്റെ പള്ളയ്ക്കാണ്. കൊല്ലാനുള്ള ഉദ്ദേശത്തി® തന്നെയാണ് കുത്തിയത്."

The evidence aforesaid that the blows were intended towards the abdomen of PW2, has not been discredited by the appellant in any manner. That apart, MO4 weapon with which the appellant stabbed PW2 is a knife, the blade portion of which has a length of 17.5 cm and width of 3.1 cm. It was deposed by PW2 that the stabs inflicted by the appellant pierced through his hand and the said evidence would indicate the force at which the appellant inflicted the injuries, that too with a weapon having a size referred to above. Having regard to the facts and circumstances of the case, we are inclined to hold that the appellant intended to cause the death of PW2 also, while stabbing him. Needless to say, the argument advanced by the learned counsel for the appellant in this regard is only to be rejected and we do so.

30. As far as the offence punishable under Section 302 IPC is concerned, the contention raised by the learned counsel for the appellant is that it is not possible to infer from

the proved facts that the appellant intended to cause the death of Nimisha. No doubt, it cannot be said that the appellant intended to cause the death of Nimisha when he trespassed into the house of Thambi, especially when there is no evidence to indicate that he carried any weapon with him when he trespassed into the said house. From the available evidence, especially the evidence of PWs 1 and 2 that when they reached the scene, the appellant was attempting to snatch the gold chain worn by Mariyamma, what could be inferred is that the intention of the appellant, at that time, was only to commit either theft or robbery. In the absence of any case for the appellant that Nimisha had any enmity to attack him, it could certainly be inferred that Nimisha must have attempted to prevent the appellant from snatching the gold chain of Mariyamma. It is settled that the intention to commit a crime being a state of mind, the same can only be inferred from the facts and circumstances of each case. It is also settled that there would be changes in the intention depending on the changes in the facts and circumstances also. From the available materials in the present case, what could be inferred

is only that the appellant must have been confronted with a situation in which he could not snatch the gold chain and flee from there without disabling Nimisha from preventing him from doing so and that the alleged act is one committed under those circumstances. No doubt, in order to disable a person from preventing another from doing an act, it is not necessary to cause his death. At this stage, according to us, the nature and manner of the injury caused by the appellant to Nimisha and the weapon with which the injury was caused, assumes relevance. The materials indicate that MO3 is a kitchen knife with a length of 14 cm and a width of 3 cm for its blade portion. The nature of injury inflicted by the appellant as come out from the evidence of PW22 is that it is an incised horizontal wound having a length of 15.5 cm and a depth of 3.5 cm on the front of the neck across the midline. Such a wound can only be caused by slitting the throat. If one slits the throat of another, a vital part of the body, to a depth of 3.5 cm with a kitchen knife, it can certainly be inferred that he/she intended to cause the death of the person. The argument aforesaid of the learned counsel for the appellant is also liable to be

rejected and we do so.

31. It was also argued by the learned counsel, without prejudice to the contention that the proved facts do not make out the offence punishable under Section 302 IPC, that if the elements of murder as defined under Section 300 IPC is made out on the proved facts, the appellant is entitled to the benefit of Exception 4 to Section 300 and that he cannot, therefore, be convicted for the offence punishable under Section 302 IPC, but can be convicted only for the offence punishable under Section 304 IPC. Exception 4 to Section 300 IPC reads thus:

> Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

It is now trite that the four ingredients to be satisfied to avail the benefit of Exception 4 to Section 300 IPC are - (i) there must be no premeditation; (ii) there must have been a sudden fight upon a sudden quarrel; (iii) the act must have been committed in the heat of passion and (iv) the offender must not have taken undue advantage or acted in a cruel or unusual

manner. It is not sufficient if only some of the ingredients of Exception 4 are established to avail the benefit of the same. On the other hand, all the four ingredients ought to be established from the materials on record. Even if it is assumed that the act of the appellant in slitting the throat of Nimisha was not a pre-meditated act, the proved facts in the case do not establish that there was a sudden fight upon a sudden quarrel for, there was no occasion at all, between the appellant on one side and Nimisha on other side to pick up a sudden quarrel. Similarly, the proved facts do not establish that the act was one committed in the heat of passion for, it was an act committed by the appellant to disable Nimisha who prevented him from snatching the gold chain of Mariyamma. Likewise, the proved facts would establish that it is a case where the appellant took undue advantage of the situation that the deceased and Mariyamma were incapable of resisting him from committing the intended act and in addition, he acted in a cruel and unusual manner. Needless to say, the appellant cannot be heard to contend that he is entitled to the benefit of Exception 4 to Section 300 IPC.

In the circumstances, the appeal is devoid of merits and the same is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOBIN SEBASTIAN, JUDGE.

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