

(1959) 08 KL CK 0010

High Court Of Kerala

Case No: Criminal Appeal No. 5 of 1959

State

APPELLANT

Vs

Thomas Abraham alias
Kunjukutty

RESPONDENT

Date of Decision: Aug. 5, 1959

Citation: (1959) KLJ 904

Hon'ble Judges: K. Sankaran, C.J; Anna Chandy, J

Bench: Division Bench

Advocate: K.T. Thomas, for the Respondent

Final Decision: Dismissed

Judgement

Anna Chandy, J.

This appeal is by the State against the judgment in Sessions Case No. 52 of 1958 of the Sessions Court of Kottayam acquitting the accused Thomas Abraham alias Kunjukutty. He was charged for the murder of Rev. Fr. Mathai, Vicar of the Anthinad Church by stabbing him with a knife at about mid-night on 22-1-1958. Rev. Fr. Mathai became the Vicar of the Anthinad Church about six months prior to his death. He was living in a building situated to the south of the Church. Just to the south of his room is the kitchen. At the time of the incident, P. W. 7, a boy aged 15, was employed as a servant by the Vicar. He used to sleep in the kitchen. At about 8 P. M., on the date of the incident, the Vicar had his meals and he went to sleep by 9 P. M. P. W. 1 is the Sexton attached to the Church. As usual he came to the Church at 5-30 the next morning. He went inside for the purpose of ringing the Church bell, when he saw the dead body of the Vicar over the door step of his room, partly inside the room and partly outside. The body was naked and completely drenched in blood, P. W. 1 rang the Church bell and woke up the servant boy who was found sleeping in the kitchen. On hearing the bell, a crowd gathered. P. W. 1 proceeded to the Meenachil Police Station and lodged the information at 8-15 A. M. Therein, he stated that it was the accused who was responsible for the murder, as he bore a

serious grudge against the Vicar and he had been seen by P. Ws. 5, 11 and others at about mid-night proceeding towards the Church, declaring that the Vicar should be killed. The statement was recorded by P. W. 21, the Sub-Inspector, and it is marked Ext. P. 1. The case was registered on the basis of that statement. P. W. 23, the Circle Inspector, was informed about it and he took charge of the investigation. The accused was absconding till 10-4-1958 when he surrendered in court.

2. The accused pleaded not guilty. He alleged that it was a false charge brought against him and that the witnesses were not speaking the truth. He admitted that there was difference of opinion between him and the Vicar regarding the distribution of milk powder, but added that he was not on inimical terms with the Vicar as alleged. He denied that he had gone near the Church on the night of the incident. He has also explained his absence from the locality from the time of the incident till he surrendered in court. He stated that when he was going to the Church on hearing the Church bell ringing at 5-30 A.M. on 23-1-1958, he was told by his brother-in-law that somebody had murdered the Vicar, that some of the people who gathered were saying that he was responsible for it and that they were preparing to assault him. As advised by his brother-in-law, he immediately went to Alleppey. He lived there for few days with his father who advised him to appear in court only after the case was charged by the police.

3. P.W. 22, the Civil Surgeon in charge of the Palai Government Hospital, conducted the autopsy on 23-1-1958 and issued Ext. P. 21, the post-mortem certificate. He found a penetrating gaping stab wound $2\frac{1}{4}$ " x 1" starting from 1" below the middle of the right clavicle and directed downwards and a little medialwards cutting the 2nd and 3rd ribs. Corresponding to this, a stab wound $1\frac{1}{4}$ " and 1" deep was seen in the upper lobe of the right lung. According to the doctor, the injury was sufficient in the ordinary course of nature to cause death.

4. There is no direct evidence to connect the accused with the crime. The prosecution rests its case upon the following circumstances:-

(i) Enmity between the accused and the deceased due to the difference of opinion about the distribution of milk powder and ghee, which led to previous threats by the accused to do away with the Vicar;

(ii) The accused was found in drunken condition and armed with a knife at about 9-30 P. M. uttering words of threat against the Vicar;

(iii) He was found in and about the Church premises at mid-night;

(iv) He absconded from the place soon after the incident;

(v) The recovery of a piece of newspaper stained with human blood from the accused's house when it was searched the next day; and

(vi) The false version given by the accused regarding his movement before the incident.

5. The learned Sessions Judge has considered all the evidence in support of these circumstances in detail and has arrived at the following conclusions.

(i) There can be no doubt that there was ill-feeling between the accused and the Vicar in connection with the distribution of milk powder and ghee, but there is no clear evidence to show that the accused was threatening to kill the Vicar at any time before the date of incident;

(ii) It has been proved that on the evening of 22-1-1958 the accused drunk toddy and arrack in the company of P. W. 15, Enasu, and had a pen-knife with him then;

(iii) The evidence of P. Ws. 2 to 6 that they saw the accused going into the church-yard at about midnight and remaining there for some time is unsatisfactory and it is not safe to act on it;

(iv) The medical evidence and the other circumstances indicate that the Vicar might have died by 10 P. M. and not at about mid-night as alleged by the prosecution;

(v) The fact that M. O. 3 paper recovered from the house of accused was found stained with human blood is of little importance, since P. W. 6, who says that he noted the accused at close quarters after the incident, did not note blood on the hands or body of the accused; and

(vi) That no adverse inference could be drawn from the fact that the accused was absconding, in view of the explanation given by the accused.

6. The correctness of these findings is challenged by the learned Public Prosecutor. According to him, there is acceptable evidence in support of the various circumstances relied on by the prosecution, and if the different items forming the several links in the chain of circumstantial evidence are viewed as a whole, the only possible inference is that it was the accused who caused the death of the Vicar.

7. The evidence regarding the strained feelings between the accused and the Vicar and the consequent threat by the accused on the Vicar's life may be considered first. It is not necessary to go into the details of the misunderstanding that arose between the accused and the deceased, consequent on the accused's protest against the unsatisfactory manner in which milk powder and ghee were distributed by the Kaikaran. P. Ws. 8, 9 and 10 give evidence on that point. Ext. P. 7, the letter written by the accused to the Vicar on 29-8-1957, Ext. P. 8, the petition dated 13-8-1957 presented to the Arch Bishop of Palai by the accused, and Ext. P. 11, letter dated 13-4-1957, written by the father of the accused to the Vicar, also indicate the existence of the strained relationship between the accused and the Vicar. P. W. 7 was cited to prove the previous threats by the accused to do away with the Vicar. He swears that on the 14th of January at about 8-30, while he, the servant boy (P.W. 7)

and the deceased Vicar were seated on the verandah of the Vicar's room talking, somebody flashed a torch light on the Vicar, When he went out, he saw the accused standing on the bridge across the channel adjacent to the Church, armed with a gun and flashing the torch. When he asked the accused what he was doing, he replied that he was out to shoot a rabbit with two legs, thereby meaning the Vicar. His evidence has been considered and discarded by the learned Sessions Judge for valid reasons. P. W. 7, the Vicar's servant boy, who is alleged to have been present at the time, does not say anything about such an incident. The witness was admittedly convicted in eight or nine criminal cases for theft and was imprisoned for 3 years. He further admitted that in one of the cases the accused's father might have figured as a witness for the prosecution.

8. The fact that the accused had drunk toddy and arrack during that evening in the company of P. W. 15 and others is well established by the evidence of P. W. 14, the salesman of the toddy shop, P. W. 16, the owner of the arrack shop and P. W. 15 who was in the company of the accused. However the attempt of the prosecution to prove that at about 10 P. M. the accused was seen going along the Palai-Thodupuzha Road declaring that he would finish off the Vicar that day has not succeeded. P.W. 11, is the witness who is cited to prove this. P. W. 11 swears that at about 10 P. M. when he was standing before his house, he saw the accused chasing a boy by name Mathai. At that time the accused had a knife with him and soon after the accused returned by the same way along the Palai-Thodupuzha Road uttering obscene words and declaring that he would kill the Priest. In cross-examination, the witness admitted that he was living by the side of the Melukavu Road and the distance between his house and the Kollapilli junction is about three-fourth of a furlong. Naturally he could not; have seen the accused going by the Palai-Thodupuzha Road. The boy who is alleged to have been chased is not examined, and according to P. W. 15, the boy was chased by the accused before they went to the toddy shop for the last time and not at 10 P. M.

9. Next, we shall deal with the evidence of P.Ws. 2 to 6 who are cited to prove that they saw the accused near about the Church and in the Church premises at or about mid-night. P. Ws. 2 to 6 are the witnesses. P. W. 2 is one who owns paddy fields on both sides of the road leading to the Church. He swears that his fields were harvested on 22-1-1958 and a portion of the harvested crops were left in the field after removing the rest to his house, where threshing was to be done. By about 11-30, he, along with P. W. 3, who was engaged by him in threshing work, went to the field and while they were standing on the western side of the Church road at the place marked "G" in the plan they saw some one coming along the Palai Thodupuzha Road. The person was then at a place half a furlong away from the point "A" in the plan where the Church Road meets the Palai-Thodupuzha Road. Point "A" was itself about 900 links from the place where they stood. The person whom they saw was abusing the Vicar in foul language. They recognised the voice as that of the accused. P. W. 4 and his wife who were returning home after doing

threshing work for P. W. 2, were also with them at the place. The accused came to the point "A" and stopped there for about three minutes. P. W. 4 and his wife left the place then and P. Ws. 2 and 3 moved to a place 429 links to the south of the place where they were originally standing and sat down there. Then they saw the accused going to the Church along the Church Road, entering the Church-yard and asking the priest to come out. The accused continued to abuse the Priest and went near the room of the Priest. Then they heard the sound of a door being opened and saw the electric light in the verandah being switched on. Even after the light was on, the accused continued to abuse the Vicar. Then they saw two persons moving and thereafter there was silence. After some time they saw the accused coming from the Church premises still abusing the priest. The accused came up to the middle of the Church Road and then returned to the Church-yard and went away by the road on the northern side. P. W. 4 who was doing threshing work in the house of P. W. 2 swears that the usual practice was to remove all the sheaths to the threshing floor immediately after the harvest and not to leave anything in the field. If that is so, there was no occasion for P. W. 2 to return to the paddy field that night. Again while P. W. 2 would say that P. W. 4 and his wife left the house earlier after getting their share of the paddy, and he and P. W. 3 followed them, P. W. 4 says that P. Ws. 2 and 3 left the house earlier and he and his wife followed them later. There are several contradictions and variations between the evidence of P. W. 2 in the Sessions Court and his earlier statements to the police and in the committing court. He did not tell the police that the accused stopped near the chapel at the point marked "A" for about three minutes. Evidently that fact was introduced with a view to enabling the witness to see the accused and identify him. He admitted that he had told the police that he was not in a position to see what was happening in the court-yard on account of darkness. P. W. 3 gives evidence in the same terms and added that he saw the accused being chased by the Vicar from his room northwards. When cross-examined, he asserted that he had stated so to the police as well, and so, he had to be confronted with the case diary note where there is no such statement. This additional information was introduced apparently with a view to supporting the prosecution case that the Vicar chased the accused from his room up to the plot "N" where he is alleged to have stabbed the Vicar. He too had not told the police that he saw the accused stopping near the Chapel at the point marked "A". When he was confronted with his case diary statement that he could not recognise the accused and the Vicar after the accused had got into the courtyard, due to darkness, he had to admit that he did not identify the person by sight and recognised him only by his voice. P. W. 6 is positive that when he was on his way to this place he met P. W. 3 at a place about a furlong to the south of Kollappilli bridge. The distance from the bridge to the Chapel is 2 furlongs. If P. W. 6 met P. W. 3 near the bridge on his way, P. W. 3 could never have been present in the paddy field at the time. The evidence of P. W. 6 falsifies the evidence of P. W. 3 as well as of P. W. 2 who says that P. W. 3 was in his company when he saw the accused. P. W. 4 says that while he was standing near P. Ws. 2 and 3, he heard somebody abusing the Priest in foul language, and from the

voice he recognised the person to be the accused. His wife, who was alleged to be the first person who recognised the accused's voice is not examined as a witness. In cross-examination he stated that no one stated at that time that it was the accused's voice, but only guessed it was so. He added by way of explanation that when somebody asked who it was, some one stated that the voice resembled the accused's. P. W. 5 is the owner of the tea shop marked "F" in the plan. According to P. W. 5 the distance between his shop and the Church is about a furlong. He would say that while he was standing in the courtyard of his shop he saw the accused coming along the Palai Thodupuzha Road loudly abusing the Vicar. He saw the accused stopping near the Chapel and going along the Church Road and entering the Church compound. The accused continued to abuse the Priest and asked him to come out. Then there was silence for some time. By this time P. Ws. 2 and 3 went to the witness's place and when all the three got out to the Road they saw the accused coming from the Churchyard up to the middle of the Church Road and then going back along the same road. Though the distance between his shop and the Church is about a furlong and the night was dark, he still maintained that he could recognise the accused by sight as well as by his voice and gait. He admitted in cross-examination that what he told the police was that he saw the accused coming along the Palai-Thodupuzha Road when he was seated in the shop and did not tell them that he got down to the court-yard of the shop. P. W. 6 is a goldsmith who was at that time working in the shop of one Cheriyan at Kollappilli. He stated that after working till 10-30 P. M. and after taking his bath, he was returning to his house by the road leading to the Church from the Palai-Thodupuzha Road, when he saw the accused standing on the bridge near the Church. At that time, the accused was not saying anything. It was this witness who said that on his way, he saw P. W. 3 near the Kollappilli bridge which is about two furlongs from the scene of incident. According to the witness when he went near the accused, the accused asked him who he was and when he disclosed his identity and asked the accused whether he was going home with him, the accused said he was not. The alleged conversation between him and the accused is not heard by P. Ws. 2 and 3 who, even heard the sound caused by the Vicar opening the door. Evidently this conversation was introduced with a view to making it possible for the witness to identify the accused without the possibility of any mistake. It is strange that the accused who was profusely abusing the Vicar throughout, according to P. Ws. 2 to 5 was seen by this witness to be absolutely silent. The case that the accused went along the Church Road up to about half its length and then turned back does not appear to be probable. If the accused was the real culprit it is more likely that after having committed the crime, he would have returned home quietly unnoticed. His house is to the north-west of the Church and there is no reason why he should return along the Church road and then go back to his house.

10. The learned Sessions Judge has considered the evidence of these witnesses in detail and has found it impossible to accept their evidence. In appeal from an order

of acquittal, the High Court, before reaching its conclusions upon the facts, "should and will always give proper Weight and consideration to the views of the trial Judge as to the credibility of the witnesses and should be slow in disturbing the finding of fact arrived at by a Judge who had the advantage of seeing the witnesses". On a consideration of the evidence of these witnesses, we find no compelling or substantial reason to differ from the view taken by the learned Sessions Judge that it is not safe to act on their evidence.

11. We shall now refer to the remaining circumstances which are relied upon by the prosecution to prove the accused's guilt. One such circumstance is the recovery of M.O. 3, pieces of paper stained with human blood from the accused's court-yard, under Ext. P. 6, search list. Ext. P. 6 shows that the pieces of paper were picked up from a heap of the ashes found in the courtyard of the accused's house. In the absence of evidence to show that there was blood on the hands or body of the accused or that he had M. O. 3 paper with him at the time of incident, the recovery is not of much significance. Similarly the circumstance that the accused was away from the locality after the incident for about two and a half months will not also justify any inference of guilt. Even in the First Information Statement, the accused was mentioned as the person responsible for the murder of the Vicar and the police were taking all steps to arrest him. In his statement, the accused has explained the circumstances which made him keep out and his evidence is corroborated by P. W. 18, his father. Again, whatever presumption that can be drawn from the false denial made by the accused about his drinking toddy and arrack in the company of P. W. 15 and others that night, would not advance the prosecution case any further.

12. The Vicar, who had taken his meal by 8 and gone to bed by 9, was found dead the next morning at 5-30 on the door step with a stab wound, naked and drenched in blood. The inquest report shows that drops of blood had fallen on the wall and the articles kept in the room. That suggests that blood had spurted out from the wound. The walking stick used by the Priest was placed in one corner of the room and his bloodstained trousers were hung up on the screen. His shirt, torn at the place where the knife had gone through, was found in the room blood-stained. One cannot be sure whether the incident took place at the point "N" marked in the plan or in the room, and whether the Vicar chased the assailant from the room to that place after sustaining the injury, or whether he sustained the injury there and walked back. Whatever that be, if he had time and capacity to walk up and change his cloths and place the walking stick in the corner, it is strange why he should not have called the servant boy who was sleeping in the near-by room or rung the bell, the rope of which was hanging quite handy. It looks improbable that the Vicar who opened the door on hearing the accused abusing him and challenging him to go out and meet him so that he may stab him to death, and switched on the light and saw the accused at close quarters with the deadly weapon, should have dared to meet him single-handed or chased him out to a distance of 145 links. It is equally strange that the Vicar did not utter a sound or attempt to wake up his servant boy or to take

some other precautionary measure. The witnesses who could hear even the sound of the door being opened are positive that after the light was switched on there was complete silence at the Church premises. The medical evidence also casts a doubt on the alleged time of incident and death. The post-mortem examination revealed the presence of about 8ozs. of half-digested rice and curry in the stomach. The doctor gives evidence that in a healthy person, food taken should be emptied from the stomach to the small intestines within two hours. He is of the opinion that the Vicar was a healthy person and the presence of 8 ozs. of half-digested food in the stomach would indicate that death must have taken place within two hours after taking food. The servant boy's evidence is to the effect that the Vicar took his meal at 8 P. M. If the prosecution evidence is accepted, the accused was seen going towards the Church only at about 11-30 P. M. and the incident took place at about mid-night, that is, three and a half to four hours after the Vicar had his food.

13. The only circumstances proved against the accused are:

- (i) that the relationship between the accused and the deceased was strained,
- (ii) that the accused had taken drinks in the company of P. W. 15 and others at about 9-30 and he had with him a knife at the time,
- (iii) that the accused was absconding for some time after the incident,
- (iv) that pieces of newspaper, stained with human blood, were found in a heap of ashes in his courtyard and
- (v) that he falsely denied his presence in the toddy shop. These circumstances by themselves cannot justify an inference of the accused's guilt. The test to be satisfied by the circumstantial evidence, before it can be accepted as sufficient to sustain a conviction, has been laid down by the Supreme Court in [Hanumant Vs. The State of Madhya Pradesh](#), in the following terms:-

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability that act must have been done by the accused.

The evidence in this case falls far short of that standard. Doubts abound in all directions and the learned Sessions Judge has given the benefit of that doubt to the accused. We have only to confirm that finding of the learned Judge and dismiss this appeal. In the result the appeal fails and is dismissed.