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**(2025) 01 KL CK 1820**

**In the High Court Of Kerala**

**Case No : Criminal Appeal Nos.199, 976, Of 2019**

Gopalakrishnan Nair @ Maniyan

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision : 27-01-2025**

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 161, 232  
Indian Penal Code, 1860 — Section 34, 294(b), 300, 302, 307, 341  
Evidence Act, 1872 - Section 6

**Citation : (2025) 01 KL CK 1820**

**Hon'ble Judges : P.B.Suresh Kumar, J;Jobin Sebastian, J**

**Bench : Division Bench**

**Advocate : C.P.Udayabhanu, Navaneeth.N.Nath, Rassal Janardhanan A.,  
Abhishek M. Kunnathu, P.U.Pratheesh Kumar, P.R.Ajay, Alex M.Thombra**

**Final Decision : Allowed/Dismissed**

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## **Judgement**

P.B.Suresh Kumar, J.

1. These appeals arise from S.C.No.134 of 2010 on the files of the Court of the Additional Sessions Judge – V, Thiruvananthapuram. There are two accused in the case and they stand convicted and sentenced for the offences punishable under Sections 294(b), 341, 307 and 302 read with Section 34 of the Indian Penal Code (IPC). Among the appeals, Crl.Appeal No.976 of 2019 is preferred by the first accused and Crl.Appeal No.199 of 2019 is preferred by the second accused.

2. The accused were persons residing in the neighbourhood of the house of the victims namely, Shaji who died in the occurrence which is the subject matter of the case and the wife of Shaji namely, Jayasree who suffered serious injuries in the occurrence. The genesis of the occurrence is that Shaji directed a few youngsters who were sitting in a car which was parked in front of his house to remove the same owing to their conduct in passing comments at people walking by in front of his house. At about 10.30 p.m. on 27.03.2009, there occurred an

altercation in front of the house of Shaji over the objection raised by Shaji as mentioned above and it is in that altercation, Shaji and his wife suffered serious injuries. Although Shaji and his wife were taken immediately by the neighbours to Sree Gokulam Medical College Hospital, Thiruvananthapuram, by the time they reached the said hospital, Shaji passed away.

3. A case was registered against the accused at 6 a.m. on the following day by Kilimanoor Police in connection with the occurrence under Sections 294(b), 341, 307 and 302 read with Section 34 IPC based on information furnished by Jayasree at the hospital where she was undergoing treatment at 4.30 a.m. on that day. In the investigation conducted in the said case, it was revealed that at about 10.30 p.m. on 27.03.2009, the first accused came in front of the house of the victims and started abusing them using filthy language and when Shaji came out of the house hearing the said abuse and enquired with the first accused the reason for the same, the first accused stabbed him as also his wife multiple times with a foldable knife, with the support and protection of the second accused.

4. On the accused being committed to trial after their arrest pursuant to the final report filed in the case, the Court of Session framed charges against them under Sections 294(b), 341, 307 and 302 read with Section 34 IPC. The accused pleaded not guilty. The evidence let in by the prosecution thereupon consists of the oral evidence of 19 witnesses and 35 documents proved through them. MOs 1 to 17 are the material objects in the case. In the course of the evidence let in by the prosecution, Exts.D1 to D5 contradictions were proved by the defence. Inasmuch as the Court of Session did not find the case to be one fit for acquittal under Section 232 of the Code, the accused were called upon to enter on their defence. At that stage, the second accused examined one Saifudeen as a witness on his side. On an appreciation of the evidence on record, the Court of Session found the accused guilty of the charges, convicted and sentenced them, among others, to imprisonment for life. The accused are deeply aggrieved by their conviction and sentence in the case, hence these appeals.

5. As per order dated 08.04.2019 in CrI.M.Appl.No.1 of 2019 in CrI.Appeal No.199 of 2019, this Court suspended the execution of the sentence passed against the second accused and enlarged him on bail.

6. Heard Adv.C.P.Udayabhanu for the first accused Adv.A.Rajasimhan for the second accused. Sri.Alex M.Thombra addressed arguments on behalf of the State.

7. The point that falls for consideration is whether the conviction and sentence of the accused are sustainable in law.

8. The prosecution relies mainly on the oral evidence of the wife, mother and daughter of Shaji who were examined as PWs 1, 2 and 3 respectively to prove the occurrence. The prosecution also relies on the evidence tendered by PW6, namely the neighbour of the victims to corroborate the evidence tendered by PWs 1 to 3. In order to corroborate the oral evidence, the prosecution also relies

on the evidence tendered by the doctor who examined Jayasree, the doctor who conducted postmortem examination on the body of the deceased as also the evidence tendered by the investigating officer as regards the recovery of the material objects namely, MOs 1 to 3. The essence of the elaborate submissions made by the learned counsel for the first accused is that the oral evidence tendered by PWs 1 to 3 and 6 is not reliable and trustworthy. More specifically, the evidence tendered by PW1 and PW2 were attacked by the learned counsel for the first accused mainly on the ground that no one could see the occurrence as there was no light at the scene of occurrence. According to the learned counsel, there cannot, therefore, be a conviction based on the said evidence. It was argued by the learned counsel for the first accused that at any rate, the proved facts do not establish a case of murder and that the first accused can, therefore, be convicted only for the offence punishable under Section 304 IPC. The argument advanced by the learned counsel for the second accused, however, is that it is a case where the second accused was implicated falsely on account of previous enmity between him and PW1. It was also argued by the learned counsel alternatively, that even if the entire evidence relied on by the prosecution is accepted, the second accused cannot be convicted, as the evidence in the absence of any overt act on the part of the second accused does not disclose that the second accused shared the common intention with the first accused to cause the death of Shaji and to cause injuries to Jayasree.

9. Jayasree is the main witness on the side of the prosecution. As noted, she was examined in the case as PW1. The version of PW1 as regards the occurrence is that at about 10.30 p.m. on the relevant day, while she was watching television with her mother-in-law, the accused came in front of their house and started abusing them by using filthy language; that Shaji who by then had already slept, woke up hearing the abuse, came out of the house and asked the first accused as to the reason for his outburst of anger and the first accused then rushed towards him and dragged him to the street. It was deposed by PW1 that she and her mother-in-law then came out of the house and followed Shaji and they were followed by her elder daughter. According to PW1, as Shaji was moving unsteadily on account of the conduct of the first accused, she attempted to hold him and at that point of time, the second accused rushed to that place and held from behind the hands of Shaji. It was deposed by PW1 that the first accused then took out a foldable knife from his waist and stabbed Shaji on the left portion of his chest. It was the version of PW1 that when she attempted to ward off the attack on Shaji, the subsequent stab made by the first accused fell on her right hand below the elbow and she lost the ability to move two of her fingers on account of that stab injury. It was deposed by PW1 that the first accused thereupon stabbed on the right portion of the chest of Shaji as well and the stab that subsequently followed the same fell on her right cheek and the same resulted in 16 stitches. It was deposed by PW1 that the first accused stabbed again thereafter on the thigh of the deceased and also on her chest. According to PW1, they were thereupon taken to the hospital by the neighbours. PW1

identified the accused in the dock as the assailants and affirmed that it was she who gave Ext.P1 First Information Statement. PW1 also identified MO1 as the weapon used by the first accused to stab her and Shaji, MO2 as the shirt and MO3 as the lungi worn by the first accused at the time of occurrence.

10. In the cross-examination of PW1 by the counsel for the first accused, it was clarified by PW1 that on the day previous to the date of occurrence, when she and her husband returned home, they found a car in front of their house and noticed that the youngsters who were sitting then in the car were passing comments and her husband then directed them to remove the car from there. It was stated by PW1 that the said youngsters then went to the house of the second accused and when they came back with the second accused, Shaji was sitting on the veranda of their house and one among them who was sitting in the car then pointed his fingers at Shaji and told the second accused that it was Shaji who directed them to remove the car. It was stated by PW1 that thereafter, all of them together went to the house of the first accused. The suggestion made by the counsel for the first accused to PW1 was that she and her husband sustained injuries in the quarrel that took place between them and those who were sitting in the car, and the same was denied by PW1. When PW1 was questioned in the cross-examination as to the availability of light at the scene at the time of occurrence, she clarified that there was street light in the scene of occurrence and that apart, that there were lights on both sides of her house also. It was also stated by PW1 that one of the street lights was on the north-western boundary of their house. It was clarified by PW1 in her cross-examination by the counsel for the first accused that it was the first accused who pulled down Shaji who was standing near the front door of their house by holding on to his t-shirt. When it was put to PW1 that she does not appear to have stated before the police that the second accused rushed to the scene and held from behind the hands of Shaji to enable the first accused to stab him, her answer was that she stated so to the police. When PW1 was asked in cross-examination by the counsel for the first accused about the recital in Ext.P9 wound certificate that it was one Pradeep and one Saifudeen who brought her to the hospital, she clarified that she was brought to the hospital by Saifudeen and Nikhil.

11. PW2 is the mother of Shaji. PW2 also gave evidence on similar lines as the evidence given by PW1 as regards the occurrence. It was specifically deposed by PW2 in her evidence that on the relevant day, at about 10.30 p.m., when Shaji came near the door of his house on hearing the abuse made by the first accused and questioned him for the same, the first accused pulled him and dragged him to the road; that when she and PW1 followed Shaji, they saw the first accused taking out a foldable knife from his waist and stabbing on the left portion of the chest of Shaji; that when PW1 held Shaji to support him, the first accused stabbed on the right hand of PW1 below the elbow; that the first accused thereupon stabbed Shaji again on the right portion of his chest and when PW1 intervened, the first accused stabbed on her cheek. It was also deposed by PW2 that the first accused thereafter stabbed on the leg of Shaji also. As in the case

of PW1, PW2 also deposed that when Shaji was dragged to the road, the second accused held his hands from behind. PW2 identified the accused in the dock as the assailants of her son and daughter-in-law. PW2 also identified MO2 and MO3 clothes worn by the first accused at the time of occurrence and MOs 9 and 10 as the clothes worn by PW1 at the relevant time. She has also identified MO1 as the foldable knife used by the first accused to stab Shaji and PW1. In cross-examination, it was clarified by PW2 that when Shaji was dragged to the road, PW1 followed him first and that PW2 accompanied her. PW3 is the daughter of Shaji. It was deposed by PW3 that she was sleeping at the relevant time; that she woke up on hearing the noise of the quarrel; that thereupon when she proceeded to the scene of occurrence hearing the scream of her mother and grandmother, she saw the first accused stabbing her parents. As in the case of PW1 and PW2, PW3 also deposed that she saw then the second accused holding the hands of Shaji from behind. In the cross-examination, PW3 stated that she did not see anyone dragging Shaji to the road and that she is unable to state as to how many times the first accused stabbed her parents. Likewise, PW3 also stated in her cross-examination that she does not know on which part of the body of Shaji where the first stab of the first accused fell and also that she does not know the parts of the body of Shaji where the remaining stabs were inflicted by the first accused. Even though the stand taken by PW3 in the chief-examination was that she woke up from sleep on hearing the noise of the quarrel, it was stated by PW3 in cross-examination that she had not slept at the time when the quarrel took place, but was only lying on her bed. It was admitted by PW3 in the cross-examination that she did not inform the police that she saw the second accused holding the hands of her father.

12. PW6 is a neighbour of the victims. PW6 deposed that the house of the victims is on the northern side of his house and that he went to the scene of occurrence on the relevant night on hearing the utterance of PW2 "gopalakrishnan ?? ? ". PW6 also deposed that on reaching the scene, he saw Shaji lying on the lap of his mother and that blood was oozing out from the injuries on his body. PW6 also saw PW1 at the scene with injuries on her body. It was deposed by PW6 that some of the neighbours took the victims immediately to the hospital and he followed them in another car. In the cross-examination, even though it was admitted by PW6 that his house was located about 100 meters away from the house of the victims, he denied the suggestion made to him that it is not possible to hear in his house, the sound from the house of the victims. It was clarified by PW6 in cross-examination that initially he only heard a sound from the house of the victims and it is while proceeding there that he heard the utterance "gopalakrishnan ?? ? ". PW6 admitted however that what was stated by him was that while he was about to sleep, he heard a noise and when he came out of the house on hearing the same, he saw his neighbours proceeding towards the house of the victims and on reaching the place from where the noise was heard, he saw PW2 crying aloud uttering "?? ? ? gopalakrishnan ?? ? ".

13. PW11 was the Village Officer who prepared Ext.P8 scene plan. PW11 deposed in his evidence that there was an electric post about 1.2 meters away from the scene of occurrence and the position of that electric post is shown in Ext.P8 scene plan as P2. Similarly, it was deposed by PW11 that there is another electric post 21.55 meters away from the scene of occurrence and P3 in Ext.P8 scene plan is the position of that electric post. In cross-examination, it was clarified by PW11 that he has not recorded in the sketch, the existence of electric bulbs in the electric posts shown in the scene plan and that existence of bulbs are not usually shown in the scene plans.

14. PW13 was the doctor who examined PW1 at Sree Gokulam Medical College Hospital, Thiruvananthapuram at 11.30 p.m. on the relevant day and issued Ext.P9 wound certificate. It was deposed by PW13 that the following were the injuries noted by him at the time of examination of PW1;

1. Lacerated wound 2x1cm on right temporal region, muscle deep.
2. Lacerated wound 3x1cm with facial tear right forearm dorsal aspect.

It was deposed by PW13 that the cause for the injuries was alleged to be stab injuries inflicted by a known person at 10.45 p.m. near her house. It was opined by PW13 that the injuries noted could be caused as alleged. It was also deposed by PW13 that the patient was brought to the hospital by one Pradeep and Saifudeen and that the cause of the injuries was stated by the bystanders. In cross-examination, it was admitted by PW13 that the injured was conscious when brought to the hospital and that she had not stated the name of the assailant.

15. PW16 was the Assistant Director of Serology attached to the Forensic Science Laboratory, Thiruvananthapuram who issued Ext.P12 report. Items 11 and 12 in Ext.P12 report are MO3 and MO2 clothes worn by the first accused and items 14 and 15 therein are the clothes worn by PW1 at the time of occurrence. Item 16 in Ext.P12 report is MO1 foldable knife. PW16 deposed that items 11, 12, 14 and 15 contained human blood belonging to Group 'A'. It was also deposed by PW16 that even though item 16 contained blood, its origin could not be detected for want of sufficient quantity of the sample.

16. PW18 was the doctor who conducted postmortem examination on the body of the deceased and issued Ext.P15 postmortem certificate. The ante-mortem injuries noted by PW18 at the time of postmortem examination were the following:

"1. Incised penetrating wound, 2.5x0.4 cm, oblique on left side of chest, the lower inner end which showed splitting of tissues was 6 cm to the left of midline and 10 cm below collar bone. The upper outer end of the wound was sharply cut. Cutting through the structures of the second Intercostal space, entered the chest cavity, pierced through the pericardium and ended in the lumen of the main pulmonary trunk (2.5x0.2 cm) just above the root of heart. The pericardial cavity

contained 100 g of blood clot. The left chest cavity contained 750 g of blood clot and 500 ml of fluid blood. The wound track was directed upwards, backwards and to the right for minimum depth of 2.9 cm.

2. Incised punctured wound, 7.5x0.3 cm, oblique on right side of chest, its upper inner end which was sharply cut was 5.5 cm to the right of midline and 7.5 cm below collar bone. The lower outer end of the wound showed splitting of tissues. The wound track was directed upwards, backwards and to the right for a depth of 10.5 cm and terminated within the muscle plane 3 cm below the front fold of armpit.

3. Incised wound, 7x1.5x1 cm, oblique, on the back of left thigh, its lower inner end was 6.5 cm above knee with a superficial side cut, 5.5x0.2 cm, directed obliquely downwards and inwards in the same direction.

4. Linear abrasion, 18.5 cm long, ' ' shaped on the left side of trunk, its upper end being 10.5 cm outer to midline and 18 cm below collar bone.

5. Abrasion, 2.5x0.3 cm, on the back of root of right index finger.

6. Abrasion, 1.5x1 cm, on the outer aspect of right ankle 5 cm above heel.

7. Two abrasions, 0.5x0.5 cm each, 0.5 cm apart, one behind the other, on the inner aspect of right ankle, the back of one being 5 cm in front of heel."

It was opined by PW18 in his evidence that the death of Shaji was due to the penetrating injury namely, injury 1 sustained to the chest. It was also opined by PW18 that injuries 1 to 3 could be caused with MO1 knife.

17. PW19 was the investigating officer who conducted the substantial part of the investigation in the case. It was deposed, among others, by PW19 that during the interrogation after the arrest, the first accused disclosed to him that a knife has been kept by him in the pump-house attached to the rubber estate of one Damodaran near the house of the first accused and when he was taken to that place as guided by him, the first accused took out MO1 knife from inside a PVC pipe kept in the pump-house and handed over the same to PW19 and the same was seized by PW19 as per Ext.P4 mahazar. Ext.P4(a) is the information which led to the recovery of MO1 knife. It was also deposed by PW19 that during the interrogation, the first accused disclosed to him further that he has dropped a few clothes in a deserted well near his house and when he was taken to that place as guided by him, he took out from a deserted well in the rubber estate of one Damodaran, MO2 and MO3 clothes and the same were seized by PW19 as per Ext.P10 mahazar. Ext.P10(a) is the disclosure which led to the recovery of the said MOs. In the cross-examination, PW19 affirmed that PW2 did not give a statement that the second accused held the hands of Shaji from behind and that what was stated by PW2 in her previous statement is only that the second accused who was present at the scene, did not prevent the first accused from attacking the victims. It was also affirmed by PW19 in cross-examination that what was revealed in the investigation as regards the role of the second accused

was that he came along with the first accused to the house of the victims and that he had not made any attempt to prevent the attack of the first accused on the victims. Likewise, it was stated by PW19 that in the previous statement of PW6, he did not state as to the precise time when he heard the utterance. It was also deposed by PW19 in cross-examination that the house of PW6 is not one that could be seen from the scene of occurrence and that is why the house of PW6 is not shown in the scene plan. Nevertheless, it was asserted by PW19 that PW6 is a neighbour of the victims. When PW19 was asked as to the distance between the house of PW6 and the scene of occurrence, PW19 took the stand that he did not conduct any investigation regarding the same. In the cross-examination, PW19 also affirmed that the statement of PW3 was recorded only on 07.04.2009. PW14 was a person who witnessed the recovery of MO2 and MO3 clothes at the instance of the first accused as also a witness to Ext.P10 mahazar prepared by the police in this regard. PW14 deposed the said facts in his evidence.

18. Let us now examine the point formulated for decision. A few facts which are not challenged in the cross-examination of the above witnesses are that the occurrence took place at about 10.30 p.m. on 27.03.2009; that the deceased and injured were taken to Sree Gokulam Medical College Hospital, Thiruvananthapuram at about 11.30 p.m. on 27.03.2009; that the statement of PW1 was recorded thereupon at 4.30 a.m. on the following day in the said hospital while she was undergoing treatment; that the crime was registered at 6 a.m. on 28.03.2009 and that the First Information Report reached the Jurisdictional Magistrate at 10.30 a.m. on 28.03.2009. The prime witness in the case is the wife of the deceased who was examined as PW1. PW1 was a person who also suffered serious injuries in the occurrence. As noted, the evidence tendered by PW1 as regards the occurrence was consistent with her version in the First Information Statement given within a few hours after the occurrence. Even though what is recorded in Ext.P9 wound certificate issued by PW13, the doctor who examined PW1, as to the cause of injuries was only that the same were caused by stab injuries inflicted by a known person, it has come out that the cause was not stated to the doctor by PW1, rather by the by-standers. Anyhow, it was categorically stated by PW1 in Ext.P1 recorded within a few hours after the occurrence that the injuries were caused by the first accused. No contradictions or omissions affecting the veracity of the evidence of PW1 as regards the occurrence were established in the case. True, there is an embellishment in the evidence of PW1 as regards the complicity of the second accused in the crime and we are dealing with the same elaborately in the latter part of the judgment. But, the same, according to us, is no reason to doubt the veracity of the evidence tendered by PW1 as regards the complicity of the first accused, especially since PW1 suffered serious injuries in the occurrence, which fact has not been disputed by the first accused. In this context, it is apposite to refer to a passage from the decision of the Apex Court in *Bhajan Singh v. State of Haryana*, (2011) 7 SCC 421, which reads thus:

"The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein."

In the light of the proposition of law laid down by the Apex Court as referred to above, there is absolutely no reason to disbelieve the evidence tendered by PW1 as regards the occurrence and the complicity of the first accused in the crime.

19. Coming to the evidence tendered by PW2, the specific case of PW1 was that when the first accused dragged her husband to the road, PW1 along with PW2 followed Shaji and the first accused. The said part of the evidence of PW1 is consistent with the First Information Statement given by her within hours after the occurrence. Therefore, the presence of PW2 at the scene at the time of occurrence, cannot be doubted. True, as regards the sequence of events that took place at the scene of occurrence, there are trivial omissions in the evidence of PW2. PW2 was aged 74 years at the time when the evidence was taken and the occurrence took place about nine years prior to that date. Minor discrepancies are bound to occur in situations of this nature and the evidence let in by the parties cannot be ignored on that ground. True, Exts.D1 to D4 contradictions were proved in the evidence tendered by PW2 and those contradictions, according to us, are not significant inasmuch as the same does not relate to the material parts of the evidence tendered by PW2. Needless to say, there is absolutely no reason to disbelieve the evidence tendered by PW2 also. As noted, the evidence tendered by PW1 and PW2 were attacked mainly on the ground that no one could see the occurrence as there was no light in the locality at the time of occurrence. The evidence was let in by the prosecution in the case to prove that there was light at the scene of occurrence and that there were lights on both sides of the house of the victims also, through the evidence of PW1. It was also stated by PW1 that one of the street lights was on the north-western boundary of their house close to the scene of occurrence. The learned counsel for the first accused took us through Ext.P8 scene plan to contend that even though the existence of electric posts were noted therein, the existence of bulbs in the said posts are conspicuously absent in the scene plan. According to the learned counsel, the explanation offered by the Village Officer who prepared Ext.P8 scene plan that existence of bulbs in the electric posts are normally not shown in such plans, is not acceptable. Similarly, after taking us through the

scene mahazar, the learned counsel for the first accused contended that there are no indications therein that there was sufficient light at the scene at the time of occurrence to enable anyone to see the occurrence. We are not impressed by these arguments. According to us, the accused in the case cannot be heard to contend that there was no light at all at the scene at the time of occurrence for, the occurrence took place after the first accused dragged the deceased to the road from the main door of the house where there was sufficient light. Be that as it may, the existence of electric posts close to the scene of occurrence is sufficient for us to infer that there was light at the scene at the time of occurrence.

20. Coming to the evidence tendered by PW3, even though PW3 stated in cross-examination that she had not slept at the time when the quarrel took place, but was only lying on her bed, her version in the chief-examination was that she woke up from sleep on hearing the scream of her mother and grandmother. If what PW3 had stated in chief-examination is correct, it is not possible for her to have reached the scene of occurrence from her house to witness the occurrence, since going by the version of PW1 as regards the occurrence, the same concluded within a few minutes. According to us, in the circumstances, it is not safe to place reliance on the evidence tendered by PW3. As regards the evidence tendered by PW6, it is to be noted that PW6 was not an eye-witness to the occurrence. According to the prosecution, the evidence tendered by PW6 that he heard the scream of PW2, the mother of the deceased "gopalakrishnan ?? ? ", is admissible under Section 6 of the Indian Evidence Act as *res gestae*. No doubt, if the evidence of PW6 is found believable and acceptable, the said part of the evidence would certainly fall within the scope of Section 6 of the Indian Evidence Act. But, in the case on hand, even though there are materials to hold that PW6 was a person who rushed to the scene after the occurrence on hearing the noise coming from the direction of the house of the victims, it is doubtful as to whether PW6 could have heard the scream of PWs 1 and 2 from his house. As noted, PW19, the investigating officer in the case has categorically stated that the residence of PW6 is not one visible from the scene of occurrence and when PW19 was asked as to the distance between the house of PW6 and the scene of occurrence, PW19 gave an evasive reply that he did not conduct any investigation regarding the same. Even though according to PW6, his house is located about 100 meters away from the scene of occurrence, it is doubtful whether a person who is inside his house located 100 meters away from the scene of occurrence could hear the utterance claimed to have been made by PW2. Needless to say, the evidence tendered by PW6 that he heard the utterance made by PW2, cannot be relied on. At the same time, it is necessary to mention that there is no impediment in relying on the evidence tendered by PW6 that on reaching the scene, he saw the deceased lying on the lap of PW2; that he saw blood oozing out from the injuries on the body of the deceased; that he saw PW1 at the scene with injuries on her body; that some of the neighbours took the victims immediately to the hospital and that he followed them in another car, to

corroborate the evidence tendered by PWs 1 and 2.

21. Apart from the evidence discussed above, the evidence tendered by PW13, the doctor who examined PW1 at 11.30 p.m. on 27.03.2009 at Gokulam Medical College Hospital, Thiruvananthapuram, that the injury suffered by her could be caused by stabbing, and the evidence tendered by PW18 that the ante-mortem injury 1 found on the body of the deceased which was the cause of death, is one that could be caused with MO1 foldable knife recovered based on the information furnished by the first accused, corroborates the oral evidence tendered by PWs 1 and 2 to prove the occurrence. Likewise, the evidence of PW16, the Assistant Director of Serology of the Forensic Science Laboratory, Thiruvananthapuram that the presence of blood of the same group, namely A +ve was found in MOs 2 and 3 clothes worn by the first accused at the time of occurrence as also MOs 9 and 10 clothes worn by PW1 at the time of occurrence, also corroborates the evidence tendered by PWs 1 and 2 as regards the occurrence.

22. What remains to be considered is the question whether the evidence discussed above would make out a case of murder. Even though it cannot be said that the act alleged against the first accused was one done with the intention of causing the death of Shaji, the proved facts would establish beyond reasonable doubt that the act was one done with the intention of causing bodily injuries to Shaji. Having regard to the nature of injuries, it cannot be said that the injuries intended were not injuries sufficient in the ordinary course of nature to cause death. In the circumstances, in the absence of any case for the first accused that the case would fall within any of the exceptions to Section 300 IPC, we have no hesitation in arriving at the conclusion that the finding rendered by the Court of Session that the prosecution has established beyond reasonable doubt, the complicity of the first accused in the crime, is perfectly in order. The first accused has no case that if the factual allegations levelled against him are true, the offences punishable under Sections 294(b), 341, 307 and 302 would not be made out. In the circumstances, the conviction of the first accused and the sentence passed against him is only to be confirmed.

23. Let us now examine the question relating to the complicity of the second accused in the crime. The overt act alleged against the second accused in the charge is thus:

"The 2nd accused at the time of occurrence had given support to the 1st accused and also made an utterance to the effect that the deceased was their target."

The charge in the case has been framed by the Court of Session in the aforesaid fashion obviously for the reason that the allegation in the final report as against the second accused was only that he rendered sufficient protection to the first accused to commit the crime by uttering " ? ? ? ?? ? ? ? ". As noted, PW19, the investigating officer gave evidence consistent with the final report that it is not revealed in the investigation that the second accused held the hands of the deceased from behind. When PW19 was asked on what basis the second accused

was arrayed as an accused in the case, the explanation of PW19 was that what was revealed in the investigation is that the second accused went along with the first accused to the scene of occurrence and that he did not make any attempt to prevent the attack on the victims. Even though no specific overt act is attributed to the second accused in the final report and in the charge framed by the court, PWs 1 and 2 gave evidence consistently that the second accused who was present at the scene at the time of occurrence, held the hands of the deceased from behind so as to enable the first accused to stab the deceased and PW1 as alleged by them. In this context, it is necessary at once, to refer to Ext.P1 First Information Statement given by PW1 within a few hours after the occurrence. PW1 did not have such a case in Ext.P1 and what is stated therein is only that the first accused came to their house along with the second accused. Had the second accused held the hands of the deceased from behind as deposed by PW1, having regard to the peculiar facts of this case, PW1 would have certainly stated so in Ext.P1. Be that as it may, it was established by the accused in the course of the trial that PW2 who asserted that the second accused held the hands of the deceased at the time of occurrence, did not state so in her previous statements recorded by the police under Section 161 of the Code. On the other hand, what was stated by PW2 in her previous statements was only that the second accused who was present at the scene did not prevent the first accused from attacking the victims. In the above circumstances, what could be inferred from the evidence let in by the prosecution is only that the second accused accompanied the first accused to the house of the victims on the relevant day at the relevant time and that the second accused was present at the scene when the first accused stabbed the deceased and his wife.

24. The next question is whether the conduct of the second accused aforesaid is sufficient to hold him guilty of the offences charged against him applying Section 34 IPC. The scope of Section 34 IPC has been considered by the Division Bench of this Court of which one of us was a party, in *Shafeek v. State of Kerala*, 2024 KHC OnLine 445. Paragraph 22 of the said judgment reads thus:

22. It is trite in criminal jurisprudence, that only a person who actually commits an offence, is liable to be punished. However, Section 34 lays down a principle of joint liability in a criminal act, the essence of which is to be found in the existence of a common intention. Even when separate acts are done by two or more persons in furtherance of a common intention, each person is liable for the result of all the acts, as if all the acts had been done by all these persons. Section 34 is only a rule of evidence which attracts the principle of joint criminal liability and does not create any distinct substantive offence. The distinctive feature of Section 34 is the element of participation in action and intention of each one of the accused should be known to the rest of the accused. Mere participation is not sufficient to attribute common intention. Common intention can be inferred from proved facts and circumstances and the same can develop during the course of an occurrence or at the spot. This section does not whittle down the liability of the principal offender committing the principal act but

additionally makes all other offenders liable. The question whether the prosecution has established common intention in a given case has to be decided on the basis of the proved facts. In other words, the prosecution is required to prove a premeditated intention of all the accused. Section 34 of the Indian Penal Code, is really intended to meet a case in which it is difficult to distinguish between the acts of individual members of a party and prove exactly what part was played by each of them. To attract Section 34 of IPC, no overt act is needed on the part of the accused if they share common intention with others in respect of the ultimate criminal act, which may be done by any one of the accused sharing such intention. Common intention implies acting in concert. Existence of a prearranged plan has to be proved either from the conduct of the accused, or from circumstances or from any incriminating facts. It is not enough to have the same intention independently of each other [See *Chhota Ahirwar v. State of M.P.*, (2020) 4 SCC 126].

As seen from the extracted paragraph, the distinctive feature of Section 34 is the element of participation in action and the intention of each one of the accused being known to the rest of the accused. In other words, the prosecution is required to prove a premeditated intention of all the accused. Reverting to the facts, merely for the reason that the second accused accompanied the first accused to the house of the victims and merely for the reason that he was present when the first accused stabbed the victims, we are unable to infer that the accused shared the common intention to commit the murder of the deceased and to cause injuries to PW1. We are not oblivious of the proposition that even mere presence of a person would be sufficient, at times, to hold him guilty applying Section 34 IPC, but having regard to the peculiar facts of this case, it is not justifiable to make such an inference. We take this view also for the reason that MO1 foldable knife used by the first accused to inflict injuries was one hidden by the first accused in his waist and there is nothing on record to indicate that the second accused was aware of the fact that the first accused was carrying a weapon when the second accused proceeded to the house of the deceased along with the first accused. Needless to say, the evidence on record is not sufficient to hold the accused guilty of the charges levelled against them applying Section 34 IPC and the second accused is, therefore, entitled to the benefit of doubt.

25. It was however strenuously argued by the learned counsel for the second accused that it is a case where the second accused was falsely implicated and that he is therefore entitled to an honourable acquittal. In order to convince us that PW1 was maintaining a strained relationship with the second accused, the learned counsel for the second accused drew our attention to the admission made by PW1 during cross-examination that Bindu, the wife of the second accused had preferred a complaint against PW1 alleging that PW1 withdrew a sum of Rs.10,000/- from the bank account of a Kudumbasree Unit jointly held by PW1 as the Secretary of the Unit and Bindu as the President of the Unit by forging the signature of Bindu. According to PW1, the complaint preferred by

Bindu was baseless and the amount was withdrawn by the Vice President of the Unit. Be that as it may, in the cross-examination by the first accused, it was specifically deposed by PW1 that the deceased had in fact directed a few youngsters in the car parked in front of their house to remove the same from there as it was causing inconvenience to them; that those persons then proceeded straight to the house of the second accused and came back along with the second accused; that when all of them reached in front of the house of the victims, the deceased was sitting in the veranda and one among them, then pointed his finger towards the deceased and informed the second accused that the deceased was the person who directed them to remove the car and that thereupon, all of them went to the house of the first accused. It is on that basis, it was asserted by PW1 that it is at the instance of the second accused that the first accused went to the house of the victims along with the second accused. The relevant portion of the evidence tendered by PW1 in this regard reads thus:

"Car- ?? ??? ? Pradeep-? ? ? ? ??? ? ? ? ???? ?? ????? ? ? ? ? ??? ??\* ?  
 +? ??? ?? ?? ? ?? . ??\* car- ? ?? ??? ?? car ? ?? ??? ? pradeep-? ?  
 ?? . ? ? ?? ???? ?? Gopalakrishnan ? ? ? ?8? ? . ?? ? ?? Pradeep ?  
 + ??? ???? ?? Gopalakrishnan-? Pradeep-? ?? ?? .

As evident from the extracted portion of the deposition, even though the learned counsel for the first accused asked PW1 whether she gave such a statement to the police, her reply was only that she remembered to have stated so to the police and the said part of the evidence has not been challenged by the second accused in the cross-examination of PW1. That apart, in the First Information Statement given within a few hours after the occurrence, PW1 stated that the second accused was very much present with the first accused, when the first accused abused the deceased using filthy language, even though no other overt acts were attributed against the second accused in the First Information Statement. In the above circumstances, the argument advanced on behalf of the second accused that he had no role at all, to play in the occurrence and that he was a mere spectator of the occurrence, cannot be accepted. The materials indicate that the second accused also had a role to play, although the same was not established beyond reasonable doubt by the prosecution. In the circumstances, the second accused is not entitled to an honourable acquittal. Nevertheless, inasmuch as it is found that the second accused is entitled to the benefit of doubt, the conviction and the sentence passed against him, are liable to be set aside.

In the result, Crl.Appeal No.199 of 2019 is allowed and Crl.Appeal No.976 of 2019 is dismissed. The bail bond executed by the second accused pursuant to the interim order passed by this court on 08.04.2019 in Crl.M.A.No.1 of 2019 in Crl.Appeal No.199 of 2019 will stand cancelled.