

**IN THE COURT OF THE ADDL. DIST. & SESSIONS JUDGE-I,
KOLLAM**

Present: Sri. P.N. Vinod, Addl. Sessions Judge-I, Kollam
Wednesday, the 12th day of March, 2025/ 21st day of Phalguna, 1946.

Sessions Case No. 463/2021

C.P. No. : 91/2020 of the
Judicial First Class Magistrate- I, Kollam.

Crime No. : 130/2020 of Anchalummoodu Police Station

Complainant : State of Kerala represented by
the Inspector of Police,
Anchalummoodu Police Station

By Adv: **Sri. Sethunathan Pillai**
Addl. Public Prosecutor

Accused : Shajahan, aged 32/2020 years,
S/o. Shamsudeen, Smitha Bhavanam,
Near Nava Kerala Club,
Neeravil Cherry, Thrikkadavoor Village.
From Ambilichezhathu Vadakkathil,
Kannimel Cherry, Sakthikulangara Village.

By Adv. V.R. Vibhu
Adv. Shine. S
Adv. Ajay Koyivila

Charge : u/s. 302 of IPC

Plea of the accused : Not guilty

Finding of the Judge : Guilty

Sentence or Order : The accused is sentenced to undergo
imprisonment for life and to pay fine of
₹1,00,000/- (Rupees One lakh only) u/s. 302

of IPC, in default of payment of fine to undergo a further period of rigorous imprisonment for six months. The period of detention already undergone by the accused from 07.02.2020 till 09.03.2020 and from 11.03.2025 till 12.03.2025 will be set off against the substantive term of imprisonment, in case the sentence of imprisonment for life is commuted or remitted by the appropriate Government.

If the fine amount is realised, it will be paid as compensation to the legal heirs of the deceased u/s. 357(1)(b) of Cr.PC.

MO1, MO2, MO4 and MO5 being valueless will be destroyed and MO3 will be broken up and sold as per Rule 268 of the Kerala Criminal Rules of Practice after the appeal period is over.

<u>Dates of trial & hearing</u>	:	30.09.2022,	14.08.2024,	16.08.2024,
		22.08.2024,	30.08.2024,	03.09.2024,
		05.09.2024,	09.09.2024,	27.09.2024,
		09.10.2024,	23.10.2024,	22.01.2025,
		24.01.2025,	07.02.2025,	10.02.2025,
		28.02.2025 and 11.03.2025		

This Sessions Case has been coming on for final hearing on 11.03.2025 and having stood over for consideration and on 12.03.2025 the court delivered the following:-

J U D G M E N T

This is a case charge sheeted by Anchalummoodu police against the accused alleging commission of offence punishable u/s. 302 of the Indian Penal Code (IPC in short).

2. The following is the summary of the prosecution case as brought out by the final report:-

Ismail Kunju used to collect rent at Anchalummoodu market and used to purchase fish on wholesale basis and used to provide fish to the accused and other small scale fish vendors for sale. The accused stopped to receive fish from Ismail Kunju and used to procure fish by himself and sell fish at lower rate. Ismail Kunju questioned the same and the accused became inimical towards Ismail Kunju. On 07.02.2020 during morning hours, the accused threatened to stab and kill Ismail Kunju by showing a fish cutting knife. Ismail Kunju who reached the market thereafter questioned the accused about the said threat. Thereupon, the accused on the said date at 10.45 a.m stabbed Ismail Kunju by using a fish cutting knife and inflicted grave injuries with the intention to commit murder. Ismail Kunju died as a result of the injuries. Thereby, the accused committed murder of Ismail Kunju.

3. Originally, case was registered as crime no. 130/2020. After the completion of investigation, final report was laid against the accused alleging commission of the above mentioned offence.

4. The final report was filed before the Court of Judicial First Class Magistrate-I, Kollam. The case was taken into the file of the said court as C.P. No. 91/2020. The accused appeared before the committal court. After complying with the procedural requirements, the case was committed to the Court of Session, Kollam.

5. The Court of Session made over the case to the court of Additional Sessions Court-VI, Kollam.

6. The accused appeared before the said court.

7. After hearing both sides and after verifying the records of the case, the said court framed charge against the accused u/s. 302 of IPC. Charge was read over and explained to the accused to which he pleaded not guilty.

8. Thereafter, the case was made over to the Court of Session, Kollam.

9. On the side of the prosecution, PW 1 to PW 18 were examined and Ext.P1 to Ext.P19 and MO1 to MO5 were marked. The remaining witnesses were given up by the prosecution.

10. At the stage of questioning u/s. 313 of Cr.P.C, the case was made over to this court.

11. The accused appeared before this court.

12. This court questioned the accused u/s. 313 of Cr.PC. He denied the incriminating circumstances appearing in evidence against him and stated that he is innocent.

13. Thereafter, both sides were heard u/s. 232 of Cr.P.C. This court was of the opinion that sufficient ground was not made out to acquit the accused at that stage. Therefore, the accused was called upon to enter on his defence.

14. On the side of the accused, DW1 and DW2 were examined and Ext.D1 to Ext.D6 were marked.

15. Both sides were heard.

16. According to me, the following points arise for consideration in the case:-

- (1) Whether the death of the deceased is proved to be a case of homicide ?
- (2) Whether the prosecution succeeded in proving that the accused committed murder of Ismail Kunju and thereby committed offence punishable u/s. 302 of IPC ?
- (3) If found guilty, what is the proper sentence to be awarded ?

17. **Point no. 1:-** The case relates to the death of one Ismail Kunju who was a fish merchant. The prosecution describes his death as a case of homicide.

18. The evidence adduced has to be analysed in order to decide whether the death of Ismail Kunju is proved to be a case of homicide.

19. PW1 is the first informant. The first information statement was marked through him as Ext.P1. He is the son of the deceased. According to PW1, he came to know about the incident from one of his friends named Aneesh. Ismail Kunju was engaged in the collection of auction amounts at Anchalummoodu market and he also used to supply fish at Thannikkamukku market. The fish vendors at the said market complained before Ismail Kunju that the accused was selling fish at lower rate and Ismail Kunju questioned the accused about the same and the accused became inimical towards Ismail Kunju. The accused challenged Ismail

Kunju on 07.02.2020. Ismail Kunju questioned the accused about the same at Thannikkamukku market. At that time, the accused was provoked and he stabbed Ismail Kunju. PW1 identified MO1 series as the dresses worn by Ismail Kunju and MO2 as the chappal worn by Ismail Kunju. PW1 received the ring and cash that were found under the possession of Ismail Kunju by executing Ext.P2 receipt.

20. PW2 is a fish vendor at Thannikkamukku market. He is an occurrence witness. He gave evidence as follows:-

Ismail Kunju used to conduct wholesale business in fish at Anchalummoodu and Thannikkamukku market and used to collect fee at Anchalummoodu market. The accused is a fish vendor at Anchalummoodu and Thannikkamukku markets. On the date of occurrence, PW2 was engaged in the sale of fish at Anchalummoodu market. At that time, the accused took out a knife and said that the said knife was meant for Ismail. It was a fish cutting knife. Thereafter, PW2 went to Thannikkamukku market and was engaged in the sale of fish. The accused was sitting on the left side of PW2. Ismail reached Thannikkamukku market at 10.45 a.m for collecting amounts. Ismail questioned the accused as to why Ismail was challenged. Thereupon, the accused took out a fish cutting knife and stabbed on the abdomen of Ismail . Ismail was taken to hospital. PW2

identified MO3 as the knife used by the accused. Fish vendors had complained before Ismail about sale of fish at lower price by the accused.

21. Ext.D1 is contradictory portion of Sec. 164 statement of PW2.

22. PW3 is another occurrence witness. According to him, on 07.02.2020 at 10.45 a.m, he reached Thannikkamukku market to purchase fish. PW3 approached the accused and asked about price of fish. At that time, Ismail Kunju reached the place and questioned the accused about challenging Ismail Kunju. The accused stood up and stabbed Ismail by using a fish cutting knife. PW3 said that the knife was not to be removed. At that time, Ismail removed the knife. PW3 covered the wound by using a towel. Ismail was taken to hospital in an autorickshaw. The accused ran away from the place. PW3 identified MO3 as the knife used by the accused and MO1(c) as the towel used to cover the wound.

23. According to PW4, he is a meat vendor at Anchalummoodu market. On 07.02.2020, PW4 witnessed the accused creating commotion at the market by carrying a knife and with reference to Ismail.

24. PW5 stated that it was in his autorickshaw that Ismail was taken to Matha Hospital.

25. PW6 is a fish merchant at Anchalummoodu and Thannikkamukku Market. According to him, on 07.02.2020 during morning hours, he was selling fish at Anchalummoodu market. At that time, the accused reached the market by carrying fish and cleared a knife and asked about Ismail and said that the knife was being cleaned to cut fish and also to stab and kill Ismail. Ismail opposed sale of fish by the accused at inappropriate price and Ismail questioned the same.

25. PW7 was Resident Medical Officer at P.N.N.M Hospital, Anchalummoodu. He stated that on 07.02.2020 at 11 a.m, he examined the accused and issued Ext.P3 certificate. Suspected deep wound and tendented injury were the injuries. The history was blocking by using left hand while Ismail came to cut with a sword. PW7 opined that the injury could be caused while holding MO3 knife.

26. PW8 was the Secretary of Panayam Grama Panchayat. He issued Ext.P4 certificate which certifies that the building used for sale of fish at Thannikkamukku market is owned by Panayam Grama Panchayat.

27. PW9 was Chief Medical Officer, District Hospital, Kollam. He stated that on 07.02.2020, he collected the blood sample of the accused and handed over the same to the police.

28. PW10 is an attester in Ext.P5 mahazar. PW10 admitted his signature therein and stated that he witnessed the recovery of MO4 shirt and MO5 dhoti.

29. PW11 was Village Officer, Panayam. He stated that he issued Ext.P6 scene plan.

30. PW12 was Assistant Director (Serology), State Forensic Science Laboratory. She stated that she examined the material objects in this case and issued Ext.P7 certificate. It is reported that the blood stains in items 1 to 5, 7, 10 and 11 contain human blood and blood stains in items 1 to 5 and 7 belong to Ismail Kunju to whom the sample blood in item no. 14 belongs and the blood stain in items 10 and 11 belong to the accused to whom the sample blood in item no. 12 belongs and blood stain in item no. 6 is insufficient to determine origin and for conducting DNA profiling and blood is not detected in item no. 8.

31. PW13 was Police Photographer attached to Kollam City Police. He stated that he took Ext.P8 photographs with regard to the place of occurrence and inquest proceedings. Ext.P9 is certificate as per Sec. 65B of the Indian Evidence Act.

32. PW14 is an attester in Ext.P10 scene mahazar. He admitted his signature therein. He further stated that he witnessed seizure of MO3 knife.

33. PW15 was Assistant Professor at Government Medical College, Kollam. She stated that on 07.03.2020, she conducted postmortem examination on the dead body of Ismail Kunju and issued Ext.P11 certificate. The following ante-mortem injuries were noted :

- “1 *Incised penetrating wound 4cm long and 1cm width obliquely placed on the right side of front of abdomen, its lower inner rounded end was 1.5cm outer to midline and 15cm below lower costal margin, and the upper outer sharp end was 4cm outer to midline and 10cm below lower costal margin. The abdominal wall was perforated for a depth of 3.2cm. The ascending mesocolon was perforated by making an incised wound of 5.2cm length. The small intestine was perforated by making a through and through incised wound of 2cm long (0.5cm total thickness) 11cm proximal to ileocaecal junction. Mesentery of small intestine was perforated by making an incised wound of 2cm long and 0.3cm total thickness, 4cm distal to the attachment of its root surrounded by infiltration. The root of mesentery was perforated by making an incised wound of 0.5cm length and 0.3cm thickness and terminating in the lumen of inferior vena cava by making an incised wound 0.5cm in length and 0.1cm thickness, 1cm above its formation with surrounding area of infiltration of 17x15cm in the retroperitoneal area. Loops of intestine for a length of 14cm, 89cm proximal to ileocaceal junction was seen protruding through the open wound. The wound track was seen directed downwards, backwards and to the left for a total minimum*

depth of 4.4cm. The peritoneal cavity contained 2.5 litres of fluid blood and 500 gms of blood clot.

- 2. Incised wound 1.3x0.1x0.3cm obliquely placed on the back of left thumb, its upper end was 2.5cm below root.*
- 3. Incised wound 1x0.2x0.1cm obliquely placed on the back of left thumb, its upper outer end was 3.5cm below root.*
- 4. Abraded contusion 0.5x0.3x0.2cm on the front of right leg 20cm below knee.*
- 5. Abraded contusion 6x2.5x0.5cm on the inner aspect of right foot 6.5cm below ankle.*
- 6. Contusion 4x3.5x0.6cm on the inner aspect of left leg, 1.5cm below knee.*
- 7. Abraded contusion 0.3x0.2x0.2cm on the front of left leg, 11cm below knee.*
- 8. Linear abrasion 2cm oblique on the front of left leg its upper inner end 12cm below knee.*
- 9. Healing wound 6x2cm on the front of right leg 8cm below knee covered with loosely adherent brown scab.*
- 10. Linear abrasion 4.5cm long horizontally placed on the back of right leg 22cm below knee covered with brown adherent scab.”*

The opinion as to cause of death is stated as “death was due to injury no. 1”. She further stated that injury no. 1 was sufficient in the ordinary course to cause death. PW15 further opined that MO3 could cause injury no. 1.

34. PW16 is an attester in Ext.P12 inquest report. He admitted his signature therein.

35. PW17 is younger brother of Ismail Kunju. PW17 stated that he received the dead body of Ismail Kunju after postmortem examination by executing Ext.P13 receipt.

36. PW18 was Inspector of Police, Anchalumoodu. He registered the case as per Ext.P1(a) FIR on the basis of Ext.P1 first information statement. Thereafter, he conducted the investigation in the case. He conducted inquest on the dead body of the deceased. He visited the scene of crime and prepared Ext.P10 scene mahazar. He seized weapon and other properties as per scene mahazar. He arrested the accused. Ext.P14 series are records of arrest. The weapon used in the commission of crime was shown to the doctor who conducted postmortem examination and was got identified. Ext.P15 series are property lists. Ext.P16 is order passed by Court with regard to identification of the weapon. Ext.P17 is inventory. Ext.P18 is copy of forwarding note. Ext.P19 is report stating the address of the accused. PW18 questioned the witnesses and recorded their statements. He identified MO3 as the seized weapon.

37. DW1 is the Chief Reporter of Kollam Bureau of Malayala Manorama daily. The copy of the said daily dated 09.02.2020 was marked through him as Ext.D6.

38. DW2 was Judicial First Class Magistrate, Paravur. He recorded the statements of witnesses u/s. 164 of Cr.PC. As already stated, Ext.D1 is contradictory portion of Sec. 164 statement of PW2. Ext.D3 and Ext.D4 are contradictory portions of Sec. 164 statement of PW3. Ext.D5 is contradictory portion of Sec. 164 statement of PW6.

39. PW2 and PW3 are the occurrence witnesses examined by the prosecution. Both of them supported the prosecution case and gave evidence to the effect that the accused stabbed the deceased by using MO3 knife on the abdomen of the deceased. The evidence of PW2 and PW3 have come under stiff challenge from the side of the accused. The veracity of the evidence of PW2 and PW3 will be discussed subsequently.

40. In my view, even excluding the oral evidence of PW2 and PW3, the oral evidence of PW15 coupled with Ext.P11 certificate are sufficient to prove that the death of the deceased was a case of homicide.

41. I have already explained the ante-mortem injuries noted on the body of the deceased. The deceased sustained ten ante-mortem injuries. Injury no. 1 is incised penetrating wound 4cm long and 1 cm width on the right side of front of abdomen. The other features of injury no. 1 as noted in Ext.P11 have been already narrated.

42. PW15 recorded the ante-mortem injuries that were seen on the body of the deceased and reproduced the same in Ext.P11. The same constitutes primary evidence. Further, the opinion given by PW15 with regard to the cause of death has the status of opinion evidence, being the opinion given by an expert in the field. The experience and expertise of PW15 cannot be doubted. Her opinion with regard to the cause of death has to be given due weight. So is the case with regard to the opinion given by her to the effect that injury no. 1 could be caused by using MO3.

43. I am satisfied from the oral evidence of PW15 coupled with Ext.P11 certificate that the death of the deceased was due to injury no. 1 which was an incised penetrating wound inflicted on the body of the deceased.

44. The question as to whether MO3 was the weapon used in the crime will be discussed and answered subsequently. At this stage, what has

to be concluded from the trustworthy opinion evidence given by PW15 is that it was either MO3 or a weapon having the same characteristics of MO3 that would have been used to inflict injury no. 1 on the body of the deceased.

45. The above aspect is relevant in deciding whether the assailant by inflicting injury no. 1 committed culpable homicide and murder of the deceased. The nature and the situs of injury no. 1 coupled with the character of the weapon by which injury no. 1 could have been inflicted are clear pointers to the fact that the death of the deceased was a case of culpable homicide as defined by Sec. 299 of IPC. Further, the same factors lead to the further conclusion that the assailant would have inflicted the injury on the vital part of the body with the intention of causing death of Ismail Kunju. The case is clearly covered by clause firstly of Sec. 300 of IPC.

46. In the light of the above discussion, I hold that the death of the deceased is proved to be a case of culpable homicide amounting to murder covered by clause firstly of Sec. 300 of IPC.

Point no. 1 is answered in favour of the prosecution.

47. **Point no. 2:-** After having upheld the case of the prosecution with regard to the death of the deceased being a case of homicide, I proceed to analyse the question whether the accused is proved to have committed murder of the deceased. In the said regard, the learned Public Prosecutor contended that the complicity of the accused in the commission of the crime has been proved beyond doubt. The said contention was resisted by the learned counsel for the accused.

48. The evidence of PW2 and PW3 are crucial, while analysing the question whether the accused is proved to have committed murder of the deceased.

49. Going by the evidence of PW2, he is a fish vendor at Anchalummoodu and Thannikkamukku fish markets. He has given a detailed narration of the occurrence. According to him, on the date of occurrence at about 10.45 a.m, he along with the accused were engaged in sale of fish at Thannikkamukku market and Ismail who reached the place questioned the accused as to why the accused challenged Ismail and it was thereupon that the accused stabbed on the abdomen of Ismail by using MO3. A similar narration of the occurrence was given by PW3 also. According to him, he reached Thannikkamukku market and approached the accused and asked for the price of fish and Ismail Kunju who reached the

place questioned the accused regarding the accused challenging Ismail Kunju and the accused thereupon stood up and took MO3 and stabbed Ismail Kunju.

50. After carefully analysing the oral evidence of PW2 and PW3, they appear to me as reliable and trustworthy witnesses. Their evidence tally with each other with regard to material particulars and are free from any serious blemish. What I find is that their evidence remained solid and consistent throughout their examinations. Though subjected to the test of cross-examination, nothing was brought out to discredit their evidence.

51. The learned counsel for the accused contended that the presence of PW2 and PW3 at the time of occurrence was not established and they are planted witnesses. The said contentions deserve rejection only. Both PW2 and PW3 clearly explained their presence at the time and place of occurrence. The oral evidence of PW2 prove that he is a fish vendor. His presence at the time and place of occurrence is natural. So is the case with PW3 whose evidence prove that he went to the place to purchase fish.

52. The learned counsel for the accused challenged the evidence of PW2 and PW3 by contending that the investigating agency who recorded

the statements of PW2 and PW3 immediately after the occurrence could not explain as to how the investigating agency came to know that the said witnesses had witnessed the occurrence. I do not find any merit in the said contention. I have already found that the presence of PW2 and PW3 at the time and place of occurrence has been properly established. It is only natural that the investigating agency questioned the said witnesses who were present at the time and place of occurrence. I do not find anything suspicious about the same.

53. The learned counsel for the accused raised another contention to the effect that the other witnesses did not refer to the presence of PW3 at the scene of crime. The said aspect does not have any relevance because the oral evidence of PW3 has proved his presence at the time of occurrence beyond doubt.

54. The learned counsel for the accused further contended that PW3 was an accomplice of Ismail Kunju and PW3 was never present at the scene of crime. The said contentions have to be rejected in the light of the trustworthy evidence given by PW3 with regard to his presence at the time and place of occurrence. At the same time, there is no satisfactory evidence to bring out any special connection between PW3 and the deceased.

55. One contention advanced by the accused to challenge the evidence of PW2 and PW3 is in the context of ante-mortem injuries 2 to 10 noted on the body of the deceased. The contention of the accused is that PW2 and PW3 only referred to the accused stabbing the deceased by using MO3 and they did not offer any explanation for the deceased sustaining injuries 2 to 8 and 10. Injury no. 9 is referred to as an old injury. So far as injury no. 1 is concerned, the same is in absolute confirmity with the narration of the occurrence by PW2 and PW3. With regard to the remaining injuries, the nature of the said injuries are relevant to be considered. The said injuries were inflicted on the left thumb, right and left legs and right foot. It is true that PW2 and PW3 did not offer any explanation for the said injuries. In this context, I take note of the fact that PW2 and PW3 are shown to be two witnesses who had all of a sudden and unexpectedly witnessed the gruesome act of the accused stabbing the deceased by using MO3. It was definitely a sudden and unexpected act on the part of the accused. The evidence of PW2 and PW3 bring out that though warned against the same, Ismail Kunju removed the knife from his body. In the said situation, I do not find anything unnatural in the failure of PW2 and PW3 to explain the manner in which Ismail Kunju would have sustained the other injuries.

56. Another crucial aspect has to be considered in the above context. The defence projected by the accused is that the deceased was the aggressor and the deceased attempted to attack the accused by using a sword and the right hand finger of the accused was wounded and the accused fled from the place and Ismail while following the accused fell down after his body came into contact with a fish tray and in the course of the fall, the sword came into contact with the body of Ismail and thereby, Ismail sustained the injuries. That was the statement given by the accused at the stage of questioning u/s. 313 of Cr.PC. The said defence of the accused is not proved or probabilized by any evidence. In the said situation, injuries 2 to 10 sustained by the deceased cannot have any negative impact upon the evidence of PW2 and PW3 to the effect that the accused stabbed the deceased by using MO3. As already stated, injury no. 1 sustained by the deceased is in full confirmity with the evidence of PW2 and PW3.

57. Another contention of the accused is with regard to the identification by PW2 of the dresses worn by the victim and the accused. The accused points out that PW2 stated during cross-examination that he could remember the dress of the accused and with regard to the dress of the victim, PW2 stated initially that the deceased was wearing a brown

coloured shirt and he changed his version during re-examination by stating that MO1 shirt that was worn by the deceased is of violet colour. In my view, the above aspects are not relevant. The witness was giving evidence after some gap. It is not possible to conclude that PW2 after such a gap could correctly remember the colour of the dresses worn by the victim and the accused at the time of occurrence. In my view, the said aspect cannot create any doubt with regard to the evidence of PW2.

58. Yet another contention of the accused that was advanced to challenge the evidence of PW2 and PW3 is that they could not explain the injury sustained by the accused. It was PW7 who examined the accused on 07.02.2020 at 11 a.m and issued Ext.P3 wound certificate. I have already referred to the injuries. The fact that the accused sustained the injury stands established. It is also true that PW2 and PW3 could not explain the said injury. In my view, the said aspect cannot create any doubt about the evidence of PW2 and PW3 to the effect that they witnessed the occurrence. As already stated, what the witnesses witnessed was the accused stabbing the deceased. There is some explanation in the chief examination of PW7 with regard to the injury sustained by the accused. PW7 opined that the injury could be caused, while holding MO3 knife. PW7 was not cross-examined on behalf of the accused. Therefore, the said opinion given by

PW7 stands un rebutted. The oral evidence of PW3 brings out that after committing the crime, the accused ran away from the scene of crime. In the said situation, there would have been no opportunity for PW2 and PW3 to have a vision of the injury sustained by the accused and that too on the right middle finger. In my view, the alleged failure of PW2 and PW3 to explain the injury sustained by the accused cannot have any negative impact upon their evidence.

59. In the above context, the case sought to be developed by the accused with regard to the alleged failure of the prosecution to explain the injury sustained by the accused has to be considered. It is the contention of the accused that since the prosecution failed to explain the injury sustained by the accused, the genesis and the origin of the occurrence as claimed by the prosecution has to be doubted. Reliance is placed upon the following decisions. In ***Parashuram v. State of M.P. (2023 KHC 6973)***, the Hon'ble Supreme Court held that omission on the part of the prosecution to explain the injuries on the person of the accused assumes greater importance, where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution case. In ***Ram Narain v. State of Punjab (AIR 1975 SC 1727)***, the Hon'ble Supreme Court held that where the

prosecution evidence is inconsistent with the medical evidence, the accused is entitled to acquittal. In ***Nand Lal v. State of Chhattisgarh (2023 KHC 6247)***, the Hon'ble Supreme Court held that when the injuries sustained by the accused are not minor or superficial and are unexplained, the accused is entitled to the benefit of doubt. In ***Raghunath @ Abhaya @ Abhi Jena and Others v. State of Orissa (2011 KHC 6457)***, the Hon'ble High Court of Orissa held that when the eyewitnesses lied by stating that they did not see any injury on the person of the accused, it could be said that the prosecution suppressed the genesis of the prosecution case. In ***Bhagwan Sahai and Another v. State of Rajasthan (2016 KHC 6408)***, the Hon'ble Supreme Court held that once the court came to a finding that the prosecution suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused, adverse inference must be drawn against the prosecution in this regard.

60. On the other hand, the learned Public Prosecutor relied upon the following decisions. In ***Rohtas and Another v. State of Haryana (2019 KHC 7097)***, the Hon'ble Supreme Court in the facts of the said case held that the presence of PW1 and PW2 cannot be doubted on the ground that they are related to the deceased and are interested witnesses. In ***Mustak @ Kanio Ahmed Shaikh v. State of Gujarat (2020 KHC 6431)***,

the Hon'ble Supreme Court held that the evidence of witnesses have to be read as a whole and words and sentences cannot be truncated and read in isolation. In ***Shaji R v. State of Kerala (2013 KHC 4098)***, the Hon'ble Supreme Court held that it is not the number of witnesses, but the quality of their evidence which is important.

61. In the final report, the prosecution has introduced some explanation for the injury sustained on the body of the accused. It is stated that the accused sustained the injury, while his hand came into contact with a portion of the knife at a time when the accused stabbed the victim by using knife. The said statement in the final report is challenged by the accused by contending that such a statement was incorporated without there being any supporting data. In my view, the said statement has to be construed as the conclusion arrived at by the Investigating Officer after investigation. Significantly, the said conclusion gets support from the opinion evidence given by PW7 which has been already referred to. In my view, the prosecution could explain the injury sustained by the accused.

62. Apart from that, this is a case where the occurrence as described by the prosecution has been proved through the trustworthy oral evidence of PW2 and PW3 and the other evidence adduced by the

prosecution. The genesis and the origin of the occurrence as described in the final report has been proved. In the said situation, the alleged failure of the prosecution to explain the minor injury sustained by the accused cannot have any negative impact upon the prosecution case. The said legal position is clear from the decision of the Hon'ble Supreme Court in ***State of Gujarat v. Bai Fatima (AIR 1995 SC 1478)***.

63. The accused contends that the evidence of PW2 and PW3 is tainted with material contradictions. The said contention is based upon Ext.D1 to Ext.D5.

64. With regard to Ext.D2, it is portion of Sec. 161 statement of PW3. Ext.D2 states that PW2 approached one Shanavas upon seeing that the said Shanavas was cutting and selling tuna fish.

65. Ext. D1 and D3 to Ext.D5 are portions of Sec. 164 statements. Ext.D1 which is portion of Sec. 164 statement of PW2 states that the incident took place on 07.02.2020 after 10.15 a.m. The said inconsistency is not material.

66. Ext.D3 and Ext.D4 are portions of Sec. 164 statement of PW3. Therein, the assailant is named as Shanavas. Ext.D5 which relates to PW6 states that Shanavas challenged Ismail on 07.02.2020 at 07.45 a.m.

67. The accused attempts to take advantage of the assailant being named as Shanavas in Ext.D3 to Ext.D5. The learned counsel for the accused relied upon the decision of the Hon'ble Supreme Court in **Vijay Singh v. State of Uttarakhand (2024 KHC OnLine 6662)** to contend that statement u/s. 164 of Cr.PC serves to corroborate and contradict the evidence of the maker of the statement and statement u/s. 164 of Cr.PC has higher credibility. It is contended that Shanavas referred to in Ext.D3 to Ext.D5 is the brother of the accused and naming the said Shanavas as the offender in Ext.D2 to Ext.D5 shows that the accused was not the offender.

68. Ext.D1 and Ext.D3 to Ext.D5 were proved through DW2. It was DW2, while acting as the jurisdictional Magistrate, who recorded the statements of the witnesses u/s. 164 of Cr.PC. Evidently, the offender was described as Shajahan in Ext.D3 to Ext.D5. The learned Public Prosecutor attempted to explain the contradictions in the statements u/s. 164 of Cr.PC by contending that the statements were recorded at a time when COVID protocol was in force and the witnesses were wearing masks and the

learned Magistrate did not correctly hear the narration of the name of the offender by the witnesses. The said argument is resisted by the learned counsel for the accused by pointing out that PW2 and PW3 stated that they named the offender as Shajahan and the said stand was negated by the evidence of DW2.

69. Here, one important aspect has to be considered. This is a case where PW2 and PW3 identified the accused in the dock as the assailant. The dock identification is substantive evidence. The naming of the offender as Shanavas in Ext.D3 to Ext.D5 cannot have any negative impact upon the evidence of PW2 and PW3 because they identified the accused as the offender. In the said situation, the naming of the offender as Shanavas in Ext.D3 to Ext.D5 does not appear to me as material.

70. In the above context, I take note of another aspect also. Nobody including the accused has got a case that Shanavas was involved in the occurrence. Even according to the accused, the victim was the aggressor and the victim inflicted the injury on the body of the accused. Therefore, there cannot be any doubt about the fact that the accused and none else was the offender who committed murder of the deceased.

71. At the same time, the defence of the accused to the effect that Ismail Kunju was the aggressor is not proved or probalilized by any evidence and stands negatived by the trustworthy oral evidence of PW2 and PW3. I have already found that the injury sustained by accused has been satisfactorily explained by the prosecution.

72. Some omissions in the evidence of PW2 and PW3 were brought out through the evidence of DW2. The following are the said omissions. PW2 did not state that the accused reached the market to collect contribution. PW2 did not state that Ismail asked as to why he was challenged and complaint was raised before Ismail with regard to sale of fish for lower price and PW2 had sensation of fainting. PW3 did not state that the occurrence took place after 10.45 a.m and Ismail asked Shajahan as to whether Ismail was challenged at Anchalummoodu market. PW6 did not state that Shajahan asked PW6 as to whether Ismail was found and PW6 replied that Ismail had gone for stone laying ceremony of house at Karunagappally and the accused stated that the knife was meant for murdering Ismail Kunju.

73. In my view, the above omissions are not material and cannot affect the evidence of PW2 and PW3 with regard to the material part of the occurrence in which the accused stabbed the victim by using MO3.

74. In my view, the evidence of PW2 and PW3 are consistent and corroborate each other in material particulars. Their evidence are free from any blemish.

75. It is my further view that no reason or motive which might have prompted PW2 and PW3 to give false evidence has been brought out in evidence. PW2 stated that there was complaint regarding the accused selling fish for lower price. But, that by itself cannot be regarded as any reason for PW2 to give false evidence in a case of the present nature. So is the case with the evidence of PW3 who is proved to have gone to the market to purchase fish.

76. I am satisfied that PW2 and PW3 are witnesses of truth and their evidence fit into the category of evidence of sterling quality as laid down by the Hon'ble Supreme Court in ***Ganesan v. State (2020 (10) SCC 573)***.

77. The non-examination of one Vasantha has been highlighted by the accused. According to PW2, it was by obtaining a towel from Vasantha

that the wound of Ismail Kunju was covered. The non-examination of witness no. 2 Gracy is also highlighted by the accused. As held in ***Shaji R v. State of Kerala*** referred to above, it is not the number of witnesses, but the quality of evidence that is important. Here, the prosecution adduced the trustworthy oral evidence of PW2 and PW3 to prove the occurrence. In the light of the evidence of PW2 and PW3, the non-examination of the other witnesses cannot have any negative impact upon the prosecution case.

78. The motive for the crime stands clearly established. It is brought out through the evidence of PW1 to PW3 and PW6 that there was dispute regarding sale of fish by the accused for lower price and the same was questioned by Ismail and that was the provocation for the crime.

79. Further, this is a case where the occurrence has been proved beyond doubt. In the said situation, motive loses relevance. The said legal position is clear from the decision of the Hon'ble Supreme Court in ***Rohtash Kumar v. State of Haryana (2013 (3) KLJ 210)***.

80. Finally, the accused contends that there is suspicion about the recovery of MO3 weapon. It is the case of the accused that the evidence relating to the recovery of MO3 as the weapon used in the commission of

the crime is doubtful. The accused further contends that there are indications in the evidence suggesting the recovery of two weapons in the course of investigation.

81. It was PW18 who recovered MO3. According to him, he recovered MO3 from the scene of crime and was seized as per Ext.P5 scene mahazar. The reliable evidence of PW18 in this regard gets corroboration from the evidence of PW14 who gave evidence to the effect that he witnessed recovery of MO3 by the police and from the scene of crime. Thus, there is satisfactory evidence to prove the circumstances under which MO3 was seized by the investigating agency.

82. PW2 and PW3 identified MO3 as the weapon used by the accused in the commission of the crime. PW2 and PW3 are witnesses who witnessed the commission of the crime by the accused. They are the best witnesses to identify the weapon that was used in the commission of the crime. In my view, the identification by PW2 and PW3 of MO3 as the weapon used in the commission of the crime is reliable.

83. PW14 was examined on two dates. Initially, he was examined on 30.08.2024. On the said date, he deposed that the police seized two weapons at the time of preparation of Ext.P10 and MO3 was the knife

seized by the police. Subsequently, PW14 was recalled and was further examined on 27.09.2024. At that stage, PW14 stated that the statement in Ext.P10 with regard to the seizure of one weapon is the correct version and he during the first stage of examination referred to the recovery of two weapons due to a mistake. The accused contends that it was due to the influence of the prosecution that PW14 retracted from his first version. Even then, I am of the view that the above explanation of PW14 is believable and acceptable.

84. The accused examined DW1 to prove Ext.D6 newspaper. Ext.D6 is copy of Malayala Manorama daily dated 09.02.2020. Ext.D6 contains a news item to the effect that apart from the knife used to stab Ismail, another knife was seized from a nearby place. The accused attempts to link the said news item with the evidence of PW14 to contend that two weapons were in fact seized by the investigating agency.

85. A newspaper report is usually construed as evidence based upon hearsay knowledge. Otherwise, the reporter who authored the report should have been examined to prove the source from which the news was gathered. That was not done in this case. DW1 who is the Kollam Bureau Chief of Malayala Manorama daily is not the reporter who authored the

aforesaid news item. Therefore, Ext.D6 has to be excluded as an item of hearsay knowledge only. The said legal position is clear from the decision of the Hon'ble High Court of Kerala in ***Anto. K. Thomas @ Benny v. Deputy Superintendent of Police (2020 (5) KHC 262)***.

86. The matter has to be viewed from another angle also. If in fact two weapons were seized by the investigating agency, there would have no need for the investigating agency to suppress one weapon. The investigating agency would not have gained any benefit from such conduct.

87. I also take note of the fact that apart from the evidence of PW14 and Ext.D6 which I have already explained, there is no indication in the evidence supporting the defence of the accused regarding seizure of two weapons. I reject the said defence of the accused.

88. As per Ext.P7 report of forensic examination, MO3 knife which was item no. 6 object examined at the laboratory contains blood stains which are insufficient to determine the origin and for conducting DNA profiling. The accused contends that MO3 being a knife used for fish cutting would have even otherwise contained blood stains. Here, the relevant aspect to be taken note of is that the blood stains on MO3 were not

sufficient for determining origin and for DNA profiling. Even then, in the light of the trustworthy oral evidence given by PW2 and PW3, it has to be concluded that MO3 was the weapon used by the accused in the commission of crime.

89. Ext.P3 contains history as allegedly given by the accused before the doctor. The history is that a quarrel took place on 07.02.2020 at Thannikkamukku market with Ismail and Ismail tried to cut by using a sword and the injury was caused when the blow was resisted. The learned Public Prosecutor contended that the said statement allegedly made by the accused before the doctor is admissible as extrajudicial confession. Reliance is placed upon the decision of the Hon'ble Supreme Court in ***Ammini and Others v. State of Kerala (AIR 1998 SC 260)***. As per Ext.P3, the accused was examined by the doctor on 07.02.2020 at 11 a.m. It is recorded that the accused by himself reached the hospital. However, it is not recorded in Ext.P3 as to who narrated the history before the doctor. The evidence of PW7 is silent in the said regard. PW7 stated that the accused was brought by himself. PW7 repeated the history as recorded in Ext.P3. But significantly, PW7 did not specifically state that the history was given by the accused. Therefore, the contention that the history

recorded in Ext.P3 has to be construed as extrajudicial confession has to be rejected.

90. The accused contends that delay was caused in the registration of the case. Ext.P1 first information statement was lodged on 07.02.2020 itself at 11:56 hours. Ext.P1 FIR was registered on 07.02.2020 at 11:56 hours itself. In my view, no delay was caused in the registration of the case.

91. The learned counsel for the accused raised a contention to the effect that as per Ext.P7 report of forensic examination, no blood stain is shown to have been collected from the place of occurrence. It is further contended that MO3 does not contain the blood of the deceased. The accused further contends that the above aspects have to result in the drawing of presumption laid down by Illustration (g) to Sec. 114 of the Indian Evidence Act which provides that the court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

92. I do not find any merit in the above contentions. The accused is highlighting the absence of scientific evidence in the context of blood stains. This is a case where the trustworthy oral evidence of PW2 and

PW3 have proved the involvement of the accused in the commission of the crime beyond doubt. In the above situation, the absence of scientific evidence in the context of blood stains projected by the accused cannot have any negative impact upon the prosecution case.

93. A careful analysis of the entire evidence on record leads me to the conclusion that the involvement of the accused in the commission of the crime has been proved beyond doubt. In my view, clinching evidence is forthcoming to prove that the accused and none else committed murder of Ismail Kunju.

94. In the light of the above discussion, I hold that the prosecution succeeded in proving that the accused committed murder of Ismail Kunju and thereby committed offence punishable u/s. 302 of IPC.

Point no. 2 is answered in favour of the prosecution.

95. **Point no. 3:-** In the light of my findings on points 1 and 2, I find the accused guilty u/s. 302 of IPC and convict him thereunder.

Point no. 3 is answered in favour of the prosecution.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected by me and pronounced in open Court on this the 11th day of March, 2025.)

Sd/-

P. N. Vinod
Addl. Sessions Judge-I

96. Both sides were heard on the question of sentence. The learned Public Prosecutor by highlighting the gravity of the crime, the calculated nature of the crime and the possible impact of the crime on the society sought for awarding death penalty. On the other hand, the learned counsel for the accused contended that the case does not require awarding capital punishment.

97. The accused was questioned in person with regard to the sentence to be imposed upon him. He prayed for leniency by citing family obligations.

98. The punishment prescribed by Sec. 302 of IPC is either death or imprisonment for life with sentence of fine. Section 354(3) of Cr.PC provides that when the conviction is for an offence punishable with death or in the alternative with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded and in case of sentence of death, the special reasons for such sentence. It is clear that sentence of death can be awarded only for special reasons.

99. In *Machhi Singh v. State of Punjab (AIR 1983 SC 957)*, the Hon'ble Supreme Court by relying upon the judgment of the Hon'ble

Supreme Court in ***Bachan Singh v. State of Punjab (AIR 1980 SC 898)*** laid down the following guidelines to impose sentence of death. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed, only when life imprisonment appears to be altogether inadequate punishment, having regard to the relevant circumstances of the case. A balance sheet of aggravating and mitigating circumstances has to be drawn.

100. In the above context, I also rely upon the decision of the Hon'ble Supreme Court in ***Madan v. State of Uttar Pradesh (2024 (1) KLD 45)***. Therein, the Hon'ble Supreme Court while dealing with the question of sentencing in offence of murder held that the normal rule is that the offence of murder shall be punished with sentence of life imprisonment and the Court can depart from that rule and impose a sentence of death, only if there are special reasons for doing so.

101. After taking into consideration the relevant facts and circumstances of the case and the balance sheet of aggravating and mitigating circumstances, I am of the view that this is not a case which fits into the category of rarest of rare cases. The possibility of the accused getting reformed is still there. Therefore, sentence of death is not liable to

be imposed and instead, it is sentence of imprisonment for life with sentence of fine that is liable to be imposed.

102. Therefore, the accused is sentenced to undergo imprisonment for life and to pay fine of ₹1,00,000/- (Rupees One lakh only) u/s. 302 of IPC, in default of payment of fine to undergo a further period of rigorous imprisonment for six months. The period of detention already undergone by the accused from 07.02.2020 till 09.03.2020 and from 11.03.2025 till 12.03.2025 will be set off against the substantive term of imprisonment, in case the sentence of imprisonment for life is commuted or remitted by the appropriate Government.

103. If the fine amount is realised, it will be paid as compensation to the legal heirs of the deceased u/s. 357(1)(b) of Cr.PC.

104. MO1, MO2, MO4 and MO5 being valueless will be destroyed and MO3 will be broken up and sold as per Rule 268 of the Kerala Criminal Rules of Practice after the appeal period is over.

105. Before concluding the judgment, the aspect of victim compensation has to be considered. I am satisfied that the compensation awarded u/s. 357(1)(b) of Cr.P.C is not adequate to rehabilitate the legal heirs of the deceased and they have to be rehabilitated as per law.

Therefore, it is ordered that the District Legal Services Authority, Kollam will be addressed with due recommendation u/s. 357A(3) of Cr.P.C to pay adequate compensation to the legal heirs of the deceased in order to rehabilitate them. Forward a copy of the judgment to the District Legal Services Authority, Kollam forthwith.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected by me and pronounced in open Court on this the 12th day of March, 2025.)

Sd/-

P. N. Vinod
Addl. Sessions Judge-I

APPENDIX

Exhibits for the Prosecution :

P1	-	07.02.2020	-	FIS proved by PW1
P1(a)	-	07.02.2020	-	FIR proved by PW18
P2	-	07.02.2020	-	Kaichit proved by PW1
P3	-	07.02.2020	-	Wound Certificate proved by PW7
P4	-	02.07.2020	-	Ownership Certificate proved by PW8
P5	-	07.02.2020	-	Mahazar (Dress of Accused) proved by PW10
P6	-	07.07.2020	-	Scene Plan proved by PW11
P7	-	26.04.2023	-	FSL report proved by PW12
P8	-	18.06.2020	-	Photographs proved by PW13
P8(a)	-	18.06.2020	-	Photographs proved by PW13
P9	-	18.06.2020	-	Sec. 65B certificate proved by PW13

P10	-	07.02.2020	-	Scene mahazar proved by PW 14
P11	-	07.02.2020	-	Postmortem certificate Proved by PW 15
P12	-	07.02.2020	-	Inquest Report Proved by PW 16
P13	-	07.02.2020	-	Receipt proved by PW 17
P14	-	07.02.2020	-	Arrest Memo Proved by PW 18
P14(a)	-	07.02.2020	-	Inspection Memo Proved by PW 18
P14(b)	-	07.02.2020	-	Custody Memo Proved by PW 18
P15	-	07.02.2020	-	Property List I (TR 91/20) Proved by PW 18
P15(a)	-	07.02.2020	-	Property List II (TR 91/20) Proved by PW 18
P15(b)	-	07.02.2020	-	Property List III (TR 91/20) Proved by PW 18
P15(c)	-	07.02.2020	-	Property List IV (TR 91/20) Proved by PW 18
P15(d)	-	07.02.2020	-	Property List V (TR 91/20) Proved by PW 18
P15(e)	-	07.02.2020	-	Property List I (TR 153/20) Proved by PW 18
P15(f)	-	13.03.2020	-	Property List II (TR 153/20) Proved by PW 18
P16	-	12.03.2020	-	Application Proved by PW 18
P17	-	12.01.2020	-	Inventory Proved by PW 18
P18	-	29.05.2020	-	Copy of forwarding note Proved by PW 18
P19	-	07.02.2020	-	Address report of accused Proved by PW 18

Exhibits for the Defence :

D1	-	---	-	Portion of Sec.164 statement proved by PW2
D2	-	---	-	Portion of Sec.161 statement proved by PW3
D3	-	---	-	Portion of Sec.164 statement of proved by PW3
D4	-	---	-	Portion of Sec.164 statement proved by PW3
D5	-	---	-	Portion of Sec.164 statement proved by PW6
D6	-	09.02.2020	-	Copy of Malayala Manorama daily proved by DW1

Court Exhibits : Nil

Witnesses for the Prosecution:

PW1	-	Syedali
PW2	-	Nazeer
PW3	-	Bijukumar
PW4	-	Shibu
PW5	-	Ramachandran Pillai @ Thankachan
PW6	-	Rahim
PW7	-	Dr. Chandrasekhara Kurup, R.M.O, P.N.N.M Hospital, Anchalummoodu.
PW8	-	Suneesh, Secretary, Panayam Grama Panchayat.
PW9	-	Dr. Hareeshmani, Chief Medical Officer, District Hospital, Kollam
PW10	-	Narayanan Nair
PW11	-	Dinesh Kumar, Village Officer, Panayam
PW12	-	Dr. Sreevidya. K.V, Asst. Director (Serology), State Forensic Science Laboratory, Thiruvananthapuram
PW13	-	Syamlal, Police Photographer, Kollam City Police
PW14	-	Biju, Accountant, Panayam Panchayat
PW15	-	Dr. Bindu Samuel, Assistant Professor and Police Surgeon at Govt. Medical College, Kollam.
PW16	-	Ajmeen, Member,

- Thrikkaruva Grama Panchayath.
- PW17 - Pookkunju
- PW18 - K. Anilkumar, Circle Inspector of Police,
Anchalummoodu Police Station.

Witnesses for the Defence :

- DW1 - Jayan. K.O, Chief Reporter, Kollam Bureau,
Malayala Manorama daily
- DW2 - Sri. Shanavas. S, Judicial First Class Magistrate,
Paravur

Material objects :

- MO1 - Shirt
- MO1(a) - Dhoti
- MO1(b) - Undergarments
- MO1(c) - Towel
- MO2 - Chappals
- MO3 - Knife
- MO4 - Shirt
- MO5 - Kaili

**Sd/-
Addl. Sessions Judge-I**

TABULAR FORM AS PER RULE 132 OF THE CRIMINAL RULES OF PRACTICE

- | | | |
|--|---|---|
| 1. Serial No. | : | S.C. No. 463/2021 |
| 2. Name of Police Station & Crime No. of offence | : | 130/2020 of Anchalumoodu Police Station |

DESCRIPTION OF THE ACCUSED

- | | | |
|--------------------|---|--|
| 3. Name of Accused | : | Shajahan |
| 4. Father's name | : | Shamsudeen |
| 5. Occupation | : | ----- |
| 6. Residence | : | Smitha Bhavanam,
Near Navakerala Club,
Neeravil Cherry,
Thrikadavoor Village. |
| 7. Age | : | 32/2020 years |

DATES OF

- | | | | |
|---|---|------------|------------------|
| 8. Occurrence | : | 07.02.2020 | |
| 9. Complaint | : | 07.02.2020 | |
| 10. Apprehension | : | 07.02.2020 | 11.03.2025 |
| 11. Release on bail | : | 09.03.2020 | still in custody |
| 12. Commitment | : | 18.02.2021 | |
| 13. Commencement of trial | : | 30.09.2022 | |
| 14. Close of trial | : | 28.02.2025 | |
| 15. Sentence or Order | : | 12.03.2025 | |
| 16. Service of copy of judgment or finding on accused | : | 12.03.2025 | |
| 17. Cause of delay | : | No delay | |

Sd/-
P.N. Vinod
Addl. Sessions Judge-I

Typed by : Rekha. K. Raj
Comp. by: Rejani. P

Judgment
in
S.C. No. 463/2021
Dated: 12.03.2025