

(1959) 01 KL CK 0028

High Court Of Kerala**Case No:** Criminal Appeal No's. 88, 160 and 161 of 1958 and Referred Trial No. 5 of 1958

Sivarajan

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Jan. 7, 1959**Acts Referred:**

- Constitution of India, 1950 - Article 134(1)(a)
- Criminal Procedure Code, 1898 (CrPC) - Section 164, 201, 342, 364, 417
- Evidence Act, 1872 - Section 25, 30, 8
- Penal Code, 1860 (IPC) - Section 109, 201, 302, 34

Citation: (1959) KLJ 221**Hon'ble Judges:** K.T. Koshi, C.J; P.T. Raman Nayar, J; K. Sankaran, J**Bench:** Full Bench

Advocate: K.T. Thomas, P. Pankajakshan Nair, P. Kesavan Nair, P. Karunakaran Nair in Criminal Appeal 88/58, for the Appellant; Mathew Muricken, V.S. Moothathu in Crl. Appeal 160/58, K. Sukumaran, (State Brief) in Crl. Appeal 161/58 and Advocate-General K.V. Surianarayana Iyer for State in all cases, for the Respondent

Final Decision: Allowed

Judgement

P.T. Raman Nair, J.

There are three accused persons in this case. The 1st, Sivarajan alias Ampy aged 22, is the servant of the 2nd, Krishnan Nair aged 44; and the 3rd, Sekharan aged 23, is the brother of P.W. 30, a kitchenmaid in the 2nd accused's house, and, it is said, a friend of the 1st accused. The 1st accused has been convicted u/s 302, Indian Penal Code, of the murder of Saraswathy Amma alias Baby", aged 38, the wife of the 2nd accused, and u/s 201, Indian Penal Code, of causing disappearance of evidence of the murder. He has been sentenced to death for the former offence, but has been awarded no sentence for the latter. The 2nd accused, who was charged u/s 109, Indian Penal Code with having instigated the aforesaid offences by the 1st accused,

and the 3rd accused who was charged u/s 34, Indian Penal Code, with having joined the 1st accused in the commission of the offences, have been acquitted. The 1st accused has appealed against his conviction and sentence while the learned Sessions Judge has submitted the proceedings for confirmation of the sentence. The State Government has appealed against the acquittal of the 2nd and 3rd accused. Criminal Appeal No. 88 of 1958 is the appeal by the 1st accused while Criminal Appeals Nos. 160 of 1958 and 161 of 1958 are the appeals by the State Government against the acquittal of the 2nd and 3rd accused respectively. The deceased and the 2nd accused were married 10 years and were living in the 2nd accused's house at Pattom in the city of Trivandrum. (This house is referred to in the evidence and in the judgment of the court below as the Pattom house, and Ext. P.1 is a plan of the house and its immediate surroundings). The deceased's mother, P.W. 2, was living in Pazhavangadi (her house is referred to as the Pazhavangadi house) about 2 1/2 miles away. The deceased had three children, the 1st a boy named Sakthidharan aged eight, the 2nd a girl, Rajalakshmi alias Rajam aged six, and the 3rd, again a girl, Girija alias Thankam aged four. All of them were going to school, the youngest to a nursery school just opposite the Pattom house and the older two, to different schools a little distance away. The boy used to go to school in the morning and return only at about four in the evening. The two girls used to go home for their mid-day meal at about half past twelve and go back to school at about half past one to return at about four. (Although the second child had no school in the afternoon, she used to go to the nursery school with her younger sister and play there until that school gave over in the evening). The 2nd accused was a P.W.D. Contractor and was also running a lodging house called the "Modern Tourist Lodge" where he had an office. He used to leave home for work at about nine in the morning and return only at about nine in the night. The 1st accused, an out-door domestic servant, was engaged about nine months before the occurrence which took place on the afternoon of 5th August 1957, and he was living in the house. The only other inmate of the house was the maid-servant, P.W. 30, but she was away on leave from the 2nd August.

2. The deceased was last seen alive between 1-45 p.m. and 2 p.m. on Monday the 5th August 1957. That was in or about her house. At about 10 p.m. on Wednesday, the 7th August, her body was found lying buried (but partly exposed) at the spot marked B in the plan, behind the cowshed in the southwestern corner of the compound of the house. Her husband, the 2nd accused, reported this at the Cantonment Police Station at three the next morning, and at 9-30 or 10 the body was exhumed under the direction of the Magistrate, P.W. 60, and was identified by her relatives and neighbours. The autopsy held that afternoon by the doctor, P.W. 31 revealed that the deceased had been killed by a cut on the back of her neck with sharp heavy instrument such as a chopper. The cut had gone right through the spinal column, severing the axis from the atlas and completely dividing the cord. Death must have been instantaneous and, judging from the contents of the

stomach, must have taken place within an hour or two after the deceased had had her last meal.

3. It is the prosecution case that the 2nd accused bore the deceased bitter hatred - that there was some estrangement by reason of which the 2nd accused was getting his mind-day meal from a hotel instead of having it sent from home was, in fact, admitted by him - and that at his instigation the 1st accused murdered her with the assistance of the 3rd accused in the dining room of the house by cutting her on the neck with the chopper, M.O. 10, and then, again with the assistance of the 3rd accused, took the body, after removing some of the jewels, to the spot marked B in the plan and buried it there. The evidence in support of this case is, apart from the confessions of the 2nd and 3rd accused, purely circumstantial, and it is best set out by recounting in some detail the course of events from the time of the disappearance of the deceased as unfolded by the witnesses examined by the prosecution.

4. As can be seen from the plan, Ext. P.1, the Pattom house faces east and is on the eastern slope of a hill. It is reached from the public road running in front of it through a gate and up a flight of steps, and the courtyard in which it stands is about 40 feet from the road and about 15 feet above it. Behind it is the upper compound, about 18 feet higher up; and all around it there are compound walls. The gate is of wooden planks and can be fastened from within. The house is thus a secluded house protected alike from outside gaze or intrusion.

5. At about 1 p.m. on the 5th August, P.W. 8, the sweeper of the nursery school just opposite the house, saw the deceased at the gate of her house with her youngest child. She was then wearing the blouse M.O. 12 which was subsequently (on 29th August 1957, three weeks after the exhumation) recovered torn and tattered from the pit where the body was found buried. About three quarters of an hour later, at about 1-45 or 2 p.m., P.W. 19, a neighbouring shopkeeper who was taking his child to the school found her still standing there, but without the child. At about the same time, whether earlier or later we do not know, P.W. 10 who came out of her house near by (marked D in the plan) on hearing her dog bark saw the deceased in what she called the portico of her house (apparently, the front verandah) sending away a madman who had come for alms. At about 2-30 p.m., P.W. 28 whose house is by the side of the road, about 200 feet south of the Pattom house, saw the 1st and 3rd accused going past along the road up to the gate of the Pattom house. Round about the same time, P.W. 18, the brother of the 1st accused, who went to the Pattom house to take the 1st accused to their uncle, P.W. 3, for receiving the payment which P.W. 3 used to make them every month, found the gate of the house shut and fastened from within. The child Rajam, was waiting outside the gate to gain admittance, and it was only after about 5 to 8 minutes of knocking at the gate that the 1st accused came and opened it. The 1st accused sent P.W. 18 away saying that he could not come just then, that he had some work on hand, that the deceased had

gone out to collect her milk dues (the deceased was keeping cows and was selling milk to the neighbours, P.Ws. 10, 66, 68 and 69) and that he had to attend on the children when they came home from the school and he asked P.W. 18 to call again after four. (What happened to the child, P.W. 18 does not say but presumably she went back to the nursery school forthwith for the evidence of the school mistress, P.W. 5, shows that she was there in the afternoon and took her younger sister home when the school closed at four). Some time later, between 3 and 4 p.m., a neighbour, P.W. 20, who was passing that way saw the 3rd accused come out of the gate of the Pattom house and proceed southwards, his face downcast, and at about 3-30 p.m. the 1st accused went to P.W. 19's tea-shop near by and bought some vadas for the children. A little before 4, P.W. 16, who was giving private tuition to the children every evening arrived for that purpose. He did not find the deceased in the house but the 1st accused was there. Soon the children came and, after teaching them for about an hour or so in the front room of the house (described in the plan as the portico room) P.W. 16 left the house. Meanwhile, at about 4 p.m., the milkman, P.W. 5, had come to milk the cow and to him the 1st accused said that the deceased had gone out to collect her milk dues. This he repeated to P.W. 10 when handing over her milk to her over the compound wall at about 5 p.m.; half an hour earlier P.W. 18 who had come back to take the 1st accused to P.W. 3 found him giving coffee to the children in the dining room. They went together to P.W. 3, and P.W. 3's evidence shows that they went and took the money from him a little before 5. At about 6 the neighbour, P.W. 7, a woman who lives in the house marked E in the plan, saw the 1st accused standing at the gate of the house with the children, the youngest of whom was crying. To P.W. 7's enquiries the 1st accused said that the deceased had gone out at about 3 p.m., to collect her milk dues and had not come back. P.W. 7 took charge of the children and asked the 1st accused to make enquiries as also to inform the deceased's mother, P.W. 2. At about 7 p.m., P.W. 7 saw the 1st accused again near the house and, on being told by him that the deceased was not in the Pazhavangadi house, she asked him to go and inform the 2nd accused.

6. At about 7-30 p.m., accused 1 and 3 went to the cycle shop of P.W. 17 near by and took two bicycles on hire. (These were returned the next morning by the 3rd accused and another person). A little before eight, the 1st accused appeared at the Pazhavangadi house and reported to P.W. 2, the mother of the deceased, that the deceased had disappeared, and he repeated the story that she had gone out at about 3 p.m. for collecting her milk dues. P.W. 2 forthwith charged the 1st accused and his master with having done away with the deceased, a charge which, so far as the 2nd accused was concerned, she repeated time and again thereafter. She next sought the assistance of P.W. 13, a tenant of hers running an ivory curio shop in the same compound, and he engaged a taxi and took her in it to the house of her nephew, P.W. 4, a court Amin living in Karamanai about two or three miles away. From there they collected P.W. 4 and his relative, P.W. 12, and proceeded to the Pattom house which they reached soon after nine. P.W. 2 was all the time crying out

that her daughter, and probably her grandchildren as well, had been murdered, and her cries attracted a crowd of neighbours and passers by. Among them were P.Ws. 7, 19 and 28. P.W. 7 brought the children and, after handing them over to P.W. 2, went back to her house, but P.Ws. 19 and 28 remained there in the crowd. A few minutes later, while they were all still at the gate, the 2nd accused arrived in his car and was told of the disappearance of the deceased. The 2nd accused went up the flight of steps to the house, followed by P.Ws. 2, 4, 12 and 13 and the children and some others, P.W. 2 all the while weeping and wailing and, in between her sobs, crying out that the 2nd accused must have murdered the deceased. When they reached the verandah of the Rouse, somebody handed over a key to the 2nd accused with which the latter opened the portico room. They found the two rooms on either side, namely, the bedroom and the storeroom, locked. P.W. 4 and others asked the 2nd accused to open these rooms, and the 2nd accused replied to this demand by saying that she (meaning the deceased) had taken the key with her when she went out. He also asked them rather curtly why the rooms should be opened. P.Ws. 4, 12 and 13 then inspected the two rooms by flashing torch lights, according to them through the ventilators above the doors, the windows being shut, but according to P.W. 2 through the open windows as well. Then the 2nd accused, against whom P.W. 2 was still shouting her charge of murder, left the place and went away in his car.

7. Meanwhile the 1st accused had arrived. According to P.Ws. 19 and 28, the 1st and 3rd accused came on bicycles a few minutes after the arrival of the 2nd accused, and the 3rd accused stood outside while the 1st accused went into the house. After the departure of the 2nd accused, P.Ws. 4, 12 and 13 questioned the 1st accused and accompanied by him, they went round the house and the surroundings - all the rooms excepting the bedroom and store-room were lying open and they even explored the well with the aid of a bamboo fetched by the 1st accused - but could find nothing. They then decided to make a report to the police, and all of them including P.W. 2 and the children got into the car, taking the 1st accused also with them so that the police may question him. Just as the car was moving away from the gate, the 2nd accused came in his car and, seeing the 1st accused in the other car, asked him to get down. The 1st accused got down, and accused 1 and 2 went into the house while P.W. 2 and her party proceeded in their car to the Cantonment Police Station two miles away.

8. P.W. 2 and her party reached the Cantonment Police Station at about 10-15 p.m. Just then the Sub Inspector, P.W. 75, was coming out of the station on his way home and to him P.W. 2 reported the disappearance of the deceased and also expressed her suspicion that the 2nd accused must have done away with her. P.W. 75 called a head constable by the name of Sivasankara Pillai from the station and directed him to record a statement from P.W. 2 and make an entry in the General Diary of the station. He then went his way. The head constable recorded a statement from P.W. 2, and P.W. 2 and her party drove away to the Pazhavangadi house. (The statement

recorded by the head constable is not forthcoming. The head constable who is still in service is not a witness, and we have it from P.W. 75 that no entry of any kind was, in fact, made in the General Diary, and that when he asked for the statement the next morning the head constable told him that it had been lost. With this state of affairs P.W. 75, and those above him, seem to have been content).

9. Soon after P.W. 2 and her party reached the Pazhavangadi house, at about 10-30 p.m. or so, the 2nd accused came there in his car, accompanied by a friend (referred to by the witnesses as the Shanti Bhavan Thampi after the name of a hotel he runs) and stopping the car on the road about 25 yards from the house got out. P.Ws. 4 and 12 who were standing on the road just outside the house went up to the 2nd accused and told him that they wanted him to open the two closed rooms. Thereupon the 2nd accused got into the car and drove away without making a reply.

10. P.W. 6, a relative of the deceased, went to the Pattom house some time after 10-45 p.m. on hearing of the deceased's disappearance. He found the 1st accused seated in the courtyard of the house, and the 2nd accused in the verandha. In the course of his talk with the 2nd accused regarding the disappearance of the deceased, and the action so far taken to find her, he turned to the 1st accused and asked him if the deceased had said where she was going. The 1st accused was about to say something in reply, but, before he could do so, the 2nd accused intervened by asking what business it was of the 1st accused to ask that of the deceased, and of what use it was to question the 1st accused about the matter. That silenced the 1st accused, and P.W. 6 said nothing more.

11. Round about mid-night, P.Ws. 4 and 12 went once again to the Pattom house and found the 2nd accused there with some of his friends among whom were the Shanti Bhavan Thampi and another Thampi called by the witnesses, the Edapazhanji Thampi, after the name of the locality in which he lives. According to P.Ws. 4 and 12, the 2nd accused and his friends were in his bedroom which was open; but according to P.W. 28 they had only just arrived and were in the portico room, and it was only after the arrival of P.Ws. 4 and 12 that the bedroom was opened by undoing bolt through the ventilator. P.Ws. 4 and 12 found nothing in the bedroom. Nor in the storeroom which was opened with a key found in the bedroom. P.Ws. 4 and 12 then went once more around the house and the surroundings, but finding nothing they left the place at about half past one in the morning.

12. On the 6th morning, some time before nine, P.W. 2 who felt - and it would appear rightly - that the Sub Inspector, P.W. 75, would not make any sincere enquiry, went to the house of the Inspector-General of Police, accompanied by P.W. 4 in order to report the matter to him and secure an effective investigation. The Inspector-General was away from the station, but P.W. 78, a dismissed police constable who was there, told P.W. 2 that he had seen a woman answering to the description given by her of her daughter, board a train for Quilon at the Central Station, Trivandrum, the previous evening in company with a young man. Taking

P.W. 78 with them P.W. 2 and her party next went to the house of the Deputy Inspector-General of Police, P.W. 77, to whom P.W. 2 reported the disappearance of her daughter and the suspicion she entertained against her son-in-law. After questioning P.W. 78, showing him a photograph of the deceased produced by P.W. 2, P.W. 77 directed P.W. 2 and the others to the Railway Police, and he himself got into touch with the Railway Police Sub Inspector over the phone and, gaining from him some confirmation of P.W. 78's story, directed the Sub Inspector to send a search party to Quilon and other places. He also gave instructions over the telephone to some of his subordinates in Trivandrum (including P.W. 75) to make enquiries. (A search party comprised of a railway police constable and of P.W. 46, a relative of the deceased, and P.W. 78, armed with a photograph of the deceased, did leave for Quilon. They could find no traces of her there. P.W. 78 then disappeared, but P.W. 46 and the constable continued their fruitless search in Shencottah and other places and returned to Trivandrum on the 8th.)

13. Meanwhile, the 2nd accused also was making enquiries. It would appear that on the 5th night itself he went round Pazhavangadi, the railway station, the bus stand, and other places, and on the 6th morning he asked P.W. 42, a neighbour who was passing by the Pattom house, whether there was any news of the deceased. P.W. 42 suggested that he should question the 1st accused, and thereupon the 2nd accused went in without making a reply. At about 9 a.m., the 2nd accused and the Thampis went and consulted the astrologer, P.W. 61, regarding the whereabouts of the missing woman without revealing her identity, and thereafter the party went and made enquiries in the locality where the maid-servant, P.W. 30, was living. It would also appear from the evidence of P.W. 12 and of P.W. 23, a friend of the 2nd accused, that he was keeping in touch with P.W. 2 and her party and exchanging information. In fact P.W. 2 sent for him through a messenger in the course of the day. He did not himself go, but sent P.W. 23 and one of the Thampis to meet P.W. 2 at the Pazhavangadi house, and it would appear that, on the basis of the information furnished by her to these persons, he telephoned to the Quilon Police Station and requested the Sub-Inspector, P.W. 71, to make enquiries for the missing woman. On the 7th morning the 2nd accused again went about consulting astrologers and in the afternoon, accompanied by the two Thampis and by P.W. 73, a head constable of the Crime Branch, he went in his car making inquiries in Kulathoor, Attingal and other places. He returned home to the Pattom house only after 11 in the night. The 2nd accused's friends P.W. 41 and the two Thampis and some others including an old servant, Sekhara Pillai, were with him, and the 2nd accused said that he would be continuing his search in Kadakkavoor, a place indicated by some astrologer, early next morning.

14. But this was not to be. Earlier, at about 10 p.m. on the 7th P.W. 44, who lives about six furlongs away from the Pattom house, was passing by on his way home, and he saw the 1st accused standing outside the house. He asked the 1st accused what news there was of his missing mistress. The 1st accused said that there was no

news and that his master had gone to various places to find out. Then he called in P.W. 44 asking him if he did not notice a stench. P.W. 44 noticed none, but after they had gone up the flight of steps and reached the courtyard P.W. 44 found that there was a smell. The 1st accused then drew P.W. 44's attention to something on the ground behind the cowshed at the spot marked B in the plan, and on going near and striking a match P.W. 44 was able to see a white object there. P.W. 44 went down to the road and came up again with P.Ws. 40 and 42 who happened to be passing by and when they examined the "object more closely with the aid of P.W. 42's torch light they found that the object was a piece of flesh and they also noticed that the ground about the object was freshly upturned. When questioned about this the 1st accused said that the flesh was the left-over of the dog's meat (there was an Alsation dog in the house) and that he had cleared up the place a few days earlier as directed by P.W. 2 who was staying in the house from the 1st to the 3rd August. P.Ws. 40 and 42 left the place, P.W. 44 also wanted to go away, but the 1st accused detained him against the arrival of his master.

15. When the 2nd accused came at about 11 p.m., P.W. 44 told him that he was waiting to see him. But the 2nd accused went in without waiting to speak to P.W. 44 and then proceeded to the bathroom for a bath. P.W. 44 told the Edapazhanji Thampi and Sekhara Pillai about the piece of flesh, and about dogs having gathered there, and he took them to the spot. They examined the place closely with the aid of a torch light and found that the exposed piece of flesh was a human leg and buttock. They concluded that it must be the body of the deceased and they went back to the house where the Thampi told the 2nd accused, who had come out after his bath, what they had seen. The 2nd accused sent P.W. 41 to fetch a taxi, and in it he left with P.W. 41, the two Thampis and the others, saying that he was going to the police station. Only the 1st accused and P.W. 44 were left behind. It was about midnight then.

16. At 2-40 a.m. (that is on the 8th) the 2nd accused went to the house of P.W. 75, the Sub Inspector, woke him up and gave him the information. Together they proceeded to the Cantonment Police Station where they reached at about 3. There P.W. 75 recorded from the 2nd accused the statement, Ext. P-35, which was treated as the first information on which the present case was registered and investigated. It was about 4 a.m. by the time the recording of Ext. P-35 was complete, and then P.W. 75 went with the 2nd accused to the Circle Inspector, P.W. 74, to whom he gave a copy of Ext. P-35. They then returned to the Cantonment Police Station accompanied by P.W. 74 who, leaving the 2nd accused and P.W. 75 there, went to the house of the City Deputy Superintendent of Police and, reporting the matter to him, took his instructions. P.W. 74 then went back to the police station, and from there he went to the Pattom house taking a constable with him.

17. P.W. 74 reached the Pattom house at about 4-30 a.m., and he found the 1st accused and P.W. 44 there. They showed him the dead body lying half buried. Then

on being questioned by him, the 1st accused gave P.W. 74 what he has described as a full and true account of what had taken place. P.W. 74 then took the 1st accused to the house of the Deputy Superintendent of Police where he was once again questioned in the presence of the Deputy Superintendent of police and was arrested at about 6-30 a.m. P.W. 74 next took the 1st accused back to the Pattom house where they reached at about 6-45 a.m., and at about the same time P.W. 75 also came there accompanied by the 2nd accused as directed by the Deputy Superintendent of Police. Thereafter, in pursuance of the statement already made by him, the 1st accused took out and produced certain articles from places pointed out by him. First three thorthus and a rag (altogether marked as M.O. 18, and on all of which subsequent chemical examination discovered human blood) were taken from beneath a heap of straw on the western side of the cowshed; next M.O. 19, a piece of gunny, a mundu and a tuft of false hair (on all of which human blood was detected) and M.O. 11, a table knife, identified as belonging to the house-hold but on which no blood was found were produced from a shallow pit beneath a plantain tree a little to the north of the kitchen. M.O. 2, two gold chains (identified by P.W. 2 as jewels usually worn by the deceased), and M.O. 3 two pairs of new gold earrings wrapped up in the bill, M.O. 3 (a) relating to their purchase (and showing that they were bought by the 2nd accused on 15th April 1957 from the Ganesh Jewellery Mart), were found in a newspaper packet taken out from beneath a heap of ash in a corner of the northern verandah of the house. All these articles were seized under the mahazar, Ext. P-27.

18. The dining room, the alleged scene of the murder, was next inspected, and P.Ws. 74 and 75 and the others with them noticed blood stains on the floor and on the walls. (P.W. 74, in fact, had seen these earlier-the 1st accused had shown them to him when he was questioned at 4-30 a.m.). They noticed blood stains also on a stool and on a bench in the room. They found the chopper, M.O. 10, in the kitchen storeroom. The chopper, M.O. 10, the seat of the stool, M.O. 21, a leg of the bench, M.O. 20, and scrapings from the wall were sent for chemical examination. Human blood was found on M.O. 20, but no blood was found on the rest.

19. At 9-30 a.m. the Executive First Class Magistrate, P.W. 60, to whom a requisition had been sent for the exhumation of the body, arrived. She found the body lying buried, with a leg and buttock exposed, in a pit about 6 feet long, 3 feet wide, and 2 feet deep, under some plantain trees at the spot marked B behind the cowshed. The body was under about six inches of earth covered with plantain leaves and bits of plantain trunk which looked a few weeks old. P.W. 60 had the body taken out. It was naked (except for a bodice) and highly decomposed, and portions were missing. Four gold bangles (all on the left arm), a pair of earrings and a nose-screw were found on the body, while four other gold bangles (apparently belonging to the right arm, the plam of which was missing) were found in the pit by the side of the body.

20. P.W. 60 proceeded to hold an inquest at which she examined P.Ws. 2, 4 and 7 and accused 1 and 2.

21. The doctor, P.W. 31, did an autopsy on the body of the deceased that after-noon, and Ext. P. 14 is the postmortem certificate he issued. From the stage of decomposition of the body he came to the conclusion that death must have taken place about 72 hours earlier (that is, some time on the 5th), and from the presence of partly digested rice, filling the stomach, that it must have taken place within an hour or two of the deceased having had her last meal. There was a bone deep incised horizontal wound, 2 inches X 1/2 inch, just above the right eyebrow, and a gaping incised wound, 7 inches X 3 inches, cutting right through the spinal column between the atlas and the axis, starting from the right ear-lobe and proceeding backwards and slightly upwards just beyond the mid-line of the back of the neck. Below the jaw, about 3/4 inch below the above wound a triangular area of skin and the superficial structures (with a base of 2 inches and sides each about 2 1/2 inches) was missing, and below that there was a skin deep horizontal incised wound 1 inch x 1/2 inch. The left upper part of the chest was discoloured and there was extravasation of blood in the underlying tissues. The skin and flesh in different parts of the body were eaten up; and the right breast, right palm and right foot, were missing. Death, which must have been instantaneous was due to the injury on the back of the neck. This was an ante-mortem injury, and was, of course, necessarily fatal.

22. Ext. P. 29 (a) is the record made of the 1st accused's statement at the inquest held by P.W. 60. There he confessed that he had murdered the deceased by cutting her with a chopper on the neck and the forehead. That afternoon he and the deceased were alone in the house. The deceased was resting, and he woke her up and called her to the room adjoining the kitchen (the dining room) saying that there was a woman waiting to see her. Then he bolted the doors of the room and pushed her down and cut and killed her with a chopper. He also struck her on the chest two or three times with a table knife. Next he dragged the body to a spot south of the cowshed, dug a pit there, and buried the body in it under some earth and pieces of plantain trunk. He concealed the thorthu which he was wearing, as also the mundu and thorthu which she was wearing, all of which were blood-stained, and the blood-stained rags used for wiping the floor, in a place west of the cowshed. The false hair of the deceased and the table knife and some clothes were also concealed. The chains worn by the deceased, and two pairs of studs (earrings) taken by him from an almirah along with a bill, he concealed in a heap of ash. All these he took out and produced in the presence of the police. He bore the deceased bitter-ill-will because the deceased, who had given a loan of Rs. 125 to the maid-servant, P.W. 30, with whom he (the 1st accused) was intimate, was collecting the extortionate interest of Rs. 5 a month per Rs. 50, and eight annas per day for Rs. 25 which was given later. The deceased always used to scold him and ask him to go away she even laid violent hands on him and, for about a fortnight before the occurrence, was

starving him giving him only old kanji, and that only once a day. He had therefore made up his mind to murder her, and was on the lookout for an opportunity when there was no one else in the house.

23. At 11-45 a.m. the same day (namely on the 8th August) the 1st accused was produced before the First Class Magistrate, P.W. 32, for the purpose of recording a confession from him u/s 164, Criminal Procedure Code. P.W. 32 remanded him to the local sub-jail to give him time to reflect and had him brought up before him again at 3 p.m. the same day. Then, after administering the prescribed warnings, and after questioning him in the manner prescribed by the rules to ensure that he was making a voluntary statement, and being satisfied that he was, P.W. 32 proceeded to record from the 1st accused the confession, Ext. P. 15. In it the 1st accused repeated more or less what he had said at the inquest, but with greater particularity and with a few variations that are hardly material. He however added that, about a fortnight earlier, there had been a quarrel between the 2nd accused and the deceased as a result whereof they were not on speaking terms, and the 2nd accused used to give the money (Rs. 5) for the household expenses every morning to one or the other of the children muttering a curse. (In this confession, Ext. P.15, the bedroom is referred to as the northern room and the cowshed as being on the northern side of the compound - northern is obviously a slip for southern.)

24. The 1st accused was kept in remand in the sub-jail. At about 6 p.m. on the 10th August, P.W. 72, the Deputy Superintendent of Police, Crime Branch took over the investigation from P.W. 74. He went to the sub-jail at 7 p.m. that day taking the 1st accused's brother, P.W. 18, with him and he had P.W. 18 question the 1st accused closely with regard to the murder after adjuring him to speak the truth. P.W. 74 has been permitted to give evidence to the effect that he was listening to this conversation between the brothers, and that to P.W. 18's questions the 1st accused reaffirmed what he had said in Ext. P. 29 (a) and Ext. P. 15 - this apparently in the view that this was a confession made to P. W. 18 and not to P.W. 74. The learned Sessions Judge has however, placed no reliance on this alleged confession, and there can be little doubt that the confession was, in substance and in effect, a confession made to P.W. 74 and that it is therefore altogether inadmissible by reason of section 25 of the Evidence Act.

25. On 12th August 1957, by the letter Ext. P. 45, the Inspector-General of Police directed P.W. 80, the District Superintendent of Police, Crime Branch, to take up the investigation of the case and to conduct it without the association of any of the police officers who had hitherto had anything to do with it (The reason obviously was that there were loud and insistent complaints in the press and elsewhere regarding the way in which the investigation was being conducted). P.W. 80 accordingly took up the investigation at 7 p.m. that day, and the further investigation was done under his immediate supervision by the Circle Inspector of Police, P.W. 79, with the assistance of the Sub Inspector, P.W. 76.

26. The 1st accused was questioned in the sub-jail, and was also taken out several times by P.W. 79 in connection with the investigation. On 19th August 1957, the 1st accused told the Superintendent of the sub-jail that he wanted to be taken before a magistrate in order to make a confession. Accordingly the 1st accused was sent by the Superintendent to the magistrate, P.W. 35, with the report, Ext. P. 16. P.W. 35 recorded from the 1st accused, the statement, Ext. P. 17, after administering him the prescribed warnings and after taking due precautions to ensure its voluntary nature. But what the 1st accused actually did in Ext. P. 17 (which he said he was making because he wanted to speak the truth, not having done so in his earlier statements for fear of the police and other fears) was to go back on his confessions Exts. P. 29 (a) and P. 15, absolve himself of all blame, and throw the whole blame on the 2nd accused. The version he gave was that he went out of the house at about 1 p.m. on the 5th August leaving the deceased alone in the house, and that, when he returned at about 1-30 p.m. he heard a sound as of cutting coming from the house, on reaching the courtyard. He went inside the house and found the deceased lying dead in the closet. She had bleeding injuries. By her side was a blood-stained chopper, and standing near by was the 2nd accused wearing only a thorthu which, like his face and body, was stained with blood. The 2nd accused then buried the body in a pit used for depositing rubbish and dry leaves, covering it with earth and leaves while he (the 1st accused) stood by dumbfounded. The pool of blood on the floor of the closet was washed into the flush-out, while the blood that had fallen in the courtyard was covered with sand. The 2nd accused handed over to him the mundu and thorthu which the deceased had been wearing as also the thorthu he himself was wearing, along with a piece of gunny, a table knife, the chopper and two gold chains, and asked him to conceal these articles. These, as also the false hair of the deceased which had fallen off, he concealed in the several places from which he produced them after his arrest. The chopper he washed and kept on the bin in the kitchen-store. Meanwhile the 2nd accused had a wash and went out. At about seven in the evening he (the 1st accused) went to the Pazhavangadi house and, as instructed by the 2nd accused, informed P.W. 2 that the deceased was missing. From the very beginning, even when he handed over the incriminating articles for being concealed, the 2nd accused had asked him to produce them if the police came, and own that he had done the deed. After the body was discovered as a result of the stench, the 2nd accused went with the two Thampis and another friend (P.W. 41) and fetched the Head Constable, Kochuvelu Pillai (P.W. 73) who, after seeing the body, pronounced that the police must be informed. On this errand all of them left, and, when the police came a little later, in accordance with the instructions given by the 2nd accused, he owned that he had done the deed and showed them the places where the several articles lay concealed. The 2nd accused and the deceased had quarrelled and were not on speaking terms from about a fortnight prior to the murder. There were quarrels over money matters, and there was a quarrel even on the morning of occurrence. The 2nd accused suspected the deceased's character, in particular, her relations with one Nanukuttan (P.W. 27) staying just across the road

and had, on many occasions, questioned him (the 1st accused) with regard to this.

27. The next day, i.e., on the 20th August, the 2nd accused was arrested by P.W. 79, and on the 7th September the charge-sheet, Ext. P. 40, said to be an interim charge-sheet, was filed against the 1st and 2nd accused under sections 302 and 201, I.P.C. read with section 34, I.P.C. In this charge-sheet the 3rd accused was cited as a witness for the prosecution, witness No. 36.

28. On 20th September 1957 the 2nd accused was released on bail.

29. The 3rd accused was questioned in the case, first on the 15th August, then on two occasions thereafter, and finally, in his village some miles away from Trivandrum, on the 25th September five days after the 2nd accused's release on bail. Immediately after this he was sent to the magistrate, P.W. 35, before whom he was produced in court at 11-15 a.m. P.W. 35 had him detained in her chambers until 2 p.m. in order to give him time to reflect, and then had him brought up before her in open court, and, after administering the prescribed warnings and observing all due precautions to ensure the voluntary nature of the statement he was making, recorded from him the statement, Ext. P-18. In it the 3rd accused claimed to have been present in the house at the time of the murder. About a fortnight earlier, he had been working with the 1st accused, putting up a fence in a compound of the 2nd accused, and the 1st accused had told him that, at the instance of his master, he had decided to do away with the deceased who was ill-treating him because of his close association with his master. The 1st accused also told him that there was enmity between his master, the 2nd accused and the deceased because, on one occasion, the 2nd accused had brought a woman into the house late in the night and asked the deceased to make coffee for her, but the deceased had instead brought a broom and beaten the woman with it. This resolve of his the 1st accused repeated the following day after he had fetched him for the purpose of receiving from the 2nd accused a higher wage than the deceased had paid him. The 1st accused also said that the 2nd accused had promised to bear the entire responsibility in the matter. On the 4th August the 1st accused met him (the 3rd accused) in a shop and asked him to go to the house the next day. The next day the 1st accused came to the house of his sister P.W. 30, with whom he was staying, at about noon and again at about 2 p.m., and, after having had his meal there, took him (the 3rd accused) to the Pattom house. The 1st accused kept him (the 3rd accused) waiting near the tap (there is a tap in the yard just outside the closet), and asking him to keep a watch, went into the central room from where, after calling out to the deceased, he went to the kitchen. Then the 1st accused came to the dining room with a chopper and delivered a cut which was immediately followed by a cry. After about 10 minutes, the 1st accused called him (the 3rd accused) in, and when he went in, he found the deceased lying dead with cut injuries and with only a blouse on her person. At the instance of the 1st accused he took hold of the body by the feet and dragged it into the closet, the 1st accused holding it by the arms. Then

the 1st accused took a table knife and cut the body above the foot, after which operation he handed over the table knife to him (the 3rd accused), and, removing the jewels on the body, kept them in his waist. The 1st accused next ordered him to saw the deceased's neck with the knife and, after an ineffective protest, he proceeded to do so. The knife got bent and he dropped it and went out and washed his hands. Then, after changing the thorthu he was wearing the 1st accused opened the almirah in the bedroom, took two pairs of earrings and kept them in his waist. Just before that he had gone down to the gate and come back saying that he had closed the gate. The 1st accused then washed the blood on the floor and, as it was time for the children to come, sent him (the 3rd accused) away and asked him to come again at five. When he went again at five, the 1st accused told him that the children had been safely sent to P.W. 7's house. Under the 1st accused's directions he cleared the pit near the cowshed of the bits of plantain trunk lying in it, and the two of them then carried the dead body to the pit, the 1st accused holding it by the chest and he himself by the feet. The body was put into the pit face downwards, and the 1st accused covered the body with bits of plantain trunk, bricks, and earth, especially where the foot was showing out. After that the 1st accused dismissed him saying that the body could remain there safely for the time being and could be removed at leisure after the 2nd accused came. He went away. Later he accompanied the 1st accused on a bicycle when the latter went to Pazhavangadi to inform P.W. 2 of the deceased's disappearance.

30. There follows a detailed account of his movements on that day and on the two following days - the entire statement, in fact, abounds in a wealth of circumstantial detail - of which it is unnecessary to recount more than that on the night of the 5th, after P.W. 2 and her party had left for the police station, the 2nd accused called him (the 3rd accused) into the house and asked him to go to Pazhavangadi and find out what was happening there. After going to the Pazhavangadi house he came back and reported to the 2nd accused who thereupon gave him a rupee and sent him away. The next day he was again in the Pattom house. In the evening, the 2nd accused called him in and warned him against speaking out saying that if he spoke out he would surely be caught. The 2nd accused assured him that he (the 2nd accused) would see to it that no trouble ensued. The 2nd accused asked him not to frequent the house, but nevertheless he went there again after his night meal and slept there for the night. At two in the morning a lorry came and the 2nd accused went out and had a talk with the lorry man. After a while, the lorry left. He (the 3rd accused) then went home. The next day he returned at about four in the evening when he found the 1st accused covering the leg of the body, which was exposed, with some earth. The 1st accused asked him to go away and he went away.

31. The 3rd accused was arrested the same evening soon after he had made the confession, and on 10th October 1957 the final charge-sheet was laid against the three accused. On 2nd November 1957 the 3rd accused sent the petition, Ext. D-8, to the Magistrate, P.W. 35, retracting the statement (Ext. P.18) he had made to her and

complaining that he had been tortured by the police into making it.

32. The rest of the evidence in the case is designed mainly to secure corroboration for the several confessions; much of it relates to immaterial particulars; and where it is material, it will be referred to in considering the case against each accused.

33. At the preliminary enquiry there was no questioning of the accused u/s 342, Criminal Procedure Code. In fact no witnesses were examined at the enquiry, the words "witnesses to the actual commission of the offence" in section 207A(4) of the Code being presumably read as meaning eye-witnesses, and the reference in section 207A(7) to "examination (if any)" as making examination of the accused optional even in a case where commitment is ordered. At the trial the accused were examined in great detail with reference to the circumstances appearing against them, and all of them denied their guilt.

34. In protesting his innocence, the 1st accused, affirmed what he is alleged to have told the several prosecution witnesses on the evening of the 5th August, and said that, at about 3 p.m. that day, the deceased went out saying that she was going to collect her milk dues. He had nothing to say with reference to the evidence of P.W. 42 that, on the night of the 7th, when questioned about the piece of flesh found laying behind the cowshed he (the 1st accused) said that it was the meat left over from what the dog had eaten. He however denied having taken P.W. 44 to the cowshed and drawn his attention to the stench, and to the white object lying behind it. He also denied having taken out and produced M.Os. 2, 3, 3(a), 10, 11, 18 and 19, or having pointed out the places where those articles lay concealed, or the blood stains in the dining room, to P.W. 74. He denied having made any statement to P.W. 60, and his case with regard to the confessions, Exts. P. 15 and P. 17, was that they were false confessions. On the night of the 7th, the head constable, P.W. 73, tortured him and asked him to own the guilt in which event he said no harm would befall him since the 2nd accused had promised to see to it that no case was brought. Else the 2nd accused would be caught and that was why he (the 1st accused) should assume responsibility for the crime. P.W. 73 also taught him what he was to say. Then he was handed over to P.W. 74 who took him to the house of another police officer and from there to the Cantonment Police Station where he was manhandled. In the morning he was taken to the Pattom house and kept bound with ropes in one of the rooms. When P.W. 60 came he was taken away - he made no statement before P.W. 60 - and was later produced before the Corporation Magistrate, P.W. 32, to whom he made the false statement P.W. 73 had tutored him to make, fully believing that no harm would come thereby. Then he was sent to the sub-jail from where he was taken a few days later by P.W. 79 and other police officers to the Pattom house where he was tortured. The next day he was taken out again to another place where he was beaten and made to say that it was not he but the 2nd accused that had committed the murder. On the 19th August, P.W. 79 met the Jail Superintendent and the same day he (the 1st accused) was produced before the

Magistrate, P.W. 35, to whom he made the false statement, Ext. P. 17, in accordance with what P.W. 79 and the others had taught him to say.

35. The 2nd accused said that he had been falsely implicated in the case at the instance of one Anirudhan, a communist leader whom he had refused help in the last general election. There was no ill-feeling between him and the deceased although it was true that, for about a fortnight before the deceased's disappearance, he was taking only his morning and night milk in the house and not any meal from the house since the food that was being sent was not good. When he came home at about nine, on the night of the 5th, there was a crowd at the gate. People there were saying that the deceased was missing. When he went into the house he found P.W. 2 and four or five others there, and P.W. 2 was crying out that her daughter had been murdered, A number of people were inspecting the house and looking into the closed rooms through the windows, and no one at that time asked that the two closed rooms should be opened. He was so perplexed and put out by the charges and abuses which P.W. 2 was hurling at him, that he did not know what to do and did feel like comforting P.W. 2 or the weeping children. He therefore left the house and went in his car to fetch his friends, in particular, the Shanti Bhavan Thampi. When he came back he found the Pazhvangadi people in their car preparing to go. The 1st accused was also in the car and since the only information the 1st accused had given him was that the deceased had gone out to collect her milk dues, he asked the 1st accused to get down with a view to question him further. Later he went to Pazhavangadi with his friend the Shanti Bhavan Thampi to make enquiries, but did not actually go to the house for fear of P.W. 2 again abusing him and making a scene. He sent a man to go and find out the position there, and the man came back saying that the children were there but not the deceased. P.Ws. 4 and 12 did not come to him or speak to him then. From then onwards, till the discovery of the corpse, he was making enquiries in Trivandrum and other places, and after getting the news of the deceased having entrained for quilon, he telephoned to the Sub Inspector of Police there. On the 5th night itself he had been to the Cantonment Police Station to inform the police, but he was told by a constable there that P.W. 2 had already given information and he therefore did not think it necessary to lay any information himself.

36. The 3rd accused denied having gone any where near the Pattom house until the police took him there after his arrest, and he also denied having gone about with the 1st accused. On the days in question he was actually in the Medical College Hospital in connection with the operation of his brother-in-law and he knew nothing whatsoever about the alleged murder. On the evening of the 4th Kanni last (20th September 1957, the day of the 2nd accused's release on bail) when he was in his village of Poudikonam, P.W. 19 and other police officers came there and took him away in a jeep, and between the 4th and 9th Kanni he was taken to various places and tortured in a most inhuman way in order to confess until, the unbearable pain caused by the final act of torture, namely, the setting fire to an oiled rag wound

round his private parts, compelled him to agree to say whatever they wanted him to say. All the time P.W. 79 and others had been telling him that the 2nd accused had come out from jail, that he (the 3rd accused) and the 1st accused must confess to the murder of the deceased, and that if he did so a good sum of money as also a job would be secured for him from the 2nd accused. He was also told that there were no eye-witnesses for the prosecution and that if he confessed he would be made the first witness for the prosecution. He was given in writing what he had to say in court, and P.W. 79 gave the final touches before sending him to the Magistrate, P.W. 35, to whom he made the statement which P.W. 79 had coached him to make. Then he was sent to the sub-jail. P.W. 79 told him that, after he had been there for ten days, he would be made an approver. Some days later he was taken before court and some papers were given to him from which he gathered that he was the 3rd accused in the case, and thereupon he submitted a petition (Ext. D8) stating the true facts.

37. The accused examined no witnesses in their defence.

38. The case which the prosecution would construct from the evidence it has adduced-and according to the learned Advocate-General who appears for the State that is the only possible construction, at any rate so far as the 1st and 2nd accused are concerned-is this;

Owing to the mounting hatred which the 2nd accused bore the deceased he decided to do away with her, and he instigated the 1st accused, with whom his relations were something closer than that of an ordinary master and servant, to carry out his purpose. The 1st accused, with or without the concurrence of the 2nd accused, secured the services of the 3rd accused since the task was something which he could not accomplish by himself. A day when the maidservant, P.W. 30, was absent on leave, and a time when the children would be away at school, so that of the inmates, only the deceased and the 1st accused would be in the house, and the chances of any outside intrusion were remote, namely, the afternoon of the 5th August, after the children had gone back to school, and before their return and the expected arrival of the milkman and the tuition master, was chosen; and the 2nd accused took care to see not merely that he kept away from the house but also that there would be evidence to prove that he was away. At about 2-30 p.m. after having fetched the 3rd accused to assist him, the 1st accused murdered the deceased in or about the house, most probably inside the house, by cutting her on the back of her neck with some heavy cutting instrument like the chopper, M.O. 10. Then with the assistance of the 3rd accused, the 1st accused carried or dragged the body to the spot marked B behind the cowshed and buried it there in an old pit. The clothes worn by the deceased (with the exception of the bodice which alone was found on the body when it was exhumed) as also her false hair and the two chains she was wearing round her neck must have come off, and these together with the thorthu he himself was wearing and the rag used by him for wiping off the blood, the 1st

accused concealed in the several places from which he produced them on the 8th morning. All this must have been in progress when the 1st accused's brother, P.W. 18, came at about 2-30 p.m., and that accounts for P.W. 18 finding the outer gate fastened from within as was not usual, and having had to knock for over five minutes before the 1st accused appeared and opened it. Even so, the 1st accused sent P.W. 18 away without allowing him inside the house asking him to come again after four by which time, before the arrival of the tuition master, the milkman and the children, he completed his work and came out with his story (in fact stated earlier to P.W. 18) of the deceased having gone out to collect her milk dues. When the 2nd accused came home at nine, as if as usual, he had not met the 1st accused and therefore did not know what exactly had happened. From what the people gathered there, including P.W. 2 and her party, were saying, and from the absence of the deceased, he could only have surmised that his plan had been executed, but in what manner, and how far, he could not have known. What had been done with the body and what the closed rooms held he did not know, and that accounts for his silence in the face of the charges levelled by P.W. 2, his refusal to open the two closed rooms, and his leaving the place abruptly to seek the help and advice of his friends. When he came back again at about ten, he found the 1st accused being taken away by the Pazhavangadi party in their car. This, of course, did not suit his purpose, for, in the first place, he did not want the 1st accused to be questioned either by the Pazhavangadi party or by the police, and secondly, because he himself wanted to find out from the 1st accused what exactly had happened. Therefore he took the 1st accused down from the car and having learnt that the rooms contained nothing incriminating, the hesitation of 9 p.m. became assurance by the time P.Ws. 4 and 12 came again to the Pattom house at about midnight and demanded inspection of the closed rooms.

The pit behind the cowshed was intended only as a temporary resting place for the body, and both on the night of the 5th and on the night of the 6th, the 2nd accused's lorry was brought and stopped near the Pattom house with a view to remove the body to its intended destination. But the presence of outsiders in and about the house rendered this impossible with the result that the lorry had to be sent back. Meanwhile, in order to put up a show of innocence, and also in order to put P.W. 2 and others not in his secret on a false track, the 2nd accused was going about with his friends making enquiries about the deceased, consulting astrologers, and telephoning to the Quilon Police. By the night of the 7th, it became clear that the body could not be removed and could no longer be hidden-portions were sticking out, probably as a result of the attentions of dogs and jackals, and the stench of decomposition was becoming too noticeable-and therefore the 1st accused was made to call in P.W. 44 and others as if in innocence and, with their help, discover the body and take the news to the 2nd accused. Then, after taking time, probably for consultation and preparation, and having made sure (either then or a little later with the help Of his friends in the police) that the 1st accused would

take the entire blame on himself, the 2nd accused went to the police station and, as if in innocence, but really betraying himself by protesting too much, made the report, Ext. P. 35.

39. I shall now consider how far the evidence reproduces this picture of guilt in respect of each of the accused. But before doing so, it might be as well to say a word or two about the conduct of the police with regard to this case, conduct which has come in for severe criticism, especially at the hands of counsel for the 1st accused, and which certainly seems to call for explanation. We have already seen how when P.W. 2 went to the police station and complained to the Sub-Inspector, P.W. 75, that her daughter was missing and must have been murdered by her husband (although P.W. 15 himself does not say so, P.Ws. 2, 4, 12 and 13 are definite that P.W. 2 levelled the charge of murder) the latter was content to go his way after asking a head constable to record a statement from P.W. 2 and make an entry in the General Diary. When he asked the head constable the next morning he was told that the statement taken from P.W. 2 had been mislaid and that no entry had been made. This seems to have satisfied him. Even after P.W. 2 had taken the matter to the notice of the deputy Inspector General, P.W. 77, on the morning of the 6th expressing her belief that the 2nd accused must have murdered the deceased and complaining that P.W. 75 was not taking proper action on the report she had made, no inquiry seems to have been directed as to whether a case had been registered on P.W. 2's report and investigation undertaken. Such inquiry as P.W. 77 made or directed - he was, he has said, after his interrogation of the dismissed constable, P.W. 78, entertraining the hope (perhaps he meant the belief), shared by P.W. 2 herself, that it was a case of disappearance rather than of foul play - was entirely informal, and even a search for the jewels of the deceased for which P.W. 2 asked on the 7th, was to have been a private search by P.W. 2 with the consent, and in the presence, of the 2nd accused although with a police officer for an observer. Among the police officers who were asked to make enquiries for the missing woman was the Circle Inspector, P.W. 74. He had been asked to do so by the District Superintendent of Police, and neither he nor his superiors could have been unaware of the allegation of foul play. That being so the first thing that would have occurred to a police officer as to anybody else (it did, in fact, occur to the Pazhavangadi party and to the neighbours on the 5th night itself) would have been to make a thorough search, whether formal or informal, of the house and its surroundings. And yet it would appear that there was no search as such (although many things were discovered there meanwhile) until the 25th August. P.W. 74 did go to the Pattom house accompanied by P.W. 4 at about 10-30 a.m. on the 7th with a view to make enquiries. But he found the gate closed and so came away without doing anything. He went against at about 1 p.m. to be again baffled by the closed gate. He went for a third time about 1-45 p.m. and this time succeeded in meeting the 1st accused at the gate. Even so he did not go into the house but was content with questioning the 1st accused at the gate and eliciting from him that he was returning from the laundry and that the 2nd accused was in

the Tourist Lodge and also the stale story and that the deceased had gone out at 3 p.m. on 5th August 1957 saying that she was going to collect her milk dues. Next, P.W. 74 went to the Tourist Lodge where he met the 2nd accused and asked him about the deceased's jewels, and he also-, gathered from him that he (the 2nd accused) had been to Quilon to meet the Sub-Inspector, P.W. 71, and make inquiries. Beyond this he did nothing until a copy of Ext. P. 35 was placed in his hands at 4 a.m. on the 8th by P.W. 75 who was accompanied by the 2nd accused, and although he questioned the 1st accused on reaching the Pattom house at about 4-30, it does not appear that he questioned the 2nd accused but left that to be done by P.W. 60 in the course of her inquest. Thus we find that while search parties were being despatched to Quilon and elsewhere, the information given by P.W. 2 was suppressed, - no case was registered on it not even an entry made in the General Diary - and no one thought of as much as entering the Pattom house and searching it, or questioning the 1st and 2nd accused closely with regard to the disappearance of the deceased. And admittedly, there was the Head Constable, P.W. 73, going about with the 2nd accused on the 7th afternoon and unless P.Ws. 44 and 49 are to be disbelieved, moving about in the 2nd accused's car all night, after the discovery of the body, and hovering between the Pattom house and the Tourist Lodge. In the absence of a satisfactory explanation - we do not know what explanation the police officers concerned might have to offer - this tends to the inference that there was a conspiracy of inaction, or rather misdirected action, with a view to delay and defeat due investigation. The inference which the learned counsel for the 1st accused would have us draw is that the police were intent on saving the really guilty person, possibly the 2nd accused, and have made a scapegoat of his innocent client. According to the learned Advocate-General, if indeed there was an attempt to save anybody, that person could only have been the 2nd accused. But even so, it would be too much to say that, if the 1st accused was not in any way responsible for the murder, a completely false case would have been engineered against him for the purpose of saving the 2nd accused, and that with his own active co-operation.

40. I might say at the very outset that I set no great store by the confessions proved in the case (Exts. P-29(a) P-15 and P-17 of the 1st accused and Ext. P-18 of the 3rd) even as against their makers, leave alone taking them into consideration as against the others u/s 30 of the Evidence Act. Ext. P-17 by the 1st accused and Ext. P-18 by the 3rd accused are more self-exculpatory statements than confessions, for, in so far as the principal charge of murder is concerned, they absolve the maker of all blame and throw it on others, on the 2nd accused in Ext. P-17 and on the 1st accused (as also on the 2nd accused though by hearsay) in Ext. P-18. Even if accepted they prove little against the makers, and they cannot be used against the others. On Ext. P-17 not even the prosecution places any reliance. In Ext. P-29(a) and Ext. P-15 the 1st accused implicates only himself, and they can be used, if at all, only against himself.

41. I think it unnecessary to consider the argument (based on the evidence of P.Ws. 41 and 44 to the effect that a policeman in mufti - possibly P.W. 73, who according to P.W. 49 was moving about in the 2nd accused's car that night - came to the Pattom house in the taxi in which the 2nd accused left to lodge the first information, Ext. P-35, and that P.W. 74 came to the house and took away the 1st accused some time between two and three on the morning of the 8th) that the 1st accused must have been tutored by the police and compelled by them by threat and inducement to make a confession. The first confession, Ext. P-29(a), was made to the First Class Magistrate, P.W. 60, at 11-30 a.m. on the 8th at the inquest held by her in the course of the investigation. (It will be recalled that a case had been registered at 4 a.m. and that the 1st accused was arrested at 6-30 a.m.). The confession was not recorded u/s 164 or 364 of the Criminal Procedure Code, nor does it purport to have been so recorded. No warning of any kind was administered. No steps were taken to ensure the voluntary nature of the confession (on the contrary the evidence of P.W. 60 would go to show that the 1st accused was given to understand that he was bound to make a statement), and there was no compliance either in form or in substance with the provisions of sections 164 and 364, Criminal Procedure Code. It seems to me clear that in accordance with the principle laid down in AIR 1936 253 (Privy Council) the confession is wholly inadmissible, and the distinction drawn by the learned Sessions Judge, namely, that P.W. 60 was not a person competent to record a confession u/s 164, Criminal Procedure Code and his conclusion therefrom that the confession was admissible as an extra-judicial confession do not seem to me valid. For, in the first place, what the Privy Council decision lays down is that if a confession made to a magistrate in the course of an investigation is to be used in evidence at all, it must be recorded in the manner prescribed by sections 164 and 364, Criminal Procedure Code, section 53, Criminal Procedure Code being available only to cure defects in form, and it does not seem to me from the reasoning of Their Lordships that this conclusion depends on whether or not the magistrate was empowered to record a confession u/s 164, Criminal Procedure Code. Surely a defective confession recorded by a magistrate who had no power to record it cannot stand on a better footing than such a confession recorded by a magistrate who had the power. In the second place, the learned Sessions Judge was wrong in thinking that P.W. 60 was not a person competent to record a confession u/s 164, Criminal Procedure Code. She is a First Class Magistrate and the power to record a confession u/s 164 is among the ordinary powers conferred on a First Class Magistrate by the Code, both u/s 164 itself and under schedule III. It is not competent for the State Government to take away that power, and the Government proceedings relied upon by the learned Sessions Judge are mere executive instructions allocating work as between what are called judicial and executive magistrates and in no way affects their legal powers.

42. All this apart, it is to be observed that when Ext. P. 29 (a) was recorded from the 1st accused he was actually in police custody and that there were a number of police

officers all around him. The record which is in the third person was itself made by a police officer though, it is said, to the dictation of P.W. 60, and it does not appear that it was read over or explained to the 1st accused. I have already remarked that P.W. 60's evidence shows that the impression she conveyed to the 1st accused was that he was bound to make a statement, and it follows from all this that Ext. P. 29 (a) can hardly be accepted as a voluntary confession.

43. If Ext. P. 29 (a) was not voluntary it does not seem to me that Ext. P. 15 recorded four hours later can stand on a much better footing although it was recorded in accordance with the provisions of sections 164 and 364, Criminal Procedure Code.

44. Coming now to Ext. P. 18, the so-called confession of the 3rd accused, his case of physical torture, especially of the kind alleged by him, can scarcely be accepted. He had no injury to show for it when produced before the magistrate, P.W. 35, who seems to have directed special attention to this aspect of the matter by having his person examined by a peon of the court. When questioned by P.W. 35, he affirmed that there had been no torture of any kind, and in the circumstances there is no ground for thinking that the statement was induced by physical ill-treatment. But the timing of the so-called confession, soon after the 2nd accused had been released on bail because the investigation had yet been unable to secure sufficient evidence to lay a final charge-sheet against him, would suggest that the 3rd accused was got at with a view to make him an approver and this is exactly what the 3rd accused himself said in his petition, Ext. D-8, five weeks later, and what he now reaffirms. And it is to be noted that he was not questioned by P.W. 35 on this aspect of the matter, namely, on whether his statement was induced by a promise to make him an approver. The internal evidence furnished by the statement itself, its wealth of incidental detail doubtless designed for that independent corroboration which the law requires, but which a person giving an unprompted account of what took place would hardly think it worth while to mention, and its playing down of the part played by the deponent, typical of confessions preceding a pardon, confirms the impression that Ext. P-18 must have been obtained by some such inducement as that alleged by the 3rd accused.

45. Now I shall consider the case against the 1st accused. For the motive, the prosecution case is that the motive is really that of the 2nd accused and that the 1st accused acted only at the 2nd accused's behest. Nevertheless the prosecution has adduced some evidence in an attempt to prove independent motive; but the evidence amounts to very little. P.W. 42 has said that some months before the occurrence the 1st accused spoke ill of the deceased, and the evidence of the 1st accused's brother, P.W. 18, shows that in March or April 1957 when he wanted to take away the 1st accused from domestic service the deceased seemed eager to send him away while the 2nd accused was not so willing although he agreed to do so and even settled accounts with the 1st accused. The 1st accused did not however leave the service. P.W. 30, the maidservant, began by saying that the relations

between the 1st accused and the deceased were cordial and that the 1st accused was an obedient servant, but, later on, she said that, at times, the 1st accused was disobedient and that latterly the deceased was afraid of the 1st accused because he was carrying tales to the 2nd accused. P.W. 30 also said that whenever she went out the deceased used to go to the Nursery School not wishing to be alone in the house with the 1st accused, and there is the evidence of the neighbour, P.W. 7, that on the night of the 4th August, the deceased got her to sleep with her in the house because her husband (the 2nd accused) had gone to Courtallom and was not expected back for the night. We also learn from the fish-monger, P.W. 9, who took some fish to the house at about 11 a.m. on the 5th, that the 1st accused, in speaking of the deceased, referred to her in the third person singular and that the deceased overhearing this remarked that it was her fate that a servant should speak of her like that. All this, even if accepted in entirety, cannot prove that the 1st accused bore the deceased ill-will, and even the statement of the learned Sessions Judge that, while it was clear that the 1st accused was not well disposed towards the deceased, a strong or adequate motive for the 1st accused for the commission of murder had not been proved to exist, seems to me an over-statement in so far as the first part of it is concerned and an understatement in so far as the second. However that might be, I did not understand the learned Advocate-General to press the case of an independent motive for the 1st accused - the trend of his argument seemed to me just the contrary - and it is hardly necessary to consider this matter further.

46. Since the case now pressed is that it was the 2nd accused that really had strong motive to do away with the deceased, and that the 1st accused acted not so much from his own motive as on the instigation of the 2nd accused, it might be as well to consider, even at this stage, the evidence regarding the motive of the 2nd accused. P.W. 2, the mother of the deceased, has given evidence to the effect that there was long-standing bitterness between the deceased and the 2nd accused and that this began about six months after their marriage, with P.W. 2 turning down the 2nd accused's proposal that she should sell her Pazhavangadi property for the purpose of helping him in his business. Then in Medom (April-May) 1957, P.W. 2 gave the 2nd accused Rs. 1,500 for the purpose of putting up an extension to her Pazhavangadi house (this, if true, would in some measure negative long-standing bitterness between husband and wife), but the 2nd accused did not even begin the work and the deceased was pressing the 2nd accused either to do the work or return the money. Evidence has also been adduced to show that the 2nd accused was in financial straits and that while, on the one hand, he had debts to the tune of about Rs. 12,000 (in respect of which two of his creditors filed suits soon after the occurrence) on the other, he was, as the evidence of his friend, P.W. 41, shows, raising petty loans on the pledge of jewels. There is however no suggestion that he stood to gain any pecuniary advantage, or that he expected any relief from his financial embarrassment, by the murder of the deceased. The suggestion is that, against the background of his financial troubles, the attitude of the deceased, far

from being one of helpfulness was one of aggravation in that she was insisting on his making good the sum of Rs. 1,500 he had taken from her mother, and that this must have so exasperated him that he decided to do away with her.

47. The 2nd accused has denied that there was any bitterness between himself and the deceased. He has denied also having suggested the sale of the Pazhavangadi property or having taken Rs. 1,500 from P.W. 2, and on both these points there is only the evidence of P.W. 2. The refusal to sell the Pazhavangadi property which took place about ten years earlier could not have been rankling in the 2nd accused's mind, and P.W. 2's statement that the deceased was pressing the 2nd accused to return the sum of Rs. 1,500 does not appear to be based so much on personal knowledge as on what the deceased seems to have told her. In any case P.W. 2 does not say that there was any quarrel between the 2nd accused and the deceased on that account. The evidence of P.W. 2 herself goes to show that the relations between herself and the 2nd accused were cordial (that is also the evidence of P.W. 4), that she used to go and stay off and on in the Pattom house, the latest of these visits being as recent as the 1st to the 3rd August 1957, and that the 2nd accused used to treat her as a welcome guest. This signifies a normal domestic life. The maid-servant, P.W. 30, indeed spoke to a quarrel between the 2nd accused and the deceased on the 2nd August, when P.W. 2 was in the house, over the return of the sum of Rs. 1,500, but P.W. 2 herself spoke to no such thing. P.W. 30 also said that there was bitter ill-feeling between the 2nd accused and the deceased, but in the statement, Ext. D6, made by her on 19th September 1957 u/s 164, Criminal Procedure Code, she had said that there was no enmity between the two. It would also appear that, although P.W. 30 was questioned by the police on the 9th, 11th and 14th of August, she did not then come out with the story of bitter enmity or the grounds therefor. The evidence of P.W. 22, a distant relative of the deceased, that when the deceased went home for her confinement about four years before the occurrence, she had bitter complaints to make against her husband found no corroboration from P.W. 2. It was in any case hearsay and was rightly rejected by the learned Sessions Judge. And as for the alleged financial embarrassment, although the second accused was at some pains to show that he was quite solvent, I do not think that even if true, it matters at all. Apart from P.W. 2's evidence, that about ten years before the occurrence the 2nd accused had sought financial assistance from her and suggested the sale of the Pazhavangadi property for the purpose, there is nothing to show that the 2nd accused applied either to P.W. 2 or to the deceased for help, or that these persons were in any position to render help otherwise than by the sale of the Pazhavangadi property.

48. On the other hand the evidence of the neighbour, P.W. 7, who seems to have been an intimate friend of the deceased, is that the 2nd accused and the deceased were getting on well and that the deceased had no complaints to make. P.W. 14, another neighbour, spoke to the fact that every morning, when the 2nd accused left home, the deceased and her children used to see him off at the gate, but whether

this continued up to the very end was not elicited from him and seems doubtful in view of the admitted estrangement between the 2nd accused and the deceased. Likewise, the evidence of P.W. 30, that the 2nd accused and the deceased were sharing the same bedroom until the time she left on leave, on which evidence some reliance is placed by the defence, seems to me of no great value since it is not inconsistent with the 2nd accused bearing hatred towards the deceased.

49. It has been argued that P.W. 2's instinctive reaction to the news of the deceased's disappearance, namely, that she must have been murdered by her husband lends support to the prosecution case; at any rate that it goes to show that the 2nd accused must have had adequate motive to do away with the deceased. I am afraid that this instinctive reaction of P.W. 2 is completely irrelevant, for, it is nothing more than an expression of opinion by P.W. 2; and it seems to me that the utmost to which it can be used is to show that P.W. 2's evidence of long-standing bitterness is not a subsequent invention.

50. Apart from the admitted estrangement from about a fortnight before the occurrence, the prosecution has been able to prove no quarrel or ill-feeling between the 2nd accused and the deceased or suggest any reason why he should wish to do away with her. The fact however remains that, from about a fortnight before the occurrence, the 2nd accused was not having his mid-day meal sent from home but was having only his morning and night milk there. This was admitted by the 2nd accused both in Ext. P. 35, the first information he gave, and in his statement at the trial. The reason he gave, namely, that the food sent from home was bad seems rather slight but is not improbable, and it is not clear from the evidence whether, before the estrangement, he was taking anything other than his morning and night milk at home. Then there is the circumstance that, as the evidence of P.W. 2 shows, when he left the house in the morning the 2nd accused used to give money for the day's expenses to one or the other of the children and not to the deceased. But P.W. 2 could speak from personal knowledge only of what happened when she was in the Pattom house, that is what happened on the morning of the 2nd and 3rd August. However, the explanation given by the 2nd accused himself with regard to this, namely, that when he left the house the children used to go to him and that he used to give the money to them, might be regarded as some indication that he was not on speaking terms with the deceased. The reason for the estrangement given by the 2nd accused in Ext. P. 35, and affirmed by him when examined at the trial, was that the deceased was sending him his mid-day rice with nothing else but a pickle to eat with it, and that when asked about it she retorted that he was not giving her enough money for the household expenses whereas in fact he was making a generous allowance. It is within common experience that petty matters like this do sometimes result in misunderstandings between spouses, and I am not prepared to say that the reason given by the 2nd accused is false and that there must have been some much stronger reason especially when the prosecution has been unable to prove any.

51. Learned Counsel for the 2nd accused also places some reliance on P.W. 7's evidence to the effect that when the 2nd accused returned from Court-allam in the early hours of the morning of the 5th, the deceased took him some milk which he drank, and that the deceased slept with him in the bedroom while she herself moved to dining room and took her bed there. This, he argues, negatives the case of bitter ill-will between the 2nd accused and the deceased.

52. It is not the case that the 2nd accused acted on a sudden impulse, and, altogether I do not think that the prosecution has been able to prove, either the causes for, or the outward manifestations of, a motive deep-stated enough and strong enough for the pre-planned murder of a wife. Nor can the defence say that the relations between the 2nd accused and the deceased were so loving and cordial as to make such a crime improbable. What has been established by the evidence on this question of motive is what I might call a neutral or ambiguous circumstance; while, on the one hand, it leads to no inference adverse to the 2nd accused, it does not, on the other, lead to any inference in his favour.

53. But motive being a mental attitude, some times secretly nourished, its causes, especially as between spouses, not always known to the outside world, is often difficult of proof. And people do often commit grave crimes from the most inadequate of motives. What one man might ignore or suffer might impel another to murder. The absence of proof of adequate motive is therefore not fatal to the prosecution even in a case depending solely on circumstantial evidence. If the circumstances otherwise establish guilt, inability to prove motive is no more an impediment to a conviction than in a case of direct evidence. But how motive assumes greater importance in a case depending on circumstantial evidence is that, whereas in a case of direct evidence, motive only serves to explain the conduct of the offender and thus to present a complete picture, and its presence or absence very rarely affects the credibility or otherwise of the eye-witnesses, in a case depending on circumstantial evidence, motive is by itself a very important circumstance which considerably influences the result to be deduced from all the proved circumstances in the case. It might not be an indispensable link, but it is a strand which runs through all the links and helps to forge a complete chain.

54. The lack of motive (or rather of proof of motive) notwithstanding, I think that the circumstances do forge a complete chain so far as the 1st accused is concerned. That the deceased was the victim of murder is not and indeed cannot be disputed, and I think it equally beyond doubt that she must have been murdered in the Pattom house or its precincts some time between two and four on the afternoon of the 5th August. P.Ws. 10 and 19 saw her between 1-45 and 2 p.m. that day, the former in the verandah of the house and the latter at the gate. From 4 p.m. onwards she was not be seen either in the Pattom house or elsewhere, and on the night of the 7th, her body was found lying half buried near the cowshed attached to the house. It is no doubt true that the deceased was not by any means a person who

confined herself to her house and that the evidence of P.Ws. 10 and 19 is as consistent with her having gone from the verandah to the gate on her way out of the house, as to her having come from the gate to the verandah on her way into the house. But if, as suggested on behalf of the 1st accused, she went out alive round about 2 p.m. she certainly did not come back alive, at any rate not after 4 p.m., and it would therefore follow that she must have come back dead, in other words, that she must have been murdered elsewhere and her body planted in the precincts of the Pattom house. This indeed is the theory advanced on behalf of the 1st accused. But it seems to us much too farfetched to gain a moment's acceptance. For, as the evidence shows, from the evening of the 5th August, right up to the discovery of the corpse, there were always outsiders, some of them relatives of the deceased, others interested neighbours, in and about the Pattom house by day and by night. We think it well-nigh impossible that the dead body should be smuggled into and buried within the precincts of the house without attracting notice. And why, one may well ask, should anybody ever think of doing such a thing risking almost certain discovery with the consequent result of being charged with the murder. If the murder was committed elsewhere, whether by the accused or by others, the Pattom house would certainly be the last place chosen for the disposal of the body. It is inconceivable that that place should be chosen had the inmates anything to do with the murder, and assuming, what is most unlikely, that there was some outsider who not merely wanted to murder the deceased but also wanted to foist the case on the inmates of the house at the risk being discovered and charged with the murder, I think it would have been impossible for him to escape the vigil not merely of the inmates but of the others who were throughout stationed in and about the house.

55. The suggestion advanced on behalf of the 1st accused is, however, that the body must have been planted at the place where it was discovered some time after night-fall on the 7th in order to shift the blame from the real offender, possibly the 2nd accused, to the innocent shoulders of the 1st accused who, in all likelihood, had by them been prepared by P.W. 73 and other intermeddlers to play the role of a scapegoat. The suggestion is altogether meaningless unless it is assumed that the 2nd accused was the real murderer, for, otherwise, there is no reason why the case should be foisted on the 1st accused or why he should be made the scapegoat. Even so, it is difficult to envisage why if the murder was committed elsewhere, the body could not have been disposed off there or in some other convenient place and why, for the 2nd accused to escape, it was necessary to bring the body to the Pattom house and foista Case against the 1st accused. Once again I repeat that it must have been well-nigh impossible to bring the body without attracting notice, and that whether the real murderers were the inmates of the house or outsiders, there can be no conceivable reason why, after having murdered the deceased elsewhere, they should have thought of bringing the body to the Pattom house at the risk of certain discovery.

56. In support of the theory of an outside murder and subsequent planting it is pointed out that although a number of people were in and about the house, inspecting the house and its precincts in the light of P.W. 2's allegation of murder, the milk-man, P.W. 50, in particular, going every morning and evening to the cowshed to milk the cow, no one noticed the half exposed body and the stench it must have emanated, until the 1st accused drew the attention of P.Ws. 40, 42 and 44 to this at about 10 p.m. on the 7th. P.W. 50 had been to the cowshed as late as 4 p.m. on the 7th and it is said that he must have at least noticed the stench, even if he did not see the half exposed body with only the dwarf wall, forming the back wall of the cowshed, between him and the place where the body lay. From this it is argued that the body must have been deposited at the place sometime after 4 p.m. on the 7th. I am altogether unimpressed by this argument. There is nothing to show that the body was not originally completely covered with earth and leaves and was not subsequently exposed as a result of the attention of dogs and jackals- the fact that portions of the body were eaten away would point to this; so also the evidence of P.W. 44-and if that were so neither the body nor the stench could have been noticeable. There is nothing surprising in the cowshed or its precincts having escaped the search of P.W. 2's party or of the neighbours-their suspicions really seem to have been in the direction of suicide-and there is no evidence to show that anybody ever thought of inspecting the place where the body was eventually discovered. Even P.Ws. 40, 42 and 44 did not notice the stench, although the 1st accused mentioned it to them, until they went right up to the house; and they saw the white object, which was later found to be the protruding portion of the body, only after going within a few feet of it and examining the place closely with the aid of lights.

57. The deceased was last seen alive between 1-45 and 2 p.m., and from 4 p.m. onwards the people who came to the house, beginning with the tuition master, P.W. 16, did not find her there. I have already found that the murder must have taken place in the Pattom house or its precincts, and I think it quite safe to assume that the murder must have taken place there between 2 p.m. and 4 p.m. on the 5th.

58. Leaving out of account the alleged visit of the 3rd accused-P.W. 18 it will be remembered got no farther than the gate when he went there at 2-30 p.m. -the evidence shows that the 1st accused and the deceased were alone in the house during this interval, at any rate from 2-30 p.m., and that apart from a visit to P.W. 19's shop at 3-30 p.m. to buy vadais the 1st accused did not leave the house. At about 2-30 p.m., P.W. 18, the brother of the 1st accused, whose evidence there is no reason whatsoever to suspect, found the gate of the house fastened from within contrary to the usual practice, and it took more than five minutes of knocking to bring the 1st accused from the house only to dismiss P.W. 18 forthwith on the ground that the deceased was away and that he had work on hand until after four. The explanation given by the 1st accused for having bolted the gate from within, and for the delay, namely, that a madman had come to the house a little earlier, and

that his mistress had therefore asked him to keep the gate closed, and that when P.W. 18 came he was busy feeding the cows is plausible enough in the light of the evidence of P.Ws. 10 and 18, the latter of whom said that he noticed signs of the accused's person of his having been engaged in preparing the feed. What signs he was not asked, nor did he choose to explain. And if the signs were merely of wet hands that would be consistent with other things as well. Whether the 1st accused's explanation is a true explanation or not has to be decided in the light of the other-circumstances. The fact remains that the 1st accused was inside the house at 2-30 p.m. and that he had bolted the gate from within; further that it took him some considerable time to come out when P.W. 18 knocked. He also sent P.W. 18 away instead of asking him to wait. By 4 p.m. the 1st accused was ready with the story, which on my finding that the deceased must have been murdered in the house between 2 and 4 p.m. was a false story, that the deceased had gone out at about 3 p.m. saying that she was going to collect her milk dues; and if P.W. 18 is to be believed-and there is no reason why he should not be believed despite the denial by the 1st accused-even at 2-30 p.m. the 1st accused told him that the deceased had gone out to collect her milk dues. The 1st accused himself does not deny that he and the deceased were alone in the house after the children went back to school after their mid-day meal, and he still affirms that the deceased left the house at about 3 p.m. to collect her milk dues.

59. We thus find that, at the time when the murder must have been committed, the 1st accused and the deceased were together at the place of the murder, namely, the Pattom house, and that leaving out the 3rd accused who, if he was there was there only to help the 1st accused, they were alone there. The gate had been fastened from within, admittedly by the 1st accused. And soon after the murder, the 1st accused came out with the false story that the deceased had gone out at about 3 p.m. These circumstances by themselves seem to me sufficient to bring home the guilt to the 1st accused, for, they are consistent only with his guilt and are inconsistent with any reasonable hypothesis of innocence. No one else could have gone into the house and murdered the deceased without the 1st accused's knowledge and connivance, and unless the murder was by himself or with his knowledge and connivance there is no reason why, by 4 p.m. or even earlier, the 1st accused should have come out with the false story that the deceased had gone out.

60. It has been argued that within the short space of an hour, between 2-30 p.m. when P.W. 28 saw him go up to the gate of the Pattom house in company with the 3rd accused, and 3-30 p.m. when he was in P.W. 19's teashop to buy vadais, the 1st accused could not all unaided, have not merely killed the deceased but also buried her body and washed away the blood inside the house. It is also pointed out that the 1st accused, a slightly built young man of 22, could not have carried the body of the deceased, a stout woman of 38, from the house to the place of burial, a distance of at least 60 feet. He could perhaps have dragged the body there, but only with great difficulty, and the post-mortem examination did not reveal any signs of the body

having been dragged.

61. This argument loses sight of the fact that, whether the evidence establishes this or not, it is the prosecution case that the 1st accused had the assistance of the 3rd accused. Nor do I think that in a case depending solely on circumstantial evidence if the confessions are to be eschewed, the prosecution stands committed to its case that the murder took place in the dining room; for myself I do not think it would have been impossible, though of course it would have been difficult, for the 1st accused to have dragged the body of the deceased by himself from the place of the murder to the place of the disposal, and in the highly decomposed condition in which the body was by the time of the autopsy (the skin was peeling off and had peeled off in many places) any post-mortem injuries caused by the body being dragged would no longer have been noticeable.

62. The circumstance so far considered, namely, that the 1st accused was alone with the deceased (unless it be he had an accomplice with him) in the Pattom house at the time, of the murder, and that soon thereafter he was giving out the false story that she had gone out to collect her milk dues, are established by evidence which is unimpeachable and which, in fact; has not been impeached. The facts from which these circumstances have been deduced have been admitted by the 1st accused, and it will be noticed that the proof of these circumstances is entirely unaffected by the criticism that the police have made a scapegoat of the 1st accused in order to save the real offender. As I have already remarked, these circumstances are by themselves sufficient to establish the guilt of the 1st accused And I think that the recoveries effected by P.W. 74 on the morning of the 8th reinforce my conclusion. Jewels identified by P.W." 2 as jewels habitually worn by the deceased, a tuft of false hair and blood-stained clothes which were most probably on her person at the time of her murder (it is to be noticed that although the three thorthus which might include the clothing worn by the murderer bear no mark, there is the mark "K" presumably standing for the 2nd accused"s name, "Krishnan", on the mundu) were, if P.W. 74 and the Mahazar witness P.W. 54 are to be believed, taken out and produced by the 1st accused from the several places where they lay concealed, I see no grounds for discrediting this evidence. And the suggestion advanced on behalf of the 1st accused that these incriminating articles must, like the body, have been planted there and a recovery staged, seems to me far-fetched even, for the -purposes of the argument, assuming the validity of the criticism that P.W. 74 and other police officers were out to help the real offender - and although this has not been expressly stated the necessary implication of the argument seems to be that the real offender was the 2nd accused - at the expense of the 1st accused. For, except on the hypothesis that the murder was committed in the Pattom house and the body and the incriminating articles hidden there, it is difficult to understand why, for the purpose of saving the 2nd accused, it was necessary to make a scapegoat of the 1st. Presumably there would have been no evidence against either, while the planting would tend to incriminate both. And if the hypothesis is accepted,

the entire argument fails, for, it would follow that neither the body nor the articles were planted in the house.

63. The fact that four pairs of bangles and a pair of earrings and a nose screw, articles possibly of greater value than the two gold chains recovered, were found on the body, points to the genuineness of the recovery rather than otherwise. So too the fact that, while the table knife with which the fatal injury could not have been inflicted was hidden, the chopper with which it could have been inflicted was not. Whoever the murderer, his motive does not seem to have been gain, and the explanation that readily occurs as to why the chains alone were secreted while the remaining jewels were left on the body, namely, that the chains must have fallen off the neck in the course of the attack, finds confirmation in the circumstance that, while in one of the chains the hook securing it is completely missing, in the other it is found so stretched that it could no longer have secured the chain. It would therefore appear that the murderer secreted the two chains not because he wanted to steal them but because they had fallen off the body. And if the chains had been planted in the house and a recovery staged for the purpose of showings that the 1st accused must have committed the murder for the motive of gain, the motive most readily attributable to a person in his position, one would have expected all the jewels worn by the deceased to have been so planted instead of the more valuable of them being left on the body. So also in the case of planting, one would have expected the obvious weapon, namely, the chopper, to have been secreted rather than the comparatively inoffensive table knife with which the fatal injury could not have been inflicted. I see no reason why P.Ws. 54 and 74 should be disbelieved when they say that it was the 1st accused that, in pursuance of the statement made by him, took out and produced the several incriminating articles from their hiding places.

64. There is however the mystery of the two new pairs of earrings, M.O. 3, and the bill for their purchase, M.O. 3 (a) (neither of which could have been on the deceased's person) being found concealed under the ash in the same newspaper packet as the gold chains, M.O. 2. It would appear that the two pairs of earrings were kept wrapped in the bill for their purchase, but where these articles were, there is no evidence apart from the 1st accused's confession that he took them from the almirah in the bed-room. Why he took them - his motive for that could only have been theft - when he left more valuable jewels on the body is not apparent. But, in all the circumstances, I do not think that the absence of a proper explanation as to why, if the 1st accused was the murderer, he should have taken M.Os. 3 and 3(a) from their proper place and secreted them along the chains worn by the deceased, does not lead to the inference that has been suggested, namely, that M.Os. 3 and 3(a) were planted by the police along with the chains because, while there was nothing to show that the chains were the chains worn by the deceased, M.O. 3(a) would forthwith betray the ownership of the earrings, M.O. 3. This once again presupposes that the motive in the minds of the planters was the motive of

gain, in which case they would have left no jewels on the body. And it was hardly to be supposed that persons like the deceased's mother, and the maid-servant in the house, would not be able to identify the jewels habitually worn by the deceased.

65. The circumstance that chemical examination detected no blood in the scrapings from the walls of the dining room, the alleged scene of the murder, or on the articles seized from there (with the exception of M.O. 20, the leg of the bench, on which human blood was found) is relied upon for the purpose of showing that the entire case against the 1st accused must be a concoction. P.W. 74's evidence is that the blood was shown to him by the 1st accused even when he questioned the latter at 4-30 a.m. on the 8th, and both P.W. 74 and 54 have said that there was plenty of blood on the walls as well as on the articles for any one to see as soon as he entered the room. If that were so the blood must have been even more prominent when the room was inspected by a number of people, including P.W. 2's party, both on the night of the 5th and on the 6th and yet the evidence is that none of them saw anything suspicious. The blood stains must also have been apparent to the guilty party, assuming that the guilty party was the 1st or 2nd accused, or both, and he certainly would not have left them there for others to see. Therefore it is argued the so-called blood marks must, like the body and the incriminating articles, be something planted there by the police for the purpose of concocting a case against the 1st accused.

66. It seems to me that there might have been some force in this argument had not the so called blood stains been sent for chemical examination. But, a police officer who was creating evidence of blood stains for the purpose of concocting a case, would certainly have not sent the stains for chemical examination without ensuring that they actually contained blood. The true explanation seems to me that to the suspicious eyes of P.Ws. 74 and 54 every dark spot must have looked like a blood stain. As I have already remarked the case against the 1st accused does not in any way depend on the dining room being the scene of the murder, and the absence of any blood stains there excepting on the leg of the bench does not in any way affect that case.

67. That he at no time made the least attempt to make himself scarce but", on the other hand, precipitated inquiry by reporting the deceased's disappearance to P.W. 2 that very evening (and to a smaller degree that he himself initiated the "discovery" of the corpse) are points in the 1st accused's favour. But they are no explanation of the conclusive circumstances to which I have adverted and in no way affect the conviction which they compel. These favourable circumstances are consistent with a resolve-perhaps born of despair - to brave it out and take the consequences.

68. Coming now to the case against the 2nd accused, we have already examined the question of motive and seen that the evidence makes out only what I have described as a neutral or ambiguous circumstance favouring neither the prosecution nor the defence. The other circumstances on which the learned

Advocate-General places strong reliance are :-

- (i) his relations with the 1st accused and his behaviour towards him both before and after the disappearance of the deceased;
- (ii) his conduct in going away from the Pattom house soon after he had reached there on the night of the 5th without protesting against the charge of murder levelled against him by P.W. 2 and, in particular, without acceding to the demand that the locked rooms should be opened. This is to be considered along with the fact that, even then, he made the statement that the deceased had taken the key with her when she went out;
- (iii) his detention of the 1st accused when the latter was being taken to the police station by P.W. 2 and her party;
- (iv) his failure to inform the police about the disappearance of the deceased;
- (v) his show of making a search for the deceased, designed as much for his pretence of innocence as for putting P.W. 2 and the others on a false track;
- (vi) his strange behaviour when he was told of the discovery of the corpse on the night of the 7th;
- (vii) his delay of nearly three hours in reporting this to the police, obviously for the purpose of preparing his statement in consultation with others; and
- (viii) his protesting overmuch in that statement which, read as a whole, is more a defence for himself than information of the murder.

And it is said that these circumstances clearly betray a consciousness of guilt coupled with a determination to hide it, and that taken all together they are entirely inconsistent with his innocence.

69. I am not convinced that that is so and that the circumstances proved leave no reasonable ground for a conclusion consistent with the innocence of the 2nd accused; in other words, that they are consistent only with the hypothesis of guilt. It might be that the circumstances are consistent with a picture of guilt, that they fit in nicely and paint it attractively once such an outline is drawn. But that would be to first assume the very thing to be proved and then find that the circumstances do not belie the assumption. The inquiry should rather be whether the circumstances necessarily reproduce a complete picture of guilt. That seems to me a matter of doubt.

70. I shall now consider the several circumstances one by one. I am aware that it is their cumulative effect that counts, not whether each individual circumstance, by itself, cannot be explained away. But before adding up the circumstances and assessing their cumulative effect it is necessary to evaluate each one of them and the inference to which it tends.

71. In appreciating the evidence against the 2nd accused, particularly the evidence of P.W. 2 and her party and other relatives of the deceased, there is one factor to be considered. P.W. 2, it will be remembered, had convinced herself that the deceased was the victim of foul play at the hands of the 2nd accused and was by no means silent about the conviction. It would be surprising if those along with her and the public in general, did not in some measure share this conviction - we have seen that it was even argued before us that the instinctive reaction of P.W. 2 lent support to the prosecution case - and the discovery of the corpse in the compound of the house must have served to confirm the conviction. (sic) this was the fact that the case created a great sensation, and that the local newspapers were coming out with reports to the effect that the 2nd accused was a debauchee, that he had been ill-treating the deceased and had, in the past, been guilty of violence towards her, and generally tending to the conclusion that he must have been responsible for the murder. Many other incriminating facts were reported which find no support in the evidence. The witnesses who have spoken to the several circumstances against the 2nd accused must therefore have spoken out of the moral conviction that he was the murderer, and that being so, even with regard to the most honest of the witnesses, this moral conviction must have coloured their recollection of the events. No record was made by them at the time, and they were speaking to words uttered, and things done, some six months before they gave evidence. A slight difference of tone or content in the words spoken, in the gestures made, or in the sequence of events, can make a lot of difference; and the witnesses would not be human if they did not, at least unconsciously, mould their recollection to fit in with their conviction.

72. The evidence of P.W. 18, the brother of the 1st accused, is relied upon for showing that the 2nd accused was specially attached to the 1st accused and that the relations between them were not those of an ordinary master and servant. But all that P.W. 18's evidence shows is that the 1st accused used to take the 2nd accused's advice in the matter of some family litigation, and that when he (P.W. 18) tried to take the 1st accused away from the 2nd accused's service some time in April 1957, the 2nd accused seemed somewhat reluctant to part with the 1st accused (while, on the other hand, the deceased was willing and even eager that he should go) although he agreed to send him home and even settled his accounts. Eventually it was the 1st accused himself that decided to stay. It is also in evidence that when the house was eventually searched on the 28th August, a photograph of the 1st accused was found hanging on the wall of the storeroom. It is not as if the storeroom was a secret den of the 2nd accused and the evidence does not point to any such unusual attachment as to lead to an inference that the 1st accused would do whatever the 2nd accused bade him do. Nor can the circumstance that the 1st accused had no motive to act on his own, or, rather, that the prosecution has been unable to prove such motive, lead to the inference that he must have acted at the instance of somebody else and that that somebody must be the 2nd accused. Although anything tending to show that the 1st accused must have been a tool in

the hands of the 2nd accused would be relevant, I do not think that the fact that the 1st accused had no discoverable motive of his own tends to show that he was a tool in the hands of some other person and was not acting on his own.

73. It is said that the 2nd accused did not, at any time, question the 1st accused regarding the disappearance of the deceased or take him to task. But the evidence of P.Ws. 19 and 28 shows the contrary and, with regard to the 2nd accused's admitted conduct in taking the 1st accused down from the car in which P.W. 2 and her party were taking him away, supports the 2nd accused's explanation that he did so for the purpose of questioning the 1st accused more closely about the disappearance. The evidence of P.W. 28 is that the people collected there drew the 2nd accused's attention to the fact that P.W. 2 and her party were taking the 1st accused away and (sic) thereupon the 2nd accused asked the 1st accused to get down from the car. Then, according to P.W. 19, the 2nd accused questioned the 1st accused in detail about the disappearance of the deceased. Therefore it cannot be said that the 2nd accused did not question the 1st accused; nor that he took the 1st accused down from the car for the purpose of preventing him from being questioned by P.W. 2's party or by the Police.

74. The 2nd accused has denied having interrupted P.W. 6 when the latter asked the 1st accused on the night of the 5th where the deceased had gone and whether she had said where she was going. And his case is that P.W. 6 did not speak to the 1st accused at all, but left the house after promising him (the 2nd accused) that he would search for the deceased in Karamanai and other places. After all the question which P.W. 6 says he asked of the 1st accused was a question which had been put and answered a number of times. Of this P.W. 6 could not have been unaware, and even if the 2nd accused did exhibit some impatience at the repetition of the same, and by now pointless question I do not think that that can be interpreted as an anxiety to prevent the 1st accused from being questioned. It is not as if the 2nd accused was always keeping the 1st accused with him. The evidence shows that the 1st accused was left free to move by himself and was, in fact, doing so. The 2nd accused was away from the house most of the day and the night, either in his lodge or going about from place to place making inquiries, and, so far as I can see, there was nothing to prevent anybody interested in the matter from questioning the 1st accused as closely and as secretly as he wished. P.W. 6 is a relation of the deceased, and I am by no means certain that he is not suffering from the bias to which I have referred, or that the 2nd accused's version of the incident must be untrue. But taking P.W. 6's evidence at its face value, I do not think that it amounts to much.

75. P.W. 23 is a close friend of the 2nd accused and he has said that when he was with the 2nd accused in the Tourist Lodge on the evening of the 7th, he suggested to the 2nd accused that a couple of blows might elicit some information from the 1st accused. To this the 2nd accused's reply was that the 1st accused was a harmless babblers who would not concern himself with such things. With this must be taken

the evidence of P.W. 42 that, when he suggested on the morning of the 6th in reply to the 2nd accused's question whether there was any news of the deceased, that if the 1st accused was questioned something might be known, the 2nd accused went away without saying anything. The inference that the prosecution would draw from this is that the 2nd accused's attitude towards the 1st accused was one of protectiveness, that while outsiders entertained suspicions against the 1st accused, he himself stubbornly declined to entertain any, and that he did not even relish the idea of the 1st accused being questioned closely about the matter. This, it is said, can only be because he was himself privy to the crime.

76. The 2nd accused while admitting that he made inquiries of P.W. 42, has, in effect, denied P.W. 42 having suggested the questioning of the 1st accused. And with regard to P.W. 23's evidence, his case was that it might be that P.W. 23 did suggest that the 1st accused should be beaten, but that he had not beaten anybody so far. He has also said that he had no reason to suspect the 1st accused; and assuming that the 2nd accused was innocent, this might well have been so until the discovery of the body. So far as appearances show, not merely the 2nd accused but a number of others (including even P.W. 2 despite her charge of foul play) were working on the theory that the deceased might have run away from home after saying that she was going out to collect her milk dues. That she could not have gone for that purpose was apparent, without any inquiry being made of her customers, by the very fact that she had not come back by 9 p.m. when the 2nd accused reached the house. The customers are close neighbours, and although there is no evidence on the point, probably in the crowd that had gathered at the spot, and I see no substance in the criticism that the 2nd accused made no attempt to question them and find out if the deceased had really been to them. In view of the estrangement, the 2nd accused might well have believed that the deceased had deserted him after leaving the house on the pretext that she was going to collect her milk dues. Until the body was discovered, there seems to have been no good reason to suspect the 1st accused's statement that the deceased had gone out at 3 p.m. saying that she was going to collect her milk dues; and, if that were so, there was no reason to suspect that the 1st accused was in any way responsible for her disappearance. On that basis much of the conduct of the 2nd accused, including that attributed to him by P.Ws. 23 and 42, is capable of an explanation consistent with his innocence. There was no reason why he should have questioned the 1st accused further than he did, or why he should have taken him to task.

77. That brings us to the charge that the 2nd accused did not report the deceased's disappearance to the police and that he waited until the body could no longer be concealed before laying information. This, it is said, is a circumstance inconsistent with his innocence. But the argument presupposes that he had the knowledge, or at least the suspicion, that the deceased was a victim of foul play, an assumption which, we have seen, cannot legitimately be made. If the 2nd accused believed (as he well could have done until the discovery of the body) that the deceased had run

away from him, one would not ordinarily expect him to run forthwith with this news to the police. On the contrary one would expect him to make some inquiries himself before making a report, and this is precisely what he, to all appearances, did. His own explanation that he did go to the police station that very night but that he did not lay any information because he was told that P.W. 2 had already done so might or might not be true. But, in the ordinary course, one would expect him to. have got the news that P.W. 2 had gone to the police station to make a report soon after she had left the Pattom house for the purpose. The people gathered there knew this and it would be surprising if they did not communicate this information to him. In any case, he knew the next morning, from word sent by P.W. 2 herself, of P.W. 2 having gone to the Deputy Inspector General and of a party having been dispatched to Quilon and other places. In the circumstances, I do not think that the fact that the 2nd accused did not make an immediate report to the police of the disappearance of the deceased can lead to any adverse inference.

78. It is said that the 2nd accused's protectiveness towards the 1st accused did not disappear even after the discovery of the corpse, and the conduct of the 2nd accused at that time is held out as indicative of complicity in the crime and of consciousness of guilt. It was argued that, on being informed of the presence of the body behind the cowshed, the 2nd accused instead of rushing forthwith to the spot chose to go into the bathroom for a bath. But this is not correct, for, the evidence of P.W. 44 would show that the 2nd accused was informed of the presence of the body only after he had his bath. Even so, it is commented that he did not go and have a look at the body and did not (as it is said any one would have done in the circumstances had he. been innocent) forthwith charge the 1st accused with murder. Instead he kept quiet for a while, then sent for a taxi and, when it arrived, left for the police station, the journey there taking him nearly three hours. Even in the information he laid he did not charge the 1st accused with the crime.

79. I do not think that this is the only inference that can be drawn. There is another, equally probable, that is consistent with the 2nd accused's innocence. I might observe that this alleged conduct at the time of the discovery of the corpse was not specifically put to the 2nd accused when he was questioned u/s 342, CrI. P.C., and his case in the first information, Ext. P. 35 was that he went and saw the body before going to the police station to make the report. Nor, although P.W. 44's evidence reads as if the 2nd accused did not go and see the body, was that witness or any other witness specifically questioned on the point, and their failure to say anything about it might be a mere omission. However that might be, the information that the body was lying half exposed in the compound - and the only possible inference was that it was the body of the deceased - must, if the 2nd accused was innocent, have caused him great distress. Not merely that, but he must also have known that especially in the light of P.W. 2's charges, the discovery of the body in his own back-yard would at once mark him as the murderer. Whether innocent or guilty, he must have felt a marked and hunted man, and his attitude could only have been one

of despair. In the circumstances there is nothing unnatural in his feeling quite helpless and perplexed and being, as it were, dumbfounded.

80. As I have said, the 2nd accused must have known that the discovery of the body in his back-yard would forthwith focus suspicion on him, and this would naturally put him on his defence. Before making any report which could be held up against him, any man in that situation would have taken time to reflect, and to prepare what he was to say in consultation with his friends. The delay of nearly three hours - it might have been less, for, P.W. 44's estimate of midnight might be well past that hour - is therefore hardly material. And that the statement, Ext. P.35, that he did make was obviously a prepared statement largely concerned with defending himself against a possible charge by giving a detailed account of his own movements on the 5th, seems to me explicable. Whether innocent or guilty, any man in his senses in the position of the 2nd accused would have known that grave suspicion against him was inevitable, and that being so there is nothing strange in his being pre-occupied with protesting his own innocence in advance.

81. For his failure to charge the 1st accused with murder, or at least express suspicion against him even after the discovery of the corpse, the 2nd accused has explained that he could see no reason why the 1st accused should have committed the murder, and that he did not think that he (the 1st accused) could have done it. Whether that was so or not, the discovery of the body placed the 1st and 2nd accused in much the same position so far as others were concerned, and I do not think it surprising, or inconsistent with his innocence, that the 2nd accused should not forthwith have jumped at the 1st accused's throat and charged him with the murder. Apart from distress, despair regarding his own fate, might well have prevented him from thinking of the 1st accused at all. And it is to be remarked that, although in Ext. P.35 he has levelled no charge against the 1st accused, he has stated all the facts within his knowledge and made no attempt to shield the 1st accused. Strictly his duty was only to state the facts as he knew them - the inference was for the authorities to draw.

82. We now come to the most important of the circumstances relied upon by the prosecution, namely, the conduct of the 2nd accused at the house on the night of the 5th after he was told of the disappearance of the deceased. We have been told that the natural conduct of an innocent man would have been to refute the charges levelled against him by P.W. 2, to have consoled her and the weeping children, and to have thrown open the rooms and looked all over the house for the deceased. Instead, what the 2nd accused did was to leave the place abruptly after declining to open the rooms on the pretext that the deceased had taken the key with her when she went out, an echo of the 1st accused's story that the deceased had gone out to collect her milk dues, which, since the 2nd accused had not by then met the 1st accused or heard his story, betrays prior concert between the two.

83. Now there is no positive evidence to show that the 2nd accused did not protest against the charges that were being levelled against him by P.W. 2, but his own statement that, on hearing that the deceased was missing and on hearing the abuses and charges hurled at him by P.W. 2, he was so perplexed that he did not know what to do and went to fetch his friends, would indicate this. And, although in answer to Question No. 20 in his examination u/s 342, CrI. P.C., the 2nd accused has said that none of the people gathered there at the time asked him to open the rooms and that they were all looking into the rooms through the windows, his answer to question No. 18 to the effect that he did tell P.W. 2 and her party that the deceased had locked the rooms and taken away the keys but that he did not ask why the rooms should be opened and that, later on, when P.W. 4 and some others came for the second time, both rooms were opened and shown, would go to show that, even on the first occasion (P.Ws. 2 and 13 did not go on the second occasion) there must have been a demand for opening the rooms as spoken to by P.Ws. 2, 4, 12 and 13. But I would not altogether exclude the possibility of the 2nd accused's first answer being due to some mistake or confusion, and of P.Ws. 2, 4, 12 and 13 having (in view of the bias to which I have already had occasion to refer) consciously or unconsciously transposed what happened on the second occasion to the first. Even with regard to the second occasion there is the evidence of P.W. 44 that, when P.Ws. 4 and 12 arrived, both the rooms were closed and that it was only subsequently that the bedroom was opened through the ventilator. It is not impossible that the talk about the deceased having taken the key took place on the second occasion. But assuming that the refusal, or more properly, the failure to open the rooms on the ground that the key was with the deceased, took place on the first occasion, I do not think that the inference is necessarily that the 2nd accused, not yet having met the 1st accused and not knowing what the rooms held, was deliberately refusing to open them until such time as he was assured that they contained nothing incriminating. Nor would the 2nd accused's reference to the deceased having gone out with the key imply that the story of the deceased having gone out must have been given out by the 1st accused in prior concert with the 2nd accused. The 2nd accused's statement would show that he did meet the 1st accused at the house on the first occasion; and the evidence of P.Ws. 19 and 28 that the 1st accused came there within a few minutes of the arrival of the 2nd accused makes this probable. However that might be, it was not necessary for the 2nd accused to have met the 1st accused to learn of his story of the deceased having gone out at about 3 p.m. The 1st accused had told the story to a number of persons including P.W. 2, and the crowd which gathered at the house, and which included some of these persons, must have been fully aware of that story. The first thing that the 2nd accused would have been told on his arrival, by P.W. 2 and her party, as also by the crowd that gathered, would have been that the deceased had gone out at 3 p.m. (or, at any rate that the 1st accused had said so) and that she had not returned, and the evidence of P.W. 19 shows that this was, in fact, the case. There is no reason why the 2nd accused should not have been under the impression that this story of the

deceased having gone out at 3 p.m. was true or why, merely because P.W. 2 was asserting foul play (and if he were innocent he would have known that the assertion was a hysterical and unfounded assertion) he should have suspected that the deceased was really the victim of foul play, or that anything inside the house could throw any light on the fact of her disappearance. When he found the rooms locked, it was natural for him to surmise that the mistress of the house must have locked them before she left, and his statement to that effect is no indication of any prior concert between himself and the 1st accused. As the evidence of P.W. 2 herself shows, the people gathered there were examining both the closed rooms through the open windows with the aid of torch lights; and if the 2nd accused really believed, as he well might have done, that the deceased had gone out, the breaking open of the rooms, of which it would appear from the evidence he did not hold the keys, would not have struck him as a matter of any importance. P.Ws. 2, 4, 12 and 13 have themselves admitted that they did not, at the time, regard the matter as of any significance or view the 2nd accused's conduct with suspicion; and nothing was said either to P.W. 75 or to the head constable who recorded P.W. 2's statement or to P.W. 77 the next morning, about the 2nd accused's refusal to open the rooms. It is apparent that these witnesses did not then suspect that the rooms held anything incriminating (which in fact they did not), and that it is only in the light of subsequent events that they have come to regard the 2nd accused's conduct with suspicion. But that conduct on the part of the 2nd accused could as well spring from his belief that there could be nothing in the rooms (a belief consistent with what P.Ws. 2, 4, 12 and 13 themselves thought at the time) as from the fear that they might hold something incriminating. As I have observed more than once before, the 2nd accused might well have believed that the deceased had run away from him giving a false excuse for leaving the house.

84. The 2nd accused owns a lorry, and P.Ws. 52 and 53 in whose repair shop the lorry was garaged between the 4th and 9th August, have spoken to the lorry having been taken out by the 2nd accused's driver on two successive nights during this period. The lorry is a green lorry, and there is the evidence of P.W. 39 who runs a tea-shop near the Pattom house that round about midnight on the night of the 5th August, he saw a green lorry come and stop on the road near the Pattom house and that after some time it left. P.W. 64 who was passing by that way at about 4 p.m. on the 7th also saw a green lorry stopped on the road near the Pattom house. According to the prosecution this evidence shows that the 2nd accused must have brought his lorry to the house on the nights of the 5th and the 6th in order to remove the body to its intended destination, but was unable to carry out his purpose.

85. The 2nd accused has pleaded ignorance as to whether his lorry was taken out by his driver from the repair shop and, apart from the green colour, there is nothing to show that the lorry which P.Ws. 39 and 64 claim to have seen near the Pattom house, was, in fact, the 2nd accused's lorry.

86. Of whatever value the evidence of P.Ws. 52 and 53 and 39 and 64 might have been for the purpose of corroborating a confession, or of adding weight to a case already proved, I think the facts spoken to by these witnesses constitute too slender a circumstance to sustain any inference.

87. The evidence of P.W. 71 the Sub-Inspector of Police, Quilon, shows that the 2nd accused got into touch with him over the phone on the 6th. This is also the case of the 2nd accused, and although the precise time of the telephone conversation is in dispute that is not a matter of any importance. P.W. 71's evidence is that what the 2nd accused told him was that a distant relative of his, Devaki Amma by name, was missing. He also added that the woman was wearing jewels of about 20 sovereigns and requested P.W. 71 to make enquiries about her. The 2nd accused has denied having given any such misleading information to P.W. 71 and has asserted that what he told P.W. 71 was that his wife Baby alias Saraswathy Amma was missing and that there was some information that she had gone to Quilon. And he requested P.W. 71 to make the necessary enquiries.

88. I am inclined to accept the 2nd accused's version of the conversation. It was already widely known that the 2nd accused's wife, namely, the deceased, was missing. The telephone conversation was after the 2nd accused's friends P.W. 23 and the Shanti Bhavan Thampi had met P.W. 2 and learned from her of the steps taken so far including the departure of a search party for Quilon. This information they conveyed to the 2nd accused and, in any view of the matter, it seems entirely meaningless that the 2nd accused should have rung up P.W. 71 for the purpose of giving him misleading information. Nothing whatsoever was to be gained by setting P.W. 71 after the wrong person, and if the 2nd accused knew that the right person had already been murdered he must also have known that a search for her in Quilon, like his own searches in Trivandrum and the neighbourhood, could have only one result, Innocent or guilty, a message such as that spoken to by P.W. 71 would have been quite pointless, and it is only consistent with the 2nd accused's conduct in at least making a show of a search for his missing wife that he should have asked P.W. 71 to make enquiries about her.

89. The 2nd accused's friend, P.W. 23, indeed offered to go to Quilon and make enquiries there. But the 2nd accused stopped him saying that it would be better to get into touch with the police there. In any view of the matter this was only sensible, and if the 2nd accused were guilty there could have been no harm in letting P.W. 23 go on a vain search. In fact that was what he would have done, if, as alleged by the prosecution, he was intent on setting as many people as possible on the wrong track.

90. There was some suggestion at the trial that the dismissed constable, P.W. 78, who gave misleading information to P.W. 2 at the house of the Inspector-General on the 6th morning, and who led the search party on a wild goose chase to Quilon, must have been an agent of the 2nd accused. There is no material whatsoever in

support of this suggestion, and it has not been pressed before us.

91. In considering a case of circumstantial evidence based on the conduct of the accused person it is very important to remember that different people react differently to the same circumstances and that often an innocent person does behave in a strange manner. Particularly so, when he is charged with the crime or knows that he suspected of it. In such circumstances he often falsely denies circumstances which he regards as suspicious, and false alibis by innocent persons is within the experience of every criminal judge. It might be that some of the 2nd accused's conduct was strange or unusual. But it seems to me that such conduct as has been proved against him would be equally strange if he were guilty; and so I do not regard it of much value as a sign-post pointing one way or the other. According to prosecution the murder was a deliberate and pre-planned murder so that it is reasonable to assume that the 2nd accused must have prepared everything, including the role he himself was to play, well in advance. If that were so, one would have expected better arrangements to be made for the disposal of the body, even for its temporary abode, than a shallow pit just behind the cowshed, and, in particular, one would expect the 2nd accused to have ensured that he himself would know what exactly had happened before the news of the deceased's disappearance was carried to P.W. 2 (this again must have been part of the plan) and before he appeared on the scene. The 2nd accused's conduct on reaching the Pattom house and learning of the deceased's disappearance would have been to make a show of grief and anxiety and, in any case, would not have been to remain silent in the face of P.W. 2's charges. He would have simulated the conduct of an innocent man and, unless we presume what is most improbable, that he made his appearance at the scene without having first ascertained how far his plan had been executed, he would have refuted P.W. 2's charges, thrown open all the rooms, and joined P.W. 2's party in their inspection of the house and its surroundings, just as the prosecution says he ought to have done if he were not guilty. And, on the news of the discovery of the corpse being carried to him (the discovery and the conveying of the news through the agency of P.W. 44, being, according to the prosecution, an elaborate piece of rehearsed play-acting compelled by the circumstance that the body could no longer be concealed, and, in all probability, produced after the 1st accused had been persuaded to play the scapegoat) he would again have simulated grief and righteous anger, jumped at the throat of the 1st accused, and gone forthwith to the police station and charged the 1st accused with the murder, in all likelihood taking the 1st accused with him. The very fact that, as alleged by the prosecution, the 2nd accused took time for reflection and consultation before laying the information, would go to show that the presence of the body in his compound must have taken him by surprise.

92. If, of course, the other circumstances establish the guilt of the 2nd accused, the fact that he went about pretending that he knew nothing and to all intents and purposes making inquiries for the deceased and searching for her, could be

explained away as a piece of play-acting designed as much to ward off suspicion and create appearances in his favour as to put others on a false scent. But, on the face of it, this conduct is a circumstance in favour of the 2nd accused rather than otherwise, and it is not permissible to assume that it was a piece of play-acting and then infer that he must be guilty.

93. So far as the 3rd accused is concerned, if we ignore his so-called confession, as I have shown we must, all that there is against him is that, both before and after the time of the murder, he was seen in the company of the 1st accused, not, it is to be noted, in the Pattom house, but outside it. P.W. 28 saw him go with the 1st accused as far as the gate of the Pattom house at about 2-30 p.m. but did not see him enter the house. P.W. 20 saw him come from the house between 3 and 4 p.m., his face downcast. But this witness did not expressly say that he saw him come out of the gate so that it does not necessarily follow from his evidence that the 3rd accused must have been inside the house. This is the nearest that the evidence takes the 3rd accused to the Pattom house at the time of the murder, and, even this evidence is belated and, in the case of P.W. 20, obviously undependable. P.W. 28 lives near the Pattom house and he had seen the police officers go there for investigation many a time, but he came out with the information in his possession only on 24th September 1957, seven weeks after the event. P.W. 20, who was at the time involved in a prohibition case., said nothing at all about the 3rd accused when he was questioned by the police on the 8th August, three days after the event, and it took a second questioning on the 25th September, seven weeks later,⁵ to make him a relevant witness.

94. I would uphold the judgment of the learned Sessions Judge, confirm the conviction - and since there is nothing that can be thought of in extenuation - the sentence of the 1st accused as also the acquittal of the 2nd accused and 3rd accused, and dismiss these appeals.

Sankaran J.

95. I have carefully read through the judgment of my learned brother, which has dealt with all the three appeals arising out of Sessions Case No. 1 of 1958 on the file of the Sessions court at Trivandrum. Of the three appeals, Criminal appeal No. 88 of 1958 is by the first accused and it is directed against his conviction u/s 302, Indian Penal Code, and the death sentence awarded to him by the learned Sessions Judge. The other two appeals, Nos. 160 and 161 of 1958, have been preferred by the State against the acquittal of accused 2 and 3. The three appeals together have brought up the entire case for the consideration of this Court. The entire evidence against the first accused has been fully discussed by my learned brother and he has agreed with the learned Sessions Judge's conclusion that the offence of murder has been clearly brought home to the 1st accused and that the conviction u/s 302 and the death sentence awarded to him do not call for any interference in appeal. I agree with my learned brother's conclusion that the said conviction and sentence have

only to be confirmed and that the appeal by the first accused must be dismissed. I also agree with the conclusion of my learned brother that the prosecution evidence as against the 3rd accused is not satisfactory and convincing and that the learned Sessions Judge's order acquitting him of the offence charged against him does not call for any interference. Accordingly, I concur in the dismissal of Criminal Appeal No. 161 of 1958 preferred by the State against the acquittal of the 3rd accused. But I regret that I have wholly to differ from my learned brother's conclusion that Criminal Appeal No. 160 of 1958 against the acquittal of the 2nd accused has also to be similarly dismissed. I cannot agree with the view that the several circumstances proved in this case against the 2nd accused are capable of reasonable explanations consistent with the innocence of the 2nd accused. On an anxious and careful consideration of all those circumstances, I am clear in my mind that the cumulative effect of all those circumstances is to lead to the irresistible and conclusive inference that it was at the instigation and connivance of the 2nd accused that his wife Saraswathi Amma was murdered by the first accused who was at that time a servant working in the residence of the 2nd accused, which is referred to as the Pattom house in the course of the discussion of the evidence. In the discussion to follow, I shall deal with the material and significant circumstances one by one.

96. Before proceeding to consider the evidence in the case, I may dispose of one point strenuously urged on behalf of the 2nd accused. It is contended that in an appeal against an order of acquittal the appellate court cannot ordinarily interfere with the trial court's verdict of innocence in favour of the accused, unless there are strong grounds to show that the trial court has grossly misconducted itself in the appreciation of the evidence on record. The controversy on this question was settled by the Privy Council as early as in the year 1934 by its pronouncement in *Sheo Swarup and Others vs. King Emperor*. In that case the scope of an appeal preferred u/s 417 of the Code of Criminal Procedure against orders of acquittal has been explained as follows:-

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code." But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the, slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well-known and recognised in the administration of justice.

These principles have been subsequently affirmed and reiterated by the Supreme Court in a series of cases. In [Surajpal Singh and Others Vs. The State](#), it was ruled that-

It is well established that in an appeal u/s 417 the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well-settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence, can be reversed only for very substantial and compelling reasons.

To the same effect is the decision in [Ajmer Singh Vs. The State of Punjab](#), . In [Chelloor Mankkal Narayan Ittiravi Nambudiri Vs. State of Travancore-Cochin](#), , [Aher Raja Khima Vs. The State of Saurashtra](#), and in [Balbir Singh Vs. State of Punjab](#), also the principles enunciated in Sheo Swarup and Others vs. King Emperor were reiterated and affirmed. The true scope and import of the expression "compelling reasons" has been explained in [Aher Raja Khima Vs. The State of Saurashtra](#), as follows :-

Do the words "compelling reasons" in the above passage import a limitation on the powers of a Court hearing an appeal u/s 417 not applicable to a Court hearing appeals against conviction If they do, then it is nearly the old doctrine that appeals against acquittal are in a less favoured position, dressed in a new garb, and the reasons for rejecting it as unsound are as powerful as those which found favour with the Privy Council in Sheo Swarup and Others vs. King Emperor .

But it is probable that these words were intended to express, as were the similar words of Lord Russel in Sheo Swarup and Others vs. King Emperor that the Court hearing an appeal u/s 417 should observe the rules which all appellate courts should, before coming to a conclusion different from that of the trial court. If so understood, the expression "compelling reasons" would be open to no comment. Neither would it be of any special significance in its application to appeals against acquittals any more than appeals against conviction.

But the expression has been quoted in later judgments, especially of the courts below, as if it laid down that in appeals against acquittal, the standard of proof required of the appellant was far higher than what the Law casts on appellants in other appeals, and as the words "compelling reasons" are vague and indefinite to a degree, the result has not seldom been that even when Judges hearing appeals u/s 417 were convinced of the guilt of the accused, they refrained from setting aside the order of the acquittal owing to the dark and unknown prohibition contained in the expression. That is the impression which I have formed in the appeals which have come before me in this Court.

There is always a danger in taking a phrase, attractive and telling in its context, out of it, and erecting it into a judicial formula as if it laid down a principle universal in its

application. And this danger is all the greater when the phrase is of undefined import, and relates to appreciation of evidence. It is in the interests of the public that crimes should be punished, and it is with this object that section 417 confers on the State a right to appeal against acquittal.

To fetter this right through such expressions as "compelling reasons would not merely be to legislate but to defeat the plain intention of the legislature that an accused in an appeal against acquittal should have only those rights which the State in an appeal against conviction or a respondent in a civil appeal has, and that he is to enjoy no special protection.

The fundamental objection to regarding the expression "compelling reasons" as a rigid formula governing the decision of an appeal u/s 417 is that it puts a judgment of acquittal, however rendered, in a position of vantage which the law did not accord to it, and throws around the accused who gets an order of acquittal in the trial court a protection which the law did not intend to give him. In my judgment, this is a situation in which great mischief must result, and the interests of the public must suffer.

When the expression "compelling reasons" is understood in the manner explained by the Supreme Court in the passage extracted above, it is clear that the expression is not intended to place any restriction or to impose any limitation on the appellate court's powers while hearing appeals against acquittals. It is clear from the authoritative rulings already cited that even in appeals against acquittals, the appellate court has full freedom to review the entire evidence on record and to come to its own independent conclusion on the question as to whether such evidence is sufficient to conclusively establish the guilt of the accused. In the appreciation of such evidence, the appellate court will no doubt approach the evidence keeping in mind that there is the initial presumption of innocence in favour of the accused and that such presumption has gained added strength by the trial court's verdict of innocence in his favour. All the same, if, on a due appreciation of the evidence, the appellate court reaches the conclusion that the verdict of the trial court is wrong and unsupportable and that the evidence against the accused is clear and convincing enough to lead to the conclusive inference that the guilt of the accused has been proved beyond all reasonable doubt, then it is the duty of the appellate court to reverse the decision of the trial court and to convict the accused.

97. So far as the present case is concerned, the charge against the 2nd accused is that on account of his ill-will and hatred towards his wife Saraswathi Amma, he made up his mind to do away with her and that he achieved that object by utilising the services of his trusted servant, the first accused, in this case. The prosecution case is that the 2nd accused instigated the first accused to murder Saraswathi Amma in secrecy and to dispose of the body in such a way as to cause all disappearance of evidence which may lead to a detection of the commission of the offence. The murder was committed some time between 2 p.m. and 3-30 p.m. on

the 5th of August 1957 by the first accused by inflicting a fatal cut on the back of the neck of Saraswathi Amma with the chopper, M.O. 10. This occurrence took place in the Pattom house, when all the inmates of that house excepting Saraswathi Amma and the first accused were away from that house. The 2nd accused, the master of the house, had gone out at about 9 a.m. and, even according to the prosecution, he returned home only some time after 9 p.m. The three children of Saraswathi Amma were in their respective schools. P.W. 30, who was working as a maid-servant in the Pattom house, had gone away from that house to her own house on account of her illness. P.W. 2, the mother of Saraswathi Amma, who had come on a visit to the Pattom house on the 1st of August, had also returned to her Pazha-vangadi house on the 3rd. Thus on the 5th of August, the only inmates of the house were the 2nd accused, his wife Saraswathi Amma, their three minor children and their servant, the first accused. All these facts have been spoken to by P.Ws. 2 and 30 and are also admitted by accused 1 and 2. The evidence relating to the circumstances under which the murder took place in that house in the afternoon of the 5th when the inmates of that house, Saraswathi Amma and the first accused, were alone in that house, has been discussed in the Judgment of my learned brother while dealing with the appeal preferred by the first accused. I do not propose to discuss that evidence once again, because I feel that such a discussion is unnecessary for the purpose of determining the complicity of the 2nd accused in the murder [of Saraswathi Amma. The position taken up by the 2nd accused that he was away from the Pattom house from 9 a.m. to 9 p.m. on 5th August 1957, is conceded by the prosecution. The case against the 2nd accused that he, by actively instigating the first accused, abetted the actual commission of murder by the first accused, is sought to be made out by circumstantial evidence alone. As against the first accused also there is no direct evidence about the actual commission of murder by him. The circumstantial evidence adduced by the prosecution against the first accused has been accepted as conclusive by the learned Sessions Judge and also by my learned brother and myself. We differ only on the conclusive nature of the circumstantial evidence as against the 2nd accused. In a case depending entirely on circumstantial evidence the approach should be to find out whether the cumulative effect of all the items of such circumstantial evidence when put together, would lead to the irresistible inference that the accused is-guilty of the offence charged against him. If the cumulative effect of all the items of circumstantial evidence relied on by the prosecution is only to create a suspicion in the mind of the court that the accused is guilty of the offence charged against him and not to take the matter beyond the stage of suspicion to the stage of reasonable certainty, the benefit of the doubt arising from the inconclusive nature of the evidence must go to the "accused for the obvious reason that suspicion, however strong, cannot take the place of legal evidence necessary to sustain a conviction. The test to be satisfied by the circumstantial evidence before it could 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 the act must have been done by the accused.

Two aspects have been specially emphasised in the above passage. One is that if the circumstances proved against the accused are capable of a reasonable explanation which would fit in with the innocence of the accused, those circumstances cannot be relied on as proving the guilt of the accused. The other is that the circumstances proved against the accused must be such as to lead to the inference that consistent with human probability the allegation against the accused must be true. In assessing such a probability it is essential that the different items forming the several links in the chain of circumstantial evidence, should be viewed as a whole. Each of those different items -of evidence independently considered may be capable of an explanation consistent with the innocence of the accused. But such an explanation may not hold good when that particular item of evidence is considered as part of a complete and continuous chain of circumstances making up the entire picture. The attempt should therefore be to find out whether in the particular set up any item of evidence forming a link in that chain, would sustain an explanation consistent with the innocence of the accused. No doubt the evidence in proof of each of the facts that go to make the whole chain, has to be independently scrutinised and the credibility of such evidence determined. In the present case what the learned Sessions Judge has done was to examine each link in the circumstantial evidence independently, and in doing so he has come to the conclusion that in respect of each of them an explanation consistent with the innocence of the accused was possible. He has failed to view the different links in a comprehensive manner and to see whether each of them was capable of such an explanation in the particular set-up and in the subsequence of events. In other words, he has failed to consider whether consistent with human probabilities, the cumulative effect of all the circumstances proved against the 2nd accused is to lead to a conclusive inference of the guilt of the 2nd accused.

98. The circumstantial evidence adduced by the prosecution can be grouped under three categories, viz., (1) the relationship that was subsisting between the 2nd accused and Saraswathi Amma and the attitude of the former towards the latter at about the time of the occurrence, (2) the nature of the relationship that was subsisting between accused 1 and 2 prior to and subsequent to the occurrence, and (3) the conduct of the 2nd accused subsequent to the occurrence.

99. The evidence falling under the first category may be considered at the outset. According to the prosecution the feeling of the 2nd accused towards Saraswathi Amma was one of bitterness and hatred for some time prior to the date of the occurrence and this unhappy relationship had a gradual development and had become aggravated on account of certain incidents that took place a few weeks prior to the date of occurrence. The misunderstanding between the two had its origin shortly after their marriage which took place some ten years back. Saraswathi Amma was the only daughter of P.W. 2 who had her own buildings on the side of the main road at Pazhavangadi. The 2nd accused who was a contractor by profession, thought that these buildings could be sold for a good price and that the amount could be invested in his business. About six months after his marriage, the 2nd accused suggested to P.W. 2 that the Pazhavangadi property may be sold. P.W. 2 disliked this proposal and she sternly turned it down. In this matter Saraswathi Amma was also completely on the side of P.W. 2. These facts are clearly sworn to by P.W. 2 and I see no reason to disbelieve her. The learned Sessions Judge has also not disbelieved P.W. 2 on this point, but has only stated that the humiliation which the 2nd accused felt a few years back at the attitude of P.W. 2 in turning down his suggestion for the sale of the Pazhavangadi property, could not have served as a motive for the 2nd accused for instigating the murder of Saraswathi Amma. In making such a comment the learned Judge has clearly missed the point sought to be made out by this particular incident. This incident was mentioned by the prosecution, not to make out the motive of the 2nd accused, but only as the starting point of the misunderstanding between himself and Saraswathi Amma and her mother. In spite of such a misunderstanding, things went on apparently alright for a few years. A few months before the occurrence, P.W. 2 had requested the 2nd accused to put up an extension to her building at Pazhavangadi and had entrusted Rs. 1,500 to him to meet the expenses of such an additional construction. The 2nd accused put off the construction by putting forward one excuse or another, with the result that P.W. 2 got disgusted over the affair and demanded back the money she had entrusted to the 2nd accused. Saraswathi Amma, in her turn, was also insisting on the 2nd accused to return the money to P.W. 2 if he was not prepared to put up the additional construction as desired by P.W. 2. The 2nd accused has denied this transaction altogether and he stated that no amount as stated by P.W. 2 was entrusted to him. As against such denial on his part, there is the positive evidence of P.W. 2 about the transaction relating to Rs. 1,500. The evidence of P.W. 30 who was the maid servant in the Pattom house, in a way corroborates the evidence of P.W. 2. P.W. 30 has stated that some days prior to the occurrence there was a talk between the 2nd accused and Saraswathi Amma, the former pressing for the sale of the Pazhavangadi property and the latter pressing for the return of Rs. 1,500 to P.W. 2. The mere fact that P.W. 30 had not made mention of such a conversation between the 2nd accused and Saraswathi Amma when she was questioned by the police at the earlier stage of the investigation, cannot by itself be a reason to discard her version as false. It may be mentioned here that there was serious complaint that the

police officers who were in charge of the investigation of this case at the earlier stages were not earnest about such investigation and as a result of such complaints, the Inspector-General of Police took the case out of the hands of these officers and put P.W. 79 in charge of the investigation. There is therefore nothing strange in finding that P.W. 30 had not been properly questioned at the early stage of the investigation conducted by the other police officers. The talk between the 2nd accused and Saraswathi Amma about the return of the amount of Rs. 1,500 to P.W. 2 appears to have taken place when P.W. 2 was also in the Pattom house about three weeks prior to the death of Saraswathi Amma. P.W. 2 has clearly deposed to such a conversation having taken place between the husband and wife when she too, was in that house. The evidence of P.W. 23, who is a good friend and confidante of the 2nd accused, also goes to show that the version of P.W. 2 regarding the entrustment of Rs. 1,500 is true. P.W. 23 is employed as the Works Superintendent in the P.W.D. and in that capacity he was moving on terms of intimacy with the 2nd accused who had taken up several items of work in that department. It has come out in the evidence of P.W. 23 that he too was in the company of the 2nd accused when the latter had undertaken a trip to Kuttalam on the 3rd August 1957. This witness has stated that some months prior to the occurrence in this case, the 2nd accused had taken him to the Pazhavangadi house for getting an estimate prepared for putting up an extension to the house of P.W. 2 and that on a rough calculation the witness had stated that the cost would come to Rs. 1,500. He has further stated that when he met P.W. 2 some time later, she had complained to him that the 2nd accused had not put up the extension and had even requested him to ask the 2nd accused to carry out the work. P.W. 23 has also stated that the extension was not put up by the 2nd accused. This evidence is very much in favour of the truth of the version of P.W. 2 about the entrustment of Rs. 1,500 to the 2nd accused and the misunderstanding that developed subsequently on account of the demand made by herself and her daughter, Saraswathi Amma, for the return of that amount. It has also to be remembered in this connection that Saraswathi Amma was insisting on the repayment of this amount at the time when the 2nd accused was in financial difficulties. P.W. 41, like P.W. 23, is another friend of the 2nd accused and he has stated that on two occasions he had borrowed money for the 2nd accused by pledging the jewels entrusted to him by the 2nd accused. The first pledge was towards the close of the year 1955 and the amount raised was about Rs. 200. The second pledge was in July 1957 and on this occasion a ring and necklace had to be pledged for raising Rs. 40 and Rs. 70 respectively. This clearly indicates the extent of the financial difficulties which the 2nd accused was facing at that time in spite of the fact that he had to get large amounts in connection with his contract works. It has also been proved in this case that he had become a defaulter in the payment of instalments due to the Credit Bank under a loan which he had taken some years back. He had also borrowed money from P.W. 36 and his brother and from P.W. 63 in the years 1956 and 1957. P.Ws. 36 and 63 have sworn to these transactions and have also stated that they have instituted suits for recovery of the amounts due to

them from the 2nd accused. Exts. P. 19 and P. 33 are copies of the complaints in those suits. No doubt the suits were instituted shortly after the 2nd accused got involved in the present case. But that does not mean that the transactions spoken to by P.W. 36 and 63 are not true. The 2nd accused has not denied having dealings with these witnesses. Thus there can be no doubt that for some time prior to the occurrence the 2nd accused was really in financial embarrassment. The learned Sessions Judge has missed the significance of this position when he brushed away the case of the 2nd accused's difficulties by pointing out that he had to get large amounts in connection with his contract works and that P.W. 2 and her daughter were not in such affluent circumstances as to be in a position to render monetary help to him. What is really significant is that Saraswathi Amma who was expected to realise the difficulties of her husband practically ignored his difficulties and went on insisting that the sum of Rs. 1,500 due to her mother should be repaid to her. Such an attitude on her part must have certainly embittered his feelings towards her as alleged by the prosecution. It is not clear as to whether there were other reasons for aggravating the 2nd accused's bitter feelings towards Saraswathi Amma. All the same, it is clearly proved by the evidence and is even admitted by the 2nd accused that for about two weeks prior to the occurrence the 2nd accused and Saraswathi Amma were not even on talking terms and that he was not taking his food from his house.

100. P.W. 2 was at the Pattom house from the 1st to the 3rd of August 1957 and during this period she could personally notice the unhappy relationship that was subsisting between the 2nd accused and Saraswathi Amma. According to P.W. 2, the 2nd accused was not taking any food from that house for about three weeks prior to the death of Saraswathi Amma. The witness has further stated that during this period the 2nd accused used to give Rs. 2 every day before he left the house in the morning. This amount was intended to meet the daily expenses in the house. The 2nd accused used to return home rather late in the night and he was not having his supper from that house. This version of P.W. 2 is corroborated by the evidence of P.W. 30 who was the maidservant in that house. She too has stated that the 2nd accused had stopped taking his food from his house after an exchange of words between himself and Saraswathi Amma regarding the return of Rs. 1,500 to P.W. 2. When the 2nd accused was questioned u/s 342 of the Code of Criminal Procedure, his attention was specifically drawn to this part of the evidence given by P.Ws. 2 and 30. In his reply he clearly admitted that for two weeks he was not having his food from his house, excepting a cup of milk in the morning and at night. He has tried to explain this attitude on his part by stating that one day when food was sent to his "Tourists" Lodge, he found the same not satisfactory and that was the reason why he directed that food need not any longer be sent to him and that he would be satisfied with a cup of milk even during night time. He has also stated that he had questioned Saraswathi Amma as to why food was sent without curries and she had replied that the money entrusted for daily expenses was insufficient. This matter has been

elaborated by him in his first information statement, Ext. P. 35 wherein also he had made mention of his having stopped taking food from his house. In his statement u/s 342, he has admitted that he was handing over the money for the daily expenses to any of his children. When questioned why he was not entrusting the money to Saraswathi Amma, his answer was that any of the children would go to him and he used to give the money to that child. It is obvious that he was doing so because during this period he was not even inclined to talk to his wife. The development of such situation could not certainly have been the result of a petty domestic quarrel about the insufficiency of the amount given for daily expenses and about the unsatisfactory manner in which food was sent from the house of the 2nd accused to his lodge. The cause of the 2nd accused's bitterness towards his wife must have been something much more serious and fundamental. What was working in the mind of the 2nd accused could not be known to others and hence no evidence regarding the same could be adduced. All the same, it was obvious to P.Ws. 2 and 30 that the 2nd accused was very much embittered to his wife. As persons who had chances of observing his behaviour towards Saraswathi Amma, these witnesses are competent to speak about it. The 2nd accused's counsel relies on the evidence of P.Ws. 7 and 14 to show that the relationship between the 2nd accused and Saraswathi Amma was cordial. In the cross-examination of P.W. 14 he has stated that he has seen Saraswathi Amma and her children coming to the gate of their house to see the 2nd accused off in the mornings when he left the house. It has been left vague as to when the witness had seen this. Even if what the witness has stated was a matter of daily occurrence, it would only mean that Saraswathi Amma and her children had no ill-will or bitterness towards the 2nd accused. P.W. 14 has not been able to state anything about the 2nd accused's attitude towards Saraswathi Amma. In fact he has stated that he was not in the habit of visiting Pattom house and that therefore he cannot say anything about the relationship that was subsisting between the husband and the wife. P.W. 7 was on terms of intimacy with Saraswathi Amma and in response to the request of Saraswathi Amma, this witness had gone to the Pattom house on the night of 4th August, to keep company with her when the 2nd accused was away at Kuttalam. In the cross-examination of P.W. 7 she has stated that to her knowledge the 2nd accused and his wife were getting on amicably and that Saraswathi Amma had never complained to her about her husband. P.W. 7 was speaking about her own impression and no great weight can be attached to that impression in view of the fact that the 2nd accused himself has admitted that for two weeks he was not taking his food from his house and was not having any direct dealings with Saraswathi Amma. There is also nothing strange in the conduct of Saraswathi Amma in not divulging to P.W. 7 everything about the unhappy situation that had developed at Pattom house. All the same, the evidence of P.W. 15 shows that Saraswathi Amma was feeling very much worried about the 2nd accused's attitude towards her. P.W. 15 has stated that when Saraswathi Amma visited his house three or four days prior to her death, she mentioned to the wife of the witness in his presence that the 2nd accused was not taking food from his house

and that she was very much worried over his attitude. This would give an idea of the seriousness of the situation that had developed at the Pattom house. P.W. 2 who was in that house from the 1st to the 3rd August, appears to have been fully aware of the gravity of the situation, and that accounts for her spontaneous and instinctive reactions in jumping to the conclusion that Saraswathi Amma must have been the victim of foulplay at the hands of the 2nd accused. P.W. 2 gave expression to such feeling immediately on being told by the 1st accused at about 8 p.m. on the 5th August that Saraswathi Amma was missing from her house. It is obvious that at that time P.W. 2 was absolutely in the dark as to where Saraswathi Amma was or as to what had happened to her. At the same time it is clear that she suspected danger to her at the hands of the 2nd accused only because she was fully aware of the bitter feeling which the 2nd accused was entertaining towards Saraswathi Amma. The subsequent events and the conduct of the 2nd accused have to be considered in this background. No doubt, the bitter feeling entertained by the 2nd accused towards his wife will not by itself be a sufficient ground to warrant an inference that it was at his instance that she was done to death. It cannot also be stated as a general proposition that such a mental attitude on the part of the husband would be a sufficient and adequate motive for the commission of the grave offence of murder. The question of sufficiency or otherwise of the motive is a matter depending on the psychology of the individual concerned. Some people may act on the impulse of a motive apparently trivial in character and may commit grave crimes, while others, entertaining the strongest feelings of anger and hatred, may refrain from committing such crimes by falling a victim to such feelings. The question whether the 2nd accused had abetted the murder of his wife, must therefore be determined by properly assessing the several circumstances proved in the case in the background of his bitter relationship with her which is said to have served as his motive for committing such a crime.

101. The relationship that was subsisting between the 1st accused and the 2nd accused is the next important aspect to be considered. In the first information statement, Ext. P. 35, the 2nd accused has stated that he had first engaged the 1st accused as a cooly under him and that later on he was employed as the domestic servant in the Pattom house. An idea as to the nature of the attachment and mutual confidence that had developed between the master and the servant, is given by P.W. 18 who is none other than the brother of the 1st accused. While the 1st accused was working as a domestic servant under the 2nd accused, his financial condition appears to have improved and his brother, P.W. 18, felt that it was a disgrace that the 1st accused was working as a domestic servant. P.W. 18 therefore desired that the 1st accused should come away from the Pattom house and so he went to that house to call the 1st accused. This was in the month of March or April in 1957. He met Saraswathi Amma and told her that Dr. Govindan, the uncle of himself and the 1st accused, had promised to give a maintenance allowance to these people and hence the 1st accused may be sent with him. Saraswathi Amma then called the 1st

accused and told him that his brother had come to call him. She also told him that there is no necessity for him to work as a servant in view of the offer made by Dr. Govindan to give a maintenance allowance to him. She further told him that his relations were her classmates and if they were to ask her why the 1st accused was detained as a servant in the Pattom house, she may have no proper reply to give to them. Accordingly she suggested that he may act according to the wishes of P.W. 18 and that he may do so after consulting the 2nd accused. Thereupon, the 1st accused went with P.W. 18 to the Tourists' Lodge and met the 2nd accused to whom P.W. 18 explained that he had come to call the 1st accused because their uncle Dr. Govindan desired that the 1st accused need not any longer work as a domestic servant. The 2nd accused replied that the 1st accused may stay on with him until the result of the civil case to which the 1st accused and P.W. 18 were parties, was known. P.W. 18 was not agreeable to this suggestion and he said that Dr. Govindan was particular that the 1st accused must come away from the Pattom house and he had also promised to make all necessary arrangements for a comfortable living for the 1st accused. Thereupon the 2nd accused asked P.W. 18 to consult the 1st accused. When P.W. 18 replied that the 1st accused had come with him, the 2nd accused was a bit surprised and exclaimed by saying "Has he come". The 2nd accused called the 1st accused to him and asked him if he had decided to go. The 1st accused remained silent without answering the question. The 2nd accused again asked P.W. 18 if it was necessary to take the 1st accused and if he could not be allowed to stay on. There was some discussion between the 2nd accused and P.W. 18 over this matter, and finally P.W. 18 said that the accounts of the 1st accused must be settled. On ascertaining from the 1st accused that the balance due to him was Rs. 10, the 2nd accused gave him that amount. After this, P.W. 18 took leave of the 2nd accused and when he turned back after going some distance, he noticed the 1st accused still standing near the 2nd accused. Then the witness called the 1st accused and asked him if he had told his master that he was going. The 1st accused's reply was in the negative and so P.W. 18 directed the 1st accused to go back and take the permission of the master. The 1st accused accordingly went back but showed no inclination to accompany P.W. 18. When P.W. 18 went near the 1st accused, he was found to be in tears. When P.W. 18 asked him if he was prepared to go with him, the 1st accused reluctantly went with P.W. 18. On the way, the 1st accused said that he had to take his clothes from the Pattom house. Thereupon, P.W. 18 went to his residence at Sreevaraham after giving instructions to the 1st accused to take his clothes from the Pattom house and then to meet him at the Sreevaraham house. But the 1st accused did not turn up at the residence of P.W. 18 either on that day or on the next day. Accordingly, on the third day, P.W. 18 again went to the Pattom house and asked the 1st accused why he had not gone to him. The 1st accused's reply was that the 2nd accused asked him to stay on and to go to his own house only after his case was over. On knowing about this conversation, Saraswathi Amma told P.W. 18 that the 1st accused would act only according to the wishes of his master and that therefore it would be better for the witness to persuade Dr. Govindan to induce the 1st

accused to go with him. Accordingly, P.W. 18 left the Pattom house. Some days later, he again went to Pattom house to get the signature of the 1st accused in a petition to be filed in court in connection with their civil case. When the 1st accused was asked to sign the petition, he replied that he would do so only after consulting the 2nd accused. He also said that the 2nd accused had asked him not to sign any papers without his knowledge and consent. The 1st accused accordingly went inside the house and showed the petition to the 2nd accused and obtained his consent to have it signed and entrusted to P.W. 18. After obtaining the 2nd accused's consent, the 1st accused signed and gave the petition to P.W. 18. All these facts have been clearly sworn to by P.W. 18 and nothing has been brought out in his cross-examination to doubt the truth of the version given by him. On the other hand, the trend of the cross-examination on behalf of the 2nd accused indicates that the version given by P.W. 18 is substantially true. A specific suggestion was put in the course of that cross-examination as to whether the 2nd accused had not told the witness on both the occasions when he called the 1st accused that he may continue his stay at Pattom house until his civil case was over. In the 2nd accused's statement u/s 342, he has clearly admitted that P.W. 18 wanted to take the 1st accused from the Pattom house because Dr. Govindan had promised to give him the maintenance allowance and then the 2nd accused had to agree that the 1st accused may go if he was willing to do so. The 2nd accused has further stated that in the evening when he returned home he found that the 1st accused had not gone but had preferred to stay on. These statements also go to confirm the truth of the version given by P.W. 18. It is abundantly clear from that version that the 1st accused was very much attached to the 2nd accused and was unwilling to leave him in spite of the facilities offered to him by his own brother, to have a comfortable and independent living. It is also clear that the 2nd accused was equally unwilling to send the 1st accused away and that both of them had mutual confidence of a firm nature. It is also seen that Saraswathi Amma had desired and expressed her view to the knowledge of the 1st accused that he should go away from the Pattom house as desired by P.W. 18. The circumstantial evidence relating to the occurrence in this case has to be viewed in this background also. It is seen from such evidence that the attachment and confidence that subsisted between the 1st accused and the 2nd accused continued unabated even after the disappearance of Saraswathi Amma on the 5th August 1957. This part of the evidence will be considered while discussing the evidence about the conduct of the 2nd accused on the 5th August and on subsequent days.

102. It was at about 8 p.m. on 5th August 1957 that the 1st accused made his appearance at the Pazhavangadi house and reported to P.W. 2 that Saraswathi Amma was missing. The version given by him was that she had gone out of the Pattom house at about 3 p.m. after saying that she was going to collect the amounts due from the neighbours to whom she had supplied milk and that thereafter she had not returned home. The version that she had gone to collect the amounts due

to her from her customers, was not believed by P.W. 2 and her immediate reaction was that her daughter Saraswathi Amma must have been done to death by the 2nd accused and thus she called out to the 1st accused as to whether himself and his master had murdered her daughter. The 1st accused immediately left the place while P.W. 2 continued wailing and she called out to her neighbour, P.W. 13 to help her to go to the Pattom house because she was afraid to go alone. She told P.W. 13 also that her daughter was murdered. P.W. 13 contacted P.W. 4, a relation of P.W. 2, and they arranged a car. In the meanwhile, P.W. 12 also joined that company and all of them, i.e., P.Ws. 2, 4, 12 and 13, proceeded in a car. On the way and even after reaching the Pattom house, P.W. 2 continued to be crying out that her daughter Saraswathi Amma had been killed by the 2nd accused. On hearing her cries from the premises of the Pattom house, people from the neighbourhood gathered there. The children of Saraswathi Amma were not there at that time and this caused greater alarm to P.W. 2, and so she exclaimed if the children had also been murdered. All the while she was remaining in the car just in front of the gate of the Pattom house. Within a short time, the neighbours brought the children to the place and entrusted them to P.W. 2. These children were being kept by P.W. 7 at her house. At about 6 p.m. when this witness, who is a neighbour to the Pattom house, saw the children standing at the gate and crying she questioned the 1st accused about the reason and was told by the 1st accused that Saraswathi Amma who had gone out at 3 p.m. for collecting money, had not returned. At this, P.W. 7 undertook to look after the children and directed the 1st accused to the Pazhavangadi house to report the matter to P.W. 2. The children were thus kept in the house of P.W. 7 and it was from there that they were brought and entrusted to P.W. 2. Within a short time after this, the 2nd accused also came there in his car and all of them got into the Pattom house. The 2nd accused opened the outer door of the front room of the house with the key obtained from somebody who was standing at the premises of the house. The witnesses who spoke about this have not been able to identify the person who handed over the key to the 2nd accused. But the evidence on record leaves no room for doubt that it could not have been the 1st accused who handed over the key. P.Ws. 2, 4, 12 and 13 have all stated that the 2nd accused left the place within a short time after entering the front room in that house and that the 1st accused reached the place only after these witnesses and the 2nd accused had entered that house. On reaching that house P.W. 2 fell down on the verandah and it was in that lying posture that she was crying and accusing the 2nd accused as the person responsible for the murder of her daughter. The minor children also were lying near P.W. 2 and crying. P.Ws. 4, 12 and 13 on entering the front room, found that the bed room and the store room were locked. They examined the house and the premises with a view to find out some clue which may be helpful for tracing out the missing lady. Naturally they wanted to examine the inside of the closed room also and so they asked the 2nd accused to open those rooms. His prompt reply was that Saraswathi Amma had locked these rooms and gone away with the keys. His attitude was one of resentment at being asked by these people to open the two

rooms. He asked them in an angry tone why these rooms should be opened and immediately got out and drove away in his own car. Up to this stage, the 1st accused had not arrived at the place. P.W. 4 is clear and definite that the 1st accused arrived only after the 2nd accused had left the place and when the Pazhavangadi people were engaged in examining the house and the premises. P.W. 12 has also stated that the 1st accused arrived shortly after the 2nd accused had gone away from the place. P.W. 13 is not sure about the exact time at which the 1st accused arrived. But he is also clear that he saw the 1st accused at the Pattom house only after the 2nd accused had left the place and when the others were examining the premises of the house. P.Ws. 19 and 28 are two of the persons who hastened to the Pattom house on hearing the cries of P.W. 2. When P.W. 19 arrived in front of the house, the Pazhavangadi people were also there and he saw the 2nd accused arriving in another car. This witness also saw all these persons getting into the house and the 2nd accused alone coming out within a short time and driving away from the place in his car. It was after the 2nd accused thus left the place that the 1st accused and 3rd accused arrived there on two bicycles. This is spoken to by P.W. 19 who has further stated that the 1st accused got into the house after leaving the cycle on the roadside. P.W. 28 reached the place only after the departure of the 2nd accused on the first occasion. When this witness came in front of the gate of the house, he saw the 1st accused and 3rd accused arriving there on bicycles and the 1st accused alighting from the bicycle and going into the house. Some time later he saw the 2nd accused arriving there from the south. This was the second arrival. Thus it is clear from the evidence of these witnesses that on the occasion of the first arrival of the 2nd accused at the Pattom house on the night of 5th August, he could not meet the 1st accused and talk to him because the 1st accused arrived only after the departure of the 2nd accused. Nothing has been brought out in the cross-examination of the above-mentioned witnesses to discredit them and I see no reason to disbelieve them. I do not also see any force in the general criticism that these and the other witnesses swearing to the conduct and behaviour of the 2nd accused, must have to some extent entertained a bias against him on account of their moral conviction that the accusation made by P.W. 2 must be true. The argument is that from the outset they were hearing the repeated assertion by P.W. 2 that her daughter Saraswathi Amma has been murdered by the 2nd accused and added to this, there was a sensation in the locality created by the mysterious disappearance of Saraswathi Amma, followed by the reports in the newspapers indicating that the 2nd accused must be the villain of the tragedy and that all these utterances must at least have had an unconscious influence on the mental outlook of these witnesses. In the first place, the newspaper reports appeared only by the 7th and 8th of August and there is no evidence to show that [all these witnesses had read these reports. There is also nothing in their evidence to indicate that they were persuaded to believe the assertion of P.W. 2 to be true. On the other hand, it is clear from the evidence of P.Ws. 4, 12 and 13 that their examination of the Pattom house and premises was with the idea of finding out some clue which may be helpful to trace

out the missing woman. They wanted to examine the rooms to see if she had left any clue as to why she had gone away from that house as stated by the 1st accused. It has also to be noted that these witnesses have merely narrated what they saw at the Pattom house and what had happened there after their arrival. Under these circumstances, it will be unfair and unjust to characterise their evidence as biased and to doubt their veracity. I may here refer to a point on which the evidence of these witnesses is discrepant to some extent. According to P.Ws. 4, 12 and 13, the windows of the locked rooms were also found closed and hence the examination of these rooms was conducted through the ventilators with the aid of torch lights. However, in the evidence of P.W. 2, she has stated that the windows were lying open and that it was through these open windows that the examination of these rooms were conducted. I think that P.W. 2 has been making a mistake in saying so. It has to be remembered that she was all along lying in the front verandah and the examination of the rooms was being conducted by the others who had come in her company. On learning from them that the locked rooms were also examined to the extent possible, she must, in all probability, have formed the impression that such examination must have been conducted by them through the open windows. I do not therefore attach any weight to this apparent discrepancy in the version given by P.W. 2 and the other witnesses. The examination through the ventilators or through the open windows, could not have been thorough and the divergent versions given by the witnesses cannot affect the credibility of these witnesses in respect of the material points spoken to by them. Thus I am definitely of the view that the evidence of the aforesaid witnesses can be safely accepted as true.

103. The conduct and behaviour of the 2nd accused when he first arrived at the Pattom house on the night of 5th August 1957, has to be considered along with his conduct after the second arrival at about 10 p.m. Even though on the first occasion the 2nd accused had abruptly gone away from that house, the Pazhavangadi people remained there for some time more and continued their examination of the premises of the house. The 1st accused who had come there by that time, also took part in that examination, and it was he who brought a pole to conduct a probe into the well in that house. Since no clue could be obtained as result of these examinations, P.W. 4 and others who had come from Pazhavangadi, decided to go back after reporting the matter to the police. They wanted to take the 1st accused also with them so that the police may question him for collecting all the necessary information. Accordingly all of them came out to the road in front of the Pattom house and got into their car. The 1st accused also was seated in the car. But before the car started for Pazhavangadi, the 2nd accused came there from the south in his own car, along with another person. Somebody told him that the 1st accused was in the car of P.W. 2. On noticing him in that car, the 2nd accused asked him where he was going and ordered him to get down. Accordingly the first accused got down from the car and without him the Pazhavangadi people left the place. P.Ws. 19 and 28 were among those present at the road at that time. The 2nd accused asked the

1st accused whether he was not in the house and when Saraswathi Amma left the place and where she had gone. The 1st accused replied that she had gone out at 3 p.m. saying that she was going to collect the money from the neighbours to whom milk had been supplied. To a further query by the 2nd accused the 1st accused replied that Saraswathi Amma went out in the same dress worn by her while she was remaining at home. After this conversation, which took place on the road, 1st accused and the 2nd accused went into the front room of the Pattom house and after a while came out to the verandah. P.W. 19 has deposed to these facts. P.W. 28 also has sworn to the same. The evidence of these two witnesses makes it clear that on this occasion the 2nd accused was able to ascertain from the 1st accused everything that he wanted to know. The details of their conversation while they were in the front room of the house could not be known to the witnesses standing outside. After having had a talk with the 1st accused, the 2nd accused again went to Pazhavangadi in his car. This was at about 10-30 p.m. On reaching Pazhavangadi, he stopped his car at a place about 70 feet away from the house of P.W. 2. At this time, P.Ws. 4 and 12 and some others were standing on the road in front of that house. Seeing the car of the 2nd accused stopping at a distance, both P.Ws. 4 and 12 went near that car. The 2nd accused was even then sitting in the car and his companion Thampi had got out of it. P.W. 4 once again requested the 2nd accused to have the locked rooms of the Pattom house opened for examination. The 2nd accused did not like this and he did not say anything in reply. On the other hand, he asked his companion to get into the car and then drove away from the place. Some time later, P.Ws. 4 and 12 went to Pattom in a taxi car by about midnight. When they reached the Pattom house, the 2nd accused and his companions were found there. By this time, the bed room was open and these persons were found in that room in a happy mood. P.Ws. 4 and 12 once again requested the 2nd accused to open the store room also for inspection. This time the 2nd accused showed no reluctance but readily took the bunch of keys that was available in the dining room and open the store room. P.Ws. 4 and 12 examined that room also, but could not get any helpful indications and so they went back to Pazhavangadi.

104. It may now be considered whether the conduct of the 2nd accused during the night of 5th August from the time of his first arrival to the Pattom house, is capable of a reasonable explanation consistent with his innocence, or whether his conduct clearly demonstrated a consciousness of guilt. Viewed in the light of human probabilities, I think that the 2nd accused as an innocent husband and father, would have behaved in a manner totally different from the manner in which the 2nd accused actually behaved on that night. The news which welcomed him on his arrival at about 9 p.m. was that his wife was missing. The children along with his mother-in-law were found seated in a car in front of the gate of his house and all of them were wailing. If the 2nd accused was really innocent, his natural instinct would have been first to console them and then to make an anxious inquiry as to the circumstances under which his wife had left the house as was reported to him. No

doubt, P.W. 2 was openly accusing him of having murdered his wife. An innocent son-in-law would have naturally raised a vehement protest at such accusation or at least would have appealed to the mother-in-law not to make such a baseless allegation. I do not understand why if he was really innocent, he should have felt unnerved, as argued on his behalf at such a baseless allegation against him. Even if he felt annoyed at the attitude of P.W. 2, he would have, consistent with human nature, approached his young children and would have tried to console them. Even this was not done by him. All that transpired at that particular stage have been clearly described by P.Ws. 2, 4, 12, 13, 19 and 28 and it is clear from their evidence that the 2nd accused had practically ignored the presence of his children and mother-in-law when he went into his house. They followed him, and the children as well as the old woman lay prostrate on the front verandah of the house, while the 2nd accused stood inside the adjoining room. In that situation also he never thought of his children. P.Ws. 4, 12 and others asked him to open the bed room and the store room which were found locked. The 2nd accused's reaction was one of annoyance and anger and he told them that there was no necessity to open those rooms. This shows that the anxiety on the part of these witnesses to try to find out some clue about the circumstances under which Saraswathi Amma had disappeared could not be shared by the 2nd accused. He also said that she had locked the rooms and taken the keys with her. Nobody had conveyed such an information to him and up to that time he had not seen the 1st accused who could supply such a false information to him. However, it may be said that from the report that Saraswathi Amma had gone out, the 2nd accused assumed that she might have taken the keys with her. But that could not have justified an assertion on his part that she had locked the rooms and taken the keys with her. It is strange to find that he had not the inclination or the patience to co-operate with the persons who had gathered there to make a search for Saraswathi Amma in or about that house or in the neighbourhood of that house. On the other hand, he drove away from the place immediately after the short conversation with P.Ws. 4, and others about the opening of the two rooms. His mother-in-law, P.W. 2 and his three minor children, were left on the verandah of the house to take care of themselves. When he was questioned about his failure to console the minor children and P.W. 2, the explanation offered by him in his statement u/s 342 is that he did not feel inclined to do so on hearing their cries and the accusation against him. This explanation does not at all appear to me to be natural or reasonable or convincing, at least so far as his little children are concerned. His dramatic disappearance from the place and his re-appearance within a short time, along with a trusted confidant, disclose a disturbed mind. His reluctance in the first instance to open the closed rooms and his readiness to open them at a later stage after he had a talk with the 1st accused, must speak for themselves. The natural and irresistible inference is that he did not want to permit others to have a scrutiny of those rooms before he got a chance to speak to the 1st accused and to be assured that nothing incriminating would be found in those rooms. The 2nd accused appears to have been conscious that this was the only

reasonable and probable way in which his conduct could be understood and so in his statement u/s 342 he has tried to deny the fact of P.W. 4 and others having asked him to open the rooms and of his having declined to do so. His attention was specifically drawn to the evidence of P.Ws. 2, 4, 12 and 13 that when they came to the Pattom house at about 9 p.m. they found the bed room and the store room locked and that on being asked to open them, he replied that Saraswathi Amma had locked the rooms and taken the keys with her and also added that there was no necessity to open the rooms. In the answer given by the 2nd accused he has only denied the statement that he had told them that there was no necessity to open the rooms, but has clearly admitted that the rest of the statements in the evidence of these witnesses was true. In spite of such a clear admission on his part that the first demand for the opening of the two rooms was made by P.W. 4 and others when they came to the Pattom house on the first occasion and when P.W. 2, was also in their company, he has tried to develop a theory that the demand for opening the rooms was made only on the occasion of the second visit of P.Ws. 4 and 12 and that it was readily complied with by him by putting his hand through the ventilators and by unloosening the bolt of the bed room and thus opening it. The key of the storeroom was found in that room and so the store room could also be opened without difficulty. But this new theory has only to be rejected as false in view of the clear and convincing evidence to the contrary given by the witnesses already referred to. In fact, the evidence is that the 2nd accused opened the bed room in the manner stated by him only at the time of his third appearance in the Pattom house during that night. His second appearance was at about 10 p.m. when P.W. 2 and others were about to return taking with them the 1st accused also. As already stated, he got the 1st accused down from that car and had a talk with him, and after this talk he again went away in his car. This time it was to the Pazhavangadi side. That he undertook such a trip in his car, is admitted by him in his statement. The purpose for which he undertook that trip is stated to be that the people who had gathered at the Pattom house had told him that P.W. 2 had left for Pazhavangadi with his children and had asked him to go and inquire about them and also if Saraswathi Amma was there. This explanation is unacceptable on the face of it. He had himself seen P.W. 2 and his children going in the car from the Pattom house to the Pazhavangadi house and it was from the very same car that he had got down the 1st accused. Thus there was no necessity for him to ascertain whether his children were with P.W. 2. It is equally so in respect of the inquiry to find out if Saraswathi Amma was in the Pazhavangadi house, for the obvious reason that it was from that house that P.W. 2 had come to the Pattom house on being told by the 1st accused that Saraswathi Amma was missing. Thus it is clear that the 2nd accused was putting forward a false explanation about the purpose of his trip to Pazhavangadi. His denial that P.Ws. 4 and 12 had gone near his car on that occasion and had renewed their request to open the closed rooms, is equally false. Their evidence that they had gone near the car and made a request to them as stated by them, gains some support from his own statement that he had stopped his car

some distance away from the Pazhavangadi house and was remaining in the car. Admittedly, he did not go to the Pazhavangadi house and the explanation offered is that he did not want to face the accusation of P.W. 2 once again. The truth appears to be that he was trying to find out the steps that P.W. 2 might have taken in the matter of pressing forward her accusation against himself. To me it appears that the strange and unnatural conduct of the second accused immediately after getting information about the disappearance of his wife is incapable of any reasonable explanation consistent with his innocence and that his conduct clearly betrays a guilty mind.

105. In the natural course of events, one would have expected the 2nd accused to give information to the police at the earliest opportunity about the disappearance of his wife under strange and inexplicable circumstances. But it is seen that only after the presence of the dead body of his wife at one corner of his residential compound had become public on the night of 7th August that the 2nd accused is seen to have gone to the police station and to have given the first information statement Ext. P. 35. When he gave the statement u/s 342, he felt that this delay required explanation. The explanation offered by him is that on the night of the 5th August itself, he had gone to the Cantonment Police Station to give the necessary information and that he knew from a constable attached to that station that P.W. 2 had already gone there and had given information about the disappearance of Saraswathi Amma and therefore he did not do anything further in the matter. It is difficult to believe this version to be true. The first information statement given by him on the 8th August is a significant document in itself, and it contains an elaborate and detailed account of all the activities from the 5th August to 8th August. If he had really gone to the Cantonment Police Station to report about the matter on the 5th itself, he would not have failed to mention that fact also in Ext. P. 35. But Ext. P. 35 does not make mention of that fact. It is clear from the evidence in this case that the second accused was moving on terms of intimacy with police officers of all ranks from constable upwards. If such a person wanted to give a first information about a serious event, it would have been very easy for him to meet a competent officer and to give his statement. The explanation that he went to the police station and came away after having a talk with a constable cannot be believed. On the other hand, the probability consistent with his behaviour in other respects, is that he must have been watching the reaction of the police on receipt of the complaint by P.W. 2, just as he was trying to watch the movements of P.W. 2. Whether it was due to the influence of the 2nd accused or whether it was due to the indifference of the police, the fact is there that the police had been culpably negligent in taking appropriate action at the early stages on receipt of the complaint from P.W. 2. P.Ws. 2, 4, 12 and 13 on their return from the Pattom house at about 9-30 p.m., had stopped in front of the Cantonment Police Station. There they met P.W. 75, the Inspector, who was in charge of that station at that time, at about 10 p.m. He was about to return to his house and he met them on the road in front of

the station. P.W. 2 and others in her company, told P.W. 75 about the situation at the Pattom house. They told him that Saraswathi Amma, the daughter of P.W. 2, was missing from the house of the 2nd accused and they also told him that P.W. 2 suspected that the 2nd accused must have murdered Saraswathi Amma. P.W. 75 was not prepared to believe this accusation, but at the instance of P.W. 2 and others he called a Head Constable from the station and asked him to record the statement of P.W. 2 and also to make a note in the General Diary. All these witnesses say that the Head Constable recorded the statement of P.W. 2. But that statement is not forthcoming and the mystery about it stands unexplained. According to P.W. 75, he learned from the Head Constable that the statement taken from P.W. 2 is missing and that he failed to make a note in the General Diary. The matter was left there. It is legitimate to infer that there was some foul-play about that matter and it was this kind of attitude on the part of the local police that prompted P.W. 2 to approach the higher authorities and to request that the investigation of the case may be entrusted to proper hands. It was inspite of such a strange attitude adopted by the police towards the investigation of this case that the evidence now available could be collected.

106. After his activities on the night of 5th August without informing the police about the disappearance of his wife, the 2nd accused started his attempt on the next morning to trace out his missing wife. These attempts were peculiar in themselves. According to him he was, making inquiries at the railway stations and bus stands. Then there was the consultation with a series of astrologers. He has stated that he consulted a series of astrologers and has pursued the line of inquiry suggested by them. Yet it is clear that he had not any faith in them. P.W. 61 is one of the astrologers consulted by him on the 6th August and according to the evidence of this witness, he had definitely told the 2nd accused that the chances were that the missing lady must have met with danger. Inquiries were directed to be made in places to the south-west of her residence. But, as a matter of fact, the 2nd accused is seen to have proceeded to other places on the northwest. He was busy all the while with this sort of inquiry. In the meanwhile, P.W. 78, a dismissed constable, had his own contribution in the matter of misdirected inquiries. He was present at the residence of the Inspector-General of Police when P.W. 2 went there on the 6th morning and he told her that a lady answering to the description of Saraswathi Amma was seen boarding the train to Quilon in the company of a young man. P.W. 2 believed this to be true and began to entertain the hope that her daughter may be alive. Since the Inspector-General of Police was not at his residence, P.W. 2 went to the residence of P.W. 77 who was at that time the Deputy Inspector-General of Police, and complained about the indifference of the local police in attending to her complaint. P.W. 78 was also in her company at that time, and the story given by him was conveyed to P.W. 77. It was in such a situation that P.W. 77 arranged for an investigation being conducted at Quilon and beyond, with the help of P.W. 78 and P.W. 46 deputed by P.W. 2. A photo of Saraswathi Amma was also entrusted to this

party. After conducting some inquiries at Quilon, P.W. 78 made his disappearance from the search party. P.W. 46 went so far as Shencottah and had to come away disappointed. The search could not be successful for the simple reason that Saraswathi Amma had not gone out of her house. It has come out in the evidence of P.W. 78 that he is a person who was loitering about the Tourists' Lodge run by the 2nd accused and could be frequently found there. There is every reason to suspect that the misdirected inquiry at Quilon was purposely engineered by P.W. 78. It would also appear that the 2nd accused knew that no useful purpose could be served by making inquiries at Quilon. As a result of the false hope entertained by P.W. 2 that her daughter was alive, she sent a message to 2nd accused at about noon on the 6th August asking him to go over to her obviously for conducting inquiries about Saraswathi Amma at Quilon. When this message came P.W. 23 and other friends of the 2nd accused were also in the Tourists Lodge. The 2nd accused was not inclined to go to P.W. 2 but sent his own man to ascertain the purpose for which P.W. 2 wanted to see the 2nd accused. The emissary of the 2nd accused returned from P.W. 2 and told him what P.W. 2 had mentioned about the arrangements which P.W. 77 had made to conduct an inquiry at Quilon to trace out Saraswathi Amma. The 2nd accused's friend Thampi who had gone to P.W. 2, had assured her that himself and the 2nd accused would also conduct the necessary inquiries. It was in such a situation that P.W. 23 met the 2nd accused at his lodge and offered to go to Quilon for finding out Saraswathi Amma. The 2nd accused turned down this offer by saying that the purpose could be better served by sending a phone message to the Police Inspector at Quilon and thus arranging for an inquiry. P.W. 71 was the Sub-Inspector of Police at Quilon at that time and the 2nd accused was very well acquainted with him. The 2nd accused contacted P.W. 71 over the phone and requested him to conduct an inquiry. That fact is admitted by P.W. 71 also. But according to that witness the message given by the 2nd accused to him was that one Devaki Amma, a distant relation of his, was missing and that she was wearing twenty sovereigns' worth of ornaments on her body. P.W. 71 made inquiries about such a lady but could not get any clue. About the time when the phone message was given to P.W. 71 there was some controversy between his version and the version of the 2nd accused, which of the conflicting versions is the correct one, is of no particular significance. What really matters is whether the 2nd accused had mentioned to P.W. 71 about Saraswathi Amma or only about one Devaki Amma. According to the 2nd accused, he had mentioned to P.W. 71 about Saraswathi Amma herself. P.W. 71 is equally positive that the message was about one Devaki Amma with ornaments worth about twenty sovereigns. There is no record to show which of these two conflicting versions is the true one. As between the 2nd accused and P.W. 71, I am inclined to believe the latter. I see no reason why this Inspector who was a friend of the 2nd accused, should give false evidence against him. The fact that the 2nd accused had given a false message to P.W. 71 was known to P.W. 79 who was in charge of the investigation of this case only at a very late stage and in the course of a casual talk with P.W. 71. It is so stated by P.W. 79,

That accounts for the fact that P.W. 71 was added as a prosecution witness at late stage. But that cannot in any way affect the credibility of P.W. 71. P.W. 74 was also connected with the investigation of this case at its early stages. He has stated that when he had questioned the 2nd accused soon after the recovery of the dead body of Saraswathi Amma, the 2nd accused had narrated to him the inquiries that he had conducted and had also told him that he had gone by train to Quilon, to contact P.W. 71 and to arrange with him for inquiring about Saraswathi Amma, I see no reason to disbelieve P.W. 74 on this point. It is clear from his evidence that the 2nd accused had given a false version as to the manner of the inquiry conducted at Quilon. It is not surprising therefore that in the phone message given by him to P.W. 71 he had conveyed a wrong information and had mentioned about one Devaki Amma as the missing lady. The question as to why the 2nd accused should have done so may be difficult to be answered. The only possible answer is that he was not earnest or serious in the inquiries that he was conducting. In fact my own impression about the nature of the inquiries conducted by the 2nd accused is that they were not the sort of inquiries normally expected of a husband who wanted to trace out his missing wife. The 2nd accused was merely putting up a show that he was trying to find out his missing wife. Otherwise there is no reason why the 2nd accused should have dissociated with the inquiries arranged by P.W. 2 and the police and should have preferred his own way of inquiries of a strange and curious nature. The evidence of P.W. 49 also gives an indication of the way in which the 2nd accused's mind was working during the time of the so-called inquiry. At about 10 p.m. on 7th August the 2nd accused had taken his car to the petrol bunk of P.W. 49 for taking petrol. At that time P.W. 49 asked the 2nd accused whether anything was known about Saraswathi Amma. The reply given by the 2nd accused was that she had developed signs of mental infirmity and must have gone somewhere. This version is denied by the 2nd accused in his statement even though it is admitted by him that he had gone to the petrol bunk at the time mentioned by P.W. 49. I find nothing in the evidence of P.W. 49 to discredit him and hence I am inclined to believe him. What the 2nd accused told P.W. 49 about Saraswathi Amma had no truth about it and such a false version could not be expected from an innocent husband making bona-fide inquiries about his missing wife.

107. There is yet another significant fact to be noticed about the behaviour of the 2nd accused after the disappearance of Saraswathi Amma. If he was really innocent, he would have reacted in a natural manner consistent with human probabilities, when he was told that Saraswathi Amma had gone out at 3 p.m. on the 5th of August for collecting the money due from the neighbours to whom milk had been supplied. The 2nd accused was aware that Saraswathi Amma was selling milk to some of her neighbours and hence there was no reason to disbelieve the version that she had gone to collect the dues from the customers. P.Ws. 66, 68 and 69 are the neighbours who were regularly purchasing milk and all of them have stated that either on the 5th August or on the subsequent dates no inquiries were made of

them by the 2nd accused or by the 1st accused as to whether Saraswathi Amma had gone to them on the evening of the 5th. P.Ws. 7, 15 and 67 are other neighbours to whose houses Saraswathi Amma used to go on visits. The 2nd accused did not make any inquiries at these houses also to know if Saraswathi Amma had gone there. P.W. 67 has stated that on the evening of the 5th the eldest child of Saraswathi Amma had gone to her house inquiring if Saraswathi Amma had gone there. The child was certainly exhibiting the conduct of an innocent individual anxious to find out its mother. The 2nd accused did not behave in such a manner to find out his missing wife. His failure to do so, cannot be the natural conduct of an innocent husband. It was argued on his behalf that he did not believe the story that Saraswathi Amma had gone out to collect the dues from her customers and that he must have thought that she must have gone somewhere else as a protest against the 2nd accused's attitude towards her. To accept such an argument would mean that the relationship between the husband and wife was so bad as to induce her to leave her house in utter despair. In this connection it has to be remembered that P.W. 2 was repeatedly asserting that the character of Saraswathi Amma was such that she would not have gone away anywhere after forsaking her little children. There is clear evidence in this case to show that she was very fond of her little ones and that she used to accompany them to the nursery school and back. If the 2nd accused was really innocent, he would naturally have refused to believe that Saraswathi Amma had gone away from her house after leaving her children alone, particularly in view of the stand taken by the 2nd accused that there was no desperate situation so far as she was concerned. But he went about consulting with astrologers and conducting other sorts of inquiries as if he honestly believed that she had gone away somewhere. The entire conduct has been extremely unnatural and against the normal reaction of an innocent husband.

108. The prosecution has tried to make out that the object of the 2nd accused in going about from place to place and consulting astrologers to find out the whereabouts of Saraswathi Amma was merely to mislead others and thus to gain time to secretly remove the dead body of Saraswathi Amma which had been given only a temporary burial in his own compound, to some distant place and to destroy or secrete it somewhere without any chance of being detected. I agree with the finding of the learned Sessions Judge that the evidence attempted in this direction is neither conclusive nor satisfactory. The 2nd accused owns a lorry with a green paint. P.Ws. 39, 52, 53 and 64 have been examined to prove that this lorry was seen on the road in front of the Pattom house in the early hours of the 6th and 7th of August 1957. P.W. 39 has stated that some time after midnight of 5th August and during the early hours of the 6th, he saw a lorry with green paint, waiting in front of the 2nd accused's house and being driven away some time later. P.W. 64 has also sworn that at about 4 a.m. on the morning of the 7th August he saw a lorry in front of the 2nd accused's house. Excepting the fact that the lorry seen by these persons had a green paint, these witnesses have not been able to specify further details to identify

the lorry as the one belonging to the 2nd accused. There is also no evidence to show that the lorry was brought there at the instance of the 2nd accused. The 2nd accused's lorry was kept at the relevant period in a workshop at Kaithamukku. P.W. 53 was the mechanic attached to that workshop and P.W. 52 was undergoing training in that workshop. All that these witnesses have been able to state was that on two nights between the 4th and the 9th of August the 2nd accused's lorry had been taken out from this workshop. Even if this version is accepted as true, that is not sufficient to show that the lorry seen by P.Ws. 39 and 64 was the identical lorry belonging to the 2nd accused. Such being the inconclusive nature of the evidence, it is not possible to hold that the 2nd accused had arranged for the removal of the dead body of Saraswathi Amma from its place of temporary burial. Even if anybody had an idea of removing the dead body from the place where it was found, it had become practically impossible to implement that idea because the Pattom house and its vicinity were being closely watched by the neighbours and by others who were passing along the road in front of that house from 5th August to 8th of August.

109. The next item of circumstantial evidence which is of very great significance is that furnished by the continued attachment and confidence which the 2nd accused was having in the 1st accused even subsequent to the disappearance of Saraswathi Amma on the 5th August. The evidence is that the 1st accused continued to stay on in the Pattom house and to attend on his master as before until he was arrested and taken into custody on the morning of the 8th. It has already been found that the mysterious disappearance of Saraswathi Amma took place on the afternoon of 5th August when the only other inmate of the house that was present there was the 1st accused. In such a situation the master of the house would, under normal circumstances, have directed his attention towards the 1st accused by subjecting him to an inquisition to elicit all facts which may be helpful in tracing the missing lady. But strangely enough the 2nd accused is seen to have adopted an entirely different attitude. He was content by putting a few casual questions to the 1st accused as to whether he was not in the house, where Saraswathi Amma had gone and when she went. Apart from this there was only a secret talk between them in the front room of the Pattom house when the 2nd accused had made his second visit to that house on the night of the 5th. Some of the people who had gathered there on the 5th, were of the view that useful information would be forthcoming by a detailed inquisition of the 1st accused. But the 2nd accused was not prepared to share that view and he was maintaining right through that there was no reason to entertain, any suspicion against the 1st accused. He even went to the extent of shielding the 1st accused against attempted inquisitions by others. P.W. 6 had reached the Pattom house at about midnight on 5th August and then he found that several persons had gathered there. Accused 1 and 2 were also standing on the courtyard. P.W. 6 approached the 2nd accused and put a few questions to him as to whether P.W. 2 had come there, whether inquiries were made at the neighbourhood to find out Saraswathi Amma and whether a search was made in the well.

Subsequently P.W. 6 turned towards the 1st accused and asked him whether Saraswathi Amma had mentioned the particular place where she was going to. When the 1st accused was about to give his reply the 2nd accused intervened and said what business the 1st accused had to ask Saraswathi Amma where she was going. The 2nd accused further asked P.W. 6 why he was questioning the 1st accused. The attempted inquisition of the 1st accused was thus effectively stopped by the 2nd accused. In the statement of the 2nd accused he has denied having had any such conversation with P.W. 6. At the same time, he has admitted that P.W. 6 had been to the Pattom house and that he went away from the place after promising to find out if Saraswathi Amma had gone to any house at Karamana. As between these two conflicting versions, the version given by P.W. 6 appears to be probable and convincing. P.W. 42 is another witness who had entertained a suspicion against the 1st accused. This witness met the 2nd accused in front of the Pattom house on the morning of the 6th August. The 2nd accused asked this witness whether he had any information about Saraswathi Amma. P.W. 42 replied in the negative and suggested that if the 2nd accused would again question the 1st accused the truth could be known. The 2nd accused did not apparently relish this suggestion and so he went back to his house without saying anything by way of reply to P.W. 42. Then there is P.W. 23 who is admittedly a close friend of the 2nd accused. This witness has admitted that he had a suspicion against the 1st accused and that he had mentioned about it to the 2nd accused. When this witness met the 2nd accused on the 7th August, he suggested to the 2nd accused that by giving a few blows to the 1st accused he could be made to speak out the truth. The 2nd accused's reply to this suggestion was very significant. He said that the 1st accused was a babbler or an idiot any that he may not concern himself with matters of this nature. That such a talk took place between P.W. 23 and himself is admitted by the 2nd accused in his statement. From the consistent attitude adopted by the 2nd accused it is clear that he was particularly eager and anxious not to subject the 1st accused to any sort of inquisitorial questioning. This attitude of the 2nd accused and his anxiety to prevent the 1st accused from blurting out anything harmful and revealing cannot sustain any explanation consistent with the innocence of the 2nd accused. On the other hand, the attitude, adopted by him can only be taken to be a clear, though unconscious, betrayal of his guilty conscience.

110. The situation as it developed by the evening of the 7th August was such that it had become practically impossible to maintain the theory that Saraswathi Amma had gone away to some distant place. Her dead body which had been given a temporary burial at the south eastern corner of the premises of the Pattom house, had become partly exposed as a result of the activities of stray dogs and jackals. The body had also become decomposed with the result that it had started emitting a foul odour. The 1st accused who was even then staying in the Pattom house, thought of making it known to the public that something suspicious was noticed in that compound. With that object in view he waited at the gate of the house during

the early hours of the night of 7th August and invited others who were passing along the road to go in and examine the place wherefrom stench was emanating. P.Ws. 40, 42 and 44 are the persons who were thus invited. They went in and examined the place with the aid of torch light. This was some time between 9 and 10 p.m. on the 7th August. P.Ws. 40 and 42 have stated that they noticed a piece of flesh at the place wherefrom the stench was emanating. They did not proceed to conduct any thorough examination but went away from the place after asking the 1st accused that he must inform the 2nd accused what they had noticed at the place. When P.W. 44 was about to return from the place, the 1st accused asked him to stay on by telling him that the 2nd accused would come shortly and that from him the result of the inquiries about Saraswathi Amma could be known. Thus P.W. 44 waited there in the company of the 1st accused. While they were sitting on the verandah of the house, the 2nd accused and his companions arrived there in a car at about 11 p.m. They got down and all of them went inside the house. Even though P.W. 44 told the 2nd accused that he had been waiting to see him, the 2nd accused did not care to talk to him, but went inside the house. The witness mentioned to Edapazhinji Thampi and one Sekharan Pillai who had come with the 2nd accused how, at the instance of the 1st accused the spot near the southern end of the cow shed was examined by him and others along with the 1st accused, and also what they had noticed there. P.W. 44 told them that the situation was suspicious and that the place must be examined. He also mentioned about the activities of the dogs at that spot. Sekhara Pillai (sic) and brought a good torch light and with it, himself, P.W. 44 and Edapazhinji Thampi went to that place. At this stage, the 2nd accused went to the bath room to have a bath. It has naturally to be presumed that the 1st accused must have told the 2nd accused about the stench and also about the examination already conducted of the place wherefrom the stench was emanating. When P.W. 44, Edapazhinji Thampi and Sekhara pillai (sic) the spot, with the aid of the torch light, they noticed that the (sic) and a leg of the dead body buried there had become exposed. After seing (sic) they came back to the courtyard of the house. By this time the 2nd accused had finished his bath and was standing in the front room. Edapazhinji Thampi approached him and told him that the dead body was seen exposed. The 2nd accused came out to the verandah and sat there and deputed P.W. 41 to fetch a taxi car. When the car was brought the 2nd accused along with two of his companions, got into it and droye away from the place saying that they were going to the police station. This was at about midnight. All these facts have been sworn to by P.W. 44. He has given a detailed narration of all that had happened at the Pattom house after the arrival of the 2nd accused and his companions at 11 p.m. What is of particular significance in the version given by him is that the 2nd accused even after he was told about the discovery of the dead body at the southern corner of that compound, showed no surprise or anxiety at the report of such a discovery. He did not also care to go and examine the place himself. This conduct is very telling and is not capable of any reasonable and convincing explanation, consistent with his innocence. The conduct was clearly that of a guilty

person who was already aware of the presence of the dead body at that spot. The 2nd accused appears to have realised this position at the time of giving his first information statement Ext. P. 35 at 3 a.m. on the 8th August, i.e., nearly three hours after he had left to the Police Station. In Ext. P. 35 he has stated that on knowing of the presence of the dead body at the southern corner of his compound, he too had gone there and had seen the dead body lying partly exposed and thought that it was the dead body of Saraswathi Amma. If he had really gone there, he would have elicited that fact in the cross-examination of P.W. 44. Since it is seen that no question in that direction was put to this witness, the statement of the 2nd accused that he too had examined the dead body cannot be accepted as true.

111. Even after the discovery of the dead body at the premises of the Pattom house on the night of the 7th August, the 2nd accused was not prepared to suspect that the 1st accused must have had a hand in the murder of Saraswathi Amma. Admittedly he did not care to question the 1st accused even at this stage. The explanation offered by him in his statement is that he had no reason to suspect that the 1st accused would have done any harm to. Saraswathi Amma. The first information statement Ext. P. 35 given by the 2nd accused is a very telling and revealing document, containing a lot of details most of which are irrelevant and unnecessary in a first information statement. It has to be remembered in this connection that such a detailed statement was given by the 2nd accused who had till then refrained from giving a formal report to the police about the disappearance of his wife. A reading of that statement clearly shows that the 2nd accused was anxious to give a full account of his activities ever since the disappearance of his wife. The inference is irresistible," that he was pleading for his innocence and was trying to make out that there is no reason to suspect him as one who had a part in the murder of his wife. The working of his mind as disclosed by this document appears to me to be a clear betrayal of his guilty conscience and the anxiety exhibited by the narration of the (sic) contained in the document is totally inconsistent with his innocence.

112. Even though the 2nd accused has stated in Ext. P. 35 that Saraswathi Amma had been the victim of a murder, he appears to have taken particular care not to mention about any suspicion against the 1st accused. Such an inclination to shield the 1st accused even at that stage is also very telling. It is argued in behalf of the 2nd accused that it was not for the 2nd accused to mention to the Police anything about the person suspected to have committed the murder of Saraswathi Amma and that he had only to mention the facts as found by him and leave the question of investigation to the Police. If that was the mentality of the 2nd accused, Ext. P. 35 would not have been so elaborate as it actually is. He could have contented himself by giving a short statement, that the dead body of Saraswathi Amma who was reported to have gone away from his house on the 5th August was found buried at the south eastern corner of the premises of the Pattom house. ∴

113. The stand taken by the 2nd accused that he had no reason to suspect the 1st accused even after the discovery of the dead body of Saraswathi Amma on the night of the 7th August, can be explained only on the hypothesis that both the accused were equally responsible for the murder of Saraswathi Amma. It has to be remembered that the 1st accused was all along maintaining that Saraswathi Amma had gone out of Pattom house at about 3 p.m. on the 5th August after saying that she wanted to collect the dues from her neighbours to whom milk had been supplied. Nothing more than the discovery of the dead body of Saraswathi Amma at the premises of the Pattom house was necessary to conclusively prove that the version given by the 2nd accused was absolutely false and that he was knowingly and deliberately giving out such false story. Anybody in the position of the 2nd accused as the master of the house would, if he himself had no part in the murder of Saraswathi Amma, have immediately suspected that the 1st accused was actively concerned in the murder of the lady. The master of the house would also have started questioning the 1st accused and would have tried to get an explanation from him for his conduct in spreading out a deliberately false story about the disappearance of Saraswathi Amma. The first information statement given by an innocent master of a house would also have mentioned about the suspicious behaviour of the 1st accused who was the only other person present at the Pattom house at the time of the disappearance of Saraswathi Amma from that house. An entirely different attitude adopted by the 2nd accused and which is quite inconsistent with human probabilities even after the discovery of the dead body in the circumstance already mentioned, appears to me to be a clinching circumstance consistent only with the hypothesis of the guilt of the 2nd accused. This circumstance as well as the series of the other significant circumstances which are consistent only with the hypothesis that the 2nd accused had a prominent part in the murder of Saraswathi Amma have given a complete picture of the chain of circumstantial evidence which leave no room for doubt about the complicity of the 2nd accused in the murder of Saraswathi Amma. I hold therefore that the circumstantial evidence proved against the 2nd accused has clearly and conclusively established his guilt as a person who instigated and abetted his trusted servant, the 1st accused, to murder Saraswathi Amma and to secretly dispose of her body. The 2nd accused is therefore guilty of the offence of murder punishable u/s 302 read with section 109 of the Indian Penal Code. No separate conviction is called for in respect of the offence u/s 201.

114. In the result I allow Criminal Appeal No. 160 of 1958 and set aside the acquittal of the 2nd accused. He is convicted u/s 302 read with section 109; Indian Penal Code, and he is sentenced to be hanged by the neck till he is dead. The other two appeals, viz., Criminal Appeal Nos. 88 of 1958 and 161 of 1958, will stand dismissed.

115. Since my learned brother Raman Nayar, J., and myself have differed in our conclusions in Criminal Appeal No. 160 of 1958, directed against the acquittal of the 2nd accused, this case will be placed before the Chief Justice for making the

necessary arrangements for its final disposal.

OPINION

116. This Criminal Appeal has been laid before me u/s 429, Criminal Procedure Code, as the learned Judges, Sankaran and Raman Nayar, JJ., who heard it first differed in their conclusions as to the guilt or otherwise of the respondent herein. The respondent was accused 2 in Sessions Case No. 1 of 1958 on the file of the Court of Session, Trivandrum. In that case three persons stood their trial before the learned Sessions Judge, accused 1 for murder (section 302, Penal Code), and for causing disappearance of evidence thereof (section 201, Penal Code), accused 2 for abetment of those offences and accused 3 of murder read with section 34, Penal Code and for causing disappearance of evidence of murder. The learned Sessions Judge convicted accused 1 both under sections 302 and 201, Penal Code and sentenced him to the extreme penalty of the law u/s 302. No separate sentence was passed for the offence u/s 201. Accused 2 and accused 3 were acquitted. Accused 1 preferred Criminal Appeal 88 of 1958 against his conviction and sentence. Referred Trial 5 of 1958 was the proceedings to confirm the death penalty. The State preferred Criminal Appeals 160 of 1958 and 161" of 1958 against the acquittal of accused 2 and accused 3 respectively. The Referred Trial and the three appeals were heard together by the Division Bench constituted as above and the learned Judges of the Division Bench dismissed Criminal Appeal 88 and Criminal Appeal 161 and also confirmed the death penalty against accused 1, but they delivered differing judgments in Criminal Appeal 160. The judgment passed by Mr. Justice Sankaran is one setting aside the acquittal and convicting accused 2 for abetment of the offence of murder and sentencing him to death. No separate conviction was found to be necessary for the Offence u/s 201. By his judgment Mr. Justice Raman Nayar confirmed the order of acquittal and dismissed the appeal. The appeal has since been heard by me and I now proceed to deliver my opinion and pass judgment accordingly.

117. Saraswathy Amma alias Baby, the wife of Krishnan Nair, accused 2, was alleged to have been murdered at their residence, Pattom House, Trivandrum, between 2 and 4 p.m. on August 5,. 1957 and the dead body secretly disposed of by burying it in the compound of that house, near the cattle-shed. Sivarajan alias Ampu, who was a domestic servant in the Pattom House for some nine months preceding the occurrence was said to be the principal offender and-Sekharan, accused 3 (a brother of P.W. 30, a maid servant in Pattom House) was said to have assisted accused 1 in the perpetration of the main crime and in disposing of the dead body by burying it. The prosecution case was that the murder was committed as instigated by accused 2 on account of acute differences he had with his wife over several matters. The case as against all the three accused persons rested entirely on circumstantial evidence. The learned Sessions Judge who conducted the trial and the learned Judges of the Division Bench who heard the appeals from his decision, have, as stated earlier,

concurrent in convicting accused 1 of murder and sentencing him to death, and in acquitting accused 3. Regarding accused 2, the trial court as also Raman Nayar, J., took the view that the circumstantial evidence on record did not take the case against him beyond creating strong Suspicion that he was behind the murder and that as such he could not be found guilty of having abetted murder or of causing disappearance of evidence of the commission of murder. Accordingly they entered judgments of acquittal against him. Sankaran, J., took the opposite view that the cumulative effect of the various circumstances depended upon by the prosecution was to lead to the certain conclusion that accused 2 had instigated the murder of his wife by accused 1 and that those circumstances were incapable of explanation on any other hypothesis than that of his guilt. My task is to submit the case to an independent examination and decide whether the offences with which accused 2 stood charged have been brought home to him or not.

118. Before I proceed to do that I propose to refer to a point which was mooted in the arguments before me as to whether it -was necessary for me to record a finding in this judgment as to the guilt of accused 1. Accused 2 is alleged to have abetted the commission of the offence of murder and of causing disappearance of evidence of such commission by accused 1 and to my mind it is necessary that that question should be examined and opinion expressed upon it. No doubt the judgment of the Division Bench dismissing Criminal Appeal 88 and confirming the death penalty is the final verdict of this Court as against accused 1, but the contention of Mr. Mathew Muricken, learned counsel for accused 2, that in adjudging the guilt or otherwise of accused 2 for abetment, whether the principal offender is proved to have committed the acts alleged to have been abetted by accused 2, should also be considered would appear to me to be an argument based also on substance and not merely on form. Ordinarily when a person is charged with having committed an offence and another is charged with having abetted him in the commission of that offence, and the prosecution fails to substantiate the commission of the principal offence, there can be no conviction for abetment-see *Gallu Sha v The State of Bihar*- 56 Allahabad Law Journal 716 (S.C.) I shall therefore first briefly record my views as to whether the evidence warrants accused 1 being held guilty of the murder of Saraswathi Amma and of causing disappearance of evidence of the commission of that offence.

119. The trial court and the Division Bench of this Court which heard the appeal from the trial court's decision are agreed that though the prosecution sought to establish the guilt of accused 1 for murder and for causing disappearance of evidence of murder entirely on circumstantial evidence, such evidence was overwhelmingly in favour of the view that he was guilty of those offences. I cannot for a moment find any reason to take a contrary view. Saraswathi Amma was last seen alive round about 2 or 2-30 p.m. on August 5, 1957. She was in the Pattom House at that time. All other inmates of the house except the servant, accused 1, were absent from the house then. Barring the doubtful presence of accused 3 nobody had entered the Pattom House between 2 and 4 p.m. that day. "By 4 o'clock

it began to be given out by accused 1 himself that at about 3 p.m. Saraswathy Amma had gone out to some neighbouring houses to collect her milk dues. Subsequent events clearly showed that that was false information. During the night of August 7, a dead body was found buried in a corner of the Pattom House compound and the body, when exhumed the next day, was identified to be that of Saraswathy Amma. The medical evidence left no doubt that the woman had been murdered and that she died of a deep wound on the back of her neck which almost severed the head from the trunk. P.W. 31, the Medical officer who conducted the autopsy, was definite in his evidence that when he commenced the examination of the dead body some seventy-two hours must have elapsed after the woman died and his evidence further showed that regard being had to the nature of the injury on the neck, death must have been instantaneous. The post-mortem examination commenced at 12-15 p.m. on August 8, 1957 and death must therefore have been in the afternoon of August 5, 1957. That more or less approximates to the time when Saraswathy Amma's mysterious disappearance came to be noticed. A heavy chopper (M.O. 10) with which an injury of the nature noticed on the neck of the dead body could be caused was subsequently recovered from the Pattom House. The body when exhumed was practically naked except for a bodice. Torn pieces of a blouse (M.O. 12), identified to be pieces of the blouse worn by the deceased while she was last seen alive, were recovered later from the pit wherefrom the dead body was taken, and pursuant to information the police received from accused 1, a blood-stained mundu and blood-stained false hair (booth included in M.O. 19), as many as three throthu mundus (bath towels), all blood-stained and a bloodstained rag (both included in M.O. 18) and a blood-stained gunny piece (included in M.O. 19) were, among other things, recovered from places where they were concealed. Indeed after telling the police that he had kept those things concealed at different places, accused 1 himself picked them out. Evidently the mundu comprised in M.O. 19, one of the throthu mundus comprised in M.O. 18, the blouse and the bodice constituted all that Saraswathy Amma had by way of wearing-apparel on her person at the time of her death. According to the evidence in the case the false hair also belonged to her. Further, besides the articles already referred to, pursuant to the information accused 1 gave to the police they also recovered two gold chains (M.O. 2) Those are chains which Saraswathy Amma usually used to wear on her neck. Those chains together with two pairs of gold studs (M.O. 3), were also produced by accused 1 before the police from the place where he had kept them concealed. The gold studs (M.O. 3) are alleged to have been removed from an almirah in the Pattom House, but the chains (M.O. 2) were those which she usually wore. There is also evidence that at about 2-30 p.m., when the brother of accused 1 (P.W. 18) went to the Pattom House the gates were found bolted from inside. That would appear to have been rather unusual and though P.W. 18 wanted accused 1 to go out to some place along with him, the latter excused himself by saying that he had some urgent work there and that he would be free only by 4 p.m.

120. The foregoing circumstances showed that accused 1 was alone (except perhaps for the presence of accused 3) in the company of Saraswathy Amma between 2 p.m. and 4 p.m., at the Pattom House. Nobody had seen Saraswathy Amma alive after 2 or 2-30 p.m. that day and at that time she was in her house. Her dead body was recovered two days later from a pit in the Pattom House compound itself. The post-mortem examination showed that she had been murdered. Right from the time of her disappearance, accused 1 had given out to several people (P.Ws. 18, 10, 7, 2 and others) that at about 3 p.m. she had gone out professedly to collect milk dues. Nobody had however seen her on that errand. Accused 1 had even stated that she went out wearing the same dress she was wearing that day while she was in the house. After the dead body was discovered, when the police questioned him, accused 1 produced before them from their places of concealment the clothes the murdered woman was wearing at the time of her death, her false hair and also other clothes, all blood-stained. He also produced two gold chains she usually used to wear on her neck. From the circumstances, to my mind the conclusion was irresistible that accused 1 was the murderer of Saraswathy Amma and that he had after-wards buried her dead body in the compound of the Pattom House itself.

121. Now I come to the consideration of the case against accused 2. As in the case of accused 1, the prosecution rests its case against accused 2 also entirely on circumstantial evidence. The trial court found the various items of circumstantial evidence depended upon by the prosecution to be of doubtful utility to bring home to accused 2 the guilt for abetment of the murder of Saraswathy Amma and for causing disappearance of the evidence of that murder. The considerations which a court dealing with a criminal prosecution founded entirely on circumstantial evidence and the rules which should guide an appellate court dealing with an appeal against acquittal have all been referred to in detail in the judgment delivered by Sankaran, J. The leading Privy Council and Supreme Court decisions bearing on those points are also cited in his judgment. I do not therefore propose to traverse the same grounds over again here. Nor do I think it necessary for me to set out over again the evidence which has been exhaustively reviewed by the Division Bench and the trial court. I shall content myself by referring to the facts and circumstances on which I base my opinion as to the guilt or otherwise of accused 2.

122. After very careful consideration of the evidence on record and the three learned judgments in the case discussing all relevant aspects, I am definitely of the view that accused 1 committed the crimes found against him at the instance and the instigation of accused 2 and that to refuse to interfere with the order of acquittal passed by the learned Sessions Judge would lead to serious miscarriage of justice.

123. Accused 1 was a very loyal and dutiful servant of accused 2. Indeed their relations were not those of an ordinary master and servant. The evidence of P.W. 18 showed that his efforts some time before this occurrence to persuade accused 1 to leave the service of accused 2 proved futile. His attachment to his master was so

great that even the promise by a rich relative to give a decent allowance to maintain himself was found not alluring enough to induce him to accede to the wishes of that rich relative or to the persuasions of the brother to leave the service under accused 2, Accused 2 was also not willing to permit accused 1 to go. Before me it was common ground that accused 1 had no grudge against the deceased or any motive of his own to do Saraswathi Amma any harm, much less to cause her death. No doubt at the trial the prosecution led some evidence to establish a motive in accused 1 himself to commit the crime levelled against him, but neither the trial court nor the learned judges of the Division Bench found that evidence worthy of credence. The learned Advocate-General, who appeared before me in support of this appeal, therefore, proceeded with his arguments on the footing that there was no motive for accused 1 to cause the death of Saraswathi Amma. Even according to accused 2, accused 1 had no reason whatever to do such an act against her (vide his answer to question serially numbered 26 in his statement u/s 342, Criminal Procedure Code). Against this background it is, to me, unthinkable that accused 1 would have summoned courage to kill his master's wife unless there was strong instigation from some quarter and to my mind the circumstances of the case and the subsequent conduct of accused 1 and accused 2 lead to the certain conclusion that that quarter was accused 2 himself.

124. The prosecution has succeeded in showing that at the time the occurrence took place there was great estrangement between accused 2 and his wife. What the causes of that estrangement were or whether that estrangement was sufficient to induce a person to have his wife murdered will be referred to later. It was a very daring murder that accused 1 committed and a loyal servant who had no motive of his own, cannot be expected to commit the murder of the mistress of the house and bury the dead body in the compound of that house unless the master wanted him to do it. Even after the commission of these crimes accused 1 continued to live in the Pattom House and serve his master as before as if nothing untoward had happened. Outwardly both the master and the servant conducted themselves towards each other as they were doing before the fateful day and such behaviour was impossible unless the acts which accused 1 committed towards Saraswathi Amma were with the knowledge and connivance of accused 2. To have brutally murdered the master's wife, to have buried her body in the master's compound itself and to continue to live with the master in perfect accord and amity are in my view judged by normal human standards, clear indications that the servant who did the heinous acts referred to did it at the behest of the master. For my part I cannot reconcile the confidence accused 2 showed in accused 1 after Saraswathi Amma's absence from the house came to his notice with any other hypothesis than that the former was privy to the latter's act in doing away with her life.

125. To me what I have stated above appears to be the legitimate inference from the proved facts and circumstances of the case and not an approach to the case on the assumption of the guilt of accused 2. I think it would be too unreal and divorced

from the facts and circumstances of the case to hold that accused 1 committed the murder of Saraswathi Amma on his own or at the bidding of some unknown person. The learned trial Judge was certainly not of the view that such was the case, that is, accused 1 did it at his own or at the instance of some unknown person. There has so far been no suggestion from any quarter that some unknown person must have instigated accused 1 in his actions. There is no finding by Raman Nayar, J. either that accused 1 had a motive of his own to cause the death of Saraswathi Amma. That learned Judge has also proceeded on the basis that accused 1 had no motive of his own. It is needless to observe that Sankaran, J., has definitely discountenanced the possibility of accused 1 having acted on his own.

126. The aspect whether a servant would dare to commit the murder of the mistress of the house unless the master was behind it has been adverted to by the learned Sessions Judge in his judgment (para 87 at p. 42 of the printed judgment), but he discarded it, as he did several other important aspects of the case, as doing service only to create suspicion. No attempt was made by the learned Judge to evaluate the cumulative effect of the various circumstances the prosecution depended upon in the case.

127. I shall now refer to certain other circumstances which tend to reinforce the inference I have sought to draw from the circumstances already adverted to that the murder accused 1 committed was at the bidding an instigation of accused 2. First and foremost the attitude of accused 2 to accused 1 after Saraswathi Amma's mysterious disappearance came to his notice would appear to be really revealing. Coupled with a persistent effort to make others believe that accused 1 did not know or could not have known more about the disappearance than what he had openly given out, accused 2 also exhibited an anxiety to prevent accused 1 being closely questioned about it by anybody.

128. Among the materials bearing on the above aspect I may mention here (i) the conduct of accused 2 during the night of August 5, in preventing the Pazhavangadi people from taking accused 1 with them in their car to Pazhavangadi or the police station, (ii) his conduct later that night in preventing accused 1 from answering the queries P.W. 6 sought to put to accused 1 about the disappearance of Saraswathi Amma, (iii) the silence and the subsequent conduct of accused 2 on the morning of August 6, in returning hurriedly to the Pattom House from the public road where he had a conversation with P.W. 42 about Saraswathi Amma's disappearance and (iv) the reluctance accused 2 showed to further question accused 1 when in the afternoon of August 7, P.W. 23 suggested to him that if a blow or two are given to accused 1 the truth would be out. The evidence relating to these incidents have been discussed at length by the learned Judges of the Division Bench, as also by the learned trial Judge and I shall not enter upon a further detailed discussion of that evidence. P.W. 23 was admittedly a trusted friend and confidante of accused 2. Accused 2 did not deny the fact that while they were together in his office in the

Tourist Lodge. P.W. 23 suggested to him that it was not difficult to get the truth out from accused 1 by giving him a few blows and that his reply to the suggestion was in the terms of the evidence the witness gave that accused 2 told him that accused 1 was a babbler or a person without any sense of responsibility and that he could not be expected to enquire or concern himself about such matters. Even if during the night of August 5, or on the morning of August 6, accused 2 thought accused 1 did not know anything more about Saraswathi Amma's disappearance than what he had already given out. By the afternoon of August 7, the situation had changed since for two full days her whereabouts remained unknown. Any reasonable person would then have suspected some foul-play. Accused 2 however remained as complacent as before and resisted the suggestion of P.W. 23 by his evasive reply. The other three incidents referred to above, namely, that he got accused 1 to get down from the car of the Pazhangadi people, that P.W. 6 had a conversation with him during the night of August 5 and that he (accused 2) had a conversation with P.W. 42 on the morning of August 6, were admitted by accused 2 when questioned by the trial court, but his version was that as he had not met accused 1 after he returned to the Pattom House at 9 p.m. he wanted him to remain there and that the conversations he had with P.W. 6 and P.W. 42 were not as alleged by them. In view of what P.W. 23 had stated I am afraid I cannot prefer the version accused 2 gave about those incidents to what the witnesses spoke about them. In that view it is clear all the four incidents betray an anxiety on the part of accused 2 to prevent accused 1 being closely questioned by anybody on anything touching the absence of Saraswathi Amma from the Pattom House from the afternoon of August 5, 1957. Even if no significance is attached to the incident referred to as (i) above, or the testimony of the witnesses concerned regarding the incidents (ii) and (iii) is ignored, the conversation between accused 2 and P.W. 23 in the afternoon of August 7, furnished sufficient material to indicate that accused 2 did not want accused 1 to be closely questioned about the incident. That attitude I am afraid betrays as Sankaran, J., thinks the guilty conscience of accused 2. He knew what had happened to Saraswathi Amma. He was also privy to those happenings. Otherwise he would have been more anxious than other people to get as much information as possible from accused 1. Really however his anxiety would appear to have been to prevent others knowing what he and accused 1 knew about her. If on his arrival at the Pattom House at about 9 p.m. on the fateful day when he was told that his wife was not there and that her whereabouts remained unknown, he did not know what had happened to her, accused 2 would not have behaved in the manner in which he is shown to have behaved on that night and on the subsequent two days. He knew that accused 1 was there with her in the afternoon of August 5 and had he been innocent he would have joined hands with other interested parties to elicit from accused 1 all the information he had and not tried to shield him as he did whenever a suggestion to question him was made. His conduct from the evening of August 5 till the dead body was discovered before the midnight of August 7, was not that of an anxious husband eager to find out his missing wife but was that of a person not

prepared to take anybody into confidence and anxious to deal with his wife's people and his neighbours at arm's length, trusting only a select coterie of friends.

129. His disinclination to open the closed rooms in the Pattom House on his first arrival there during the night of August 5, 1957 and his subsequent readiness to show the whole place to everybody after he returned to the house for the third time that night after he had an occasion to talk with accused 1 on his second visit while they were both alone also indicate a consciousness of guilt. Before he had an occasion to talk to accused 1 privately, which, as spoken to by P.Ws. 19 and 28, he did on the occasion of his second visit, he was afraid to have the rooms examined lest something incriminating should be found there. The evidence of P.Ws. 2, 4, 12 and 13 makes it clear that he did refuse to have the rooms opened during his first visit and I am inclined to agree with the view of the trial court and that of Sankaran, J., that the version accused 2 sought to put forward in his statement u/s 342, Criminal Procedure Code, that the demand for the opening of the rooms came only when the Pazhavangadi people came for the second time is a false explanation. Indeed the first part of the reply to question No. 16 betrays the version that the demand came only on the second occasion is an afterthought. Admittedly P.W. 2 did not pay a second visit to the Pattom House that night.

130. Apart from the fact that he showed no inclination to question accused 1 in the presence of others except to get confirmation of what accused 1 had told others (vide the evidence of P.Ws. 19 and 28) and was not inclined in the first instance to open the closed rooms of the Pattom House, unlike the Pazhavangadi people or the neighbours who had gathered there, accused 2 showed no anxiety or even any inclination to search for his wife or some clue about her within the premises of the Pattom House or the surrounding areas. No attempt was also made by him to verify from the neighbours (P.Ws. 66, 68 and 69), who were getting their milk supplies from Saraswathi Amma, whether she had gone to their houses at any time that afternoon. One should think that all these indicate a foreknowledge on the part of accused 2 as to what did happen to his wife. It was argued that as Saraswathi Amma had not returned even by 9 p.m. accused would only have thought that the version that she went out to collect the milk dues was only false information she herself gave out and that there was no need for enquiry about her at the houses of the persons who were buying milk from her. The suggestion was that on account of the estrangement between the husband and the wife the husband must have thought the wife to have deserted him. There is however the evidence of P.Ws. 19 and 28 that when accused 1 told accused 2 that she went out saying that she was going to collect the milk dues he also told him that at that time she only wore the clothes she wore when she remained in the house. Even for a temporary desertion she could not have been expected to go out dressed in that fashion. Nor is it probable to think that to spite her husband she would have deserted her young children or acted in a manner that would disturb the mind of her aged mother. The latter was then 76 years of age. The theory that accused 2 might have believed that

it must be a case of temporary desertion is on the face of it unacceptable.

131. Similar indifference, nay nonchalance, was also shown by accused 2 when P.W. 44 reported to him at about mid night of August 7, that a dead body was discovered near the cattle shed of the Pattom house. He never cared to look at the body or where it was buried or how it was buried and all that. According to the evidence of P.W. 44 the discovery did not cause any surprise at all to accused 2. Even after the dead body was found buried in the compound of his house accused 2 did not show himself minded to suspect accused 1 or to take him to the police station or even mention to the police that he had his suspicions on accused 1. These facts I am afraid are only consistent with the hypothesis that accused 2 was privy to the acts perpetrated by accused 1. It was three hours after the discovery of the body that accused 2 informed the police about it. The inference looks to me plain that the murder was perpetrated and the dead body disposed of as accused 2 had advised, instructed and instigated accused 1 to do.

132. Another significant thing to be noticed regarding the conduct of accused 2 is about his failure to give information to the police about the disappearance of his wife until after the dead body was discovered. Not only did he make no report but he also wanted the outside world to believe that he was making enquiries about her and that according to his belief she had only decamped to some unknown place. The testimony of P.Ws. 12, 49 and 78 may be referred to in connection with the latter aspect. The evidence of P.W. 78 was to the effect that he had in the evening of August 5, seen some woman answering to the description P.W. 2 gave about Saraswathy Amma, taking train from the Trivandrum Central Station and that a young man aged about twentyfour was in her company then. That set P.W. 77, the Deputy Inspector-General to depute a police party to enquire about her at Quilon, but that enquiry was of necessity futile. The evidence of P.W. 78 has been discussed at length in all the three judgments so far delivered in the case, but I am not inclined to agree that the prosecution had succeeded in establishing that accused 2 had any connection with his activities to trace out Saraswathy Amma. He is a dismissed police constable and it may be that accused 2 set him up, but it would be a mere surmise to hold that it was so. On the other hand P.W. 12 has stated inter alia that accused 2 had told him that on the forenoon of August 6, some shop-keeper at the Pattom junction had told him that he saw Saraswathy Amma the previous evening, at about 3 P.M., waiting at a bus-stop to board a bus. P.W. 12 tried to verify that information and found that the shop-keeper had only mentioned that a fair woman was seen by him at the bus-stop. Accused 2 did not deny the incident, but protested that all that he had conveyed to P.W. 12 was that the shop-keeper told him of a fair woman and that he did not mention her to be Saraswathy Amma. Again P.W. 49 was told by accused 2 during the night of August 7 that Saraswathy Amma had of late developed some mental derangement and that she must have as a result of that gone out to some place. It is stated that this information was given when P.W. 49 enquired whether anything was known about Saraswathy Amma. P.W. 49 is a

salesman at a petrol bunk and accused 2 admitted having gone to his bunk to purchase petrol during the night of August 7, but denied having told that his wife was having mental derangement. It is not known why either P.W. 12 or P.W. 49 should give twists to what accused 2 had told them. What is discernible from the conduct of accused 2 as spoken to by these witnesses is that there was a conscious effort to lull people into the belief that nothing untoward had or could have happened to Saraswathy Amma and that he believed that she must be alive. The circumstances of the case gave no room for any such complacent attitude. No doubt the omission to give information to the police was consistent with such attitude. All the same a husband anxious to find out his missing wife would not have kept quiet without giving information to the police about her mysterious disappearance and that omission has, in my view, an important bearing to establish the complicity of accused 2 in the matter of the murder of Saraswathy Amma. The trial court was definitely inclined to take that view (see paras 81, 82 and 87 of its judgment), but thought that that circumstance would not lead to any conclusive inference. It would be common place to observe that it is the cumulative effect of the various circumstances that is material and that in cases depending upon circumstantial evidence, a single circumstance would seldom be found to lead to conclusive inference of guilt.

133. It is not out of shame to report to the police that his wife had run away that he made no report. Whether true or not according to him he had gone to the Cantonment Police Station during the night of August 5, but went away without making any report as he learned from some constable that P.W. 2 had already made a report. The learned Judges who have had so far to deal with this case have not believed the version that accused 2 went to the police station that night to report about the disappearance of his wife. Again if the statement he made to the trial court is true his conduct in contacting P.W. 71, the Sub-Inspector of Police at Quilon and the attempt to contact the Circle Inspector, Quilon show that he did not feel it a disgrace to inform the police about the disappearance of his wife. The omission to give timely information to the City Police, Trivandrum, was in my view deliberate and purposeful.

134. The evidence in the case has made it reasonably clear that the relations between the deceased and her husband were not at all cordial at the time the occurrence took place. The defence did not contend that there was no estrangement. Even according to accused 2 for two weeks or so before the occurrence he was not taking any meal from his house except a cup of milk in the morning and another during night time. The practice of sending noon-day meal to his office at the Tourist Lodge was also stopped some two weeks before August 5, 1957. The explanation that it was because the meal sent on one occasion was bad has not commended itself to me as anywhere near the truth. Evidence further showed that during that period of two weeks or more the money for daily expenses of the household used to be handed over to the children and not to the wife. That is

also an indication of the strained relation between the husband and the wife. Here too the explanation that the children used to meet him when he was leaving for the office and therefore he found it convenient to hand over the money to them appears to be a lame one. If the children used to go near him when he was leaving for the office, it could not be that that practice started only after or about the same time as the father ceased to take any meal from the house. The evidence of P.W. 15 clearly showed that the deceased was very much worried over her husband's estrangement towards her and that she had mentioned about it to his wife in his presence. Certain answers given by P.Ws. 7 and 14 during their cross-examination were depended upon to show that accused 2 and his wife behaved as a very loving couple till the last. As pointed out by Sankaran, J., P.W. 14 had not made it clear as to when he used to see the wife and children seeing the husband off to the office every morning, that is how long before the occurrence. The explanation of accused 2 for handing over the money for daily expenses to the children itself shows that the wife could not have been seeing him off at least for a period of two weeks or so before the occurrence. What P.W. 7 spoke about their relationship is only her impressions and not what she learned from the deceased or accused 2. My own suspicion is that these witnesses, P.Ws. 7 and 14, went out of their way to give a colour to the suggestions the defence made in cross-examination that there was no ill-feeling worth the name between the husband and the wife, but that is even against the case the defence put forward that on account of the estrangement Saraswathi Amma must have thought of deserting, the husband.

135. The evidence of P.Ws. 4, 12, 13, 19 and 28 among others clearly showed that the spontaneous reaction of P.W. 2 when she was apprised of the disappearance of her daughter was that accused 2 must have, or got her done to death. From August 1 to August 3 P.W. 2 was living at the Pattom House and must therefore have understood the true state of the relationship between the husband and the wife. The mother's reaction to the news that her daughter had disappeared cannot certainly go to establish that accused 2 had any part in doing away with her life, but to me that reaction clearly showed that the relationship between the husband and the wife were at that time very very strained. The prosecution alleged more grounds than one for such a state of relationship and what I have stated earlier as to their mutual behaviour or dealings for some two weeks preceding the occurrence are only the outward manifestations of the unhappy relations that existed between the husband and the wife. One of the grounds alleged was that the suggestion of accused 2 to sell the Pazhavangadi property of P.W. 2 to finance his business did not find acceptance with P.W. 2 or the deceased either. Even if it be true that such a suggestion was once made, that was some ten years before the occurrence. The other ground mentioned is about the proposed extension to the Pazhavangadi buildings. That there was such a proposal some six months before the occurrence is common ground between the prosecution and the defence and the evidence of P.W. 23 shows that some preliminary steps were also taken in that behalf. The real

controversy with respect to that matter however is whether P.W. 2 had actually entrusted an amount of Rs. 1,500 to accused 2 for the extension and whether on account of the failure of accused 2 to have the construction undertaken, P.W. 2 and the deceased were demanding that either the construction should be immediately taken up or the amount returned. I am not inclined to place any reliance on the evidence P.W. 30 gave regarding this matter or even with reference to the proposed sale of the Pazhavangadi property. As pointed out by the trial court her earlier statement to the police did not refer to this matter at all, nor do I think the maid-servant in the household would really have been aware of such matters. All the same I am inclined to believe the evidence of P.W. 2 that she had entrusted accused 2 with an amount of Rs. 1,500 for the extension. P.W. 23 has stated that some time after he went and looked at the Pazhavangadi buildings to prepare an estimate for the extension, P.W. 2 had told him that accused 2 was not further pursuing the matter and that he should ask accused 2 to expedite the construction. It is not the case of the defence that accused 2 was proposing to undertake the work at his own cost and unless P.W. 2 had entrusted the money she could not have been asking P.W. 23 to intercede. No doubt P.W. 23 does not say that P.W. 2 had paid the money, but the inference which I make from the evidence of P.W. 23 is that the version of P.W. 2 that she had paid the money is true. The further evidence that even during her last stay with her daughter at the Pattom House, her daughter and herself wanted accused 2 to undertake the construction or return the money is also acceptable to me.

136. This takes me on the question of the financial position of accused 2 at about the time of the occurrence. As a contractor under the Public Works Department large amounts were no doubt passing through his hands and it would appear several money bills were due to him from the Department in respect of works carried out by him, but the evidence of P.W. 41 shows that even as late as July 1957 accused 2 got him to raise loans for him on the pledge of jewels. Two sums of Rs. 40 and Rs. 70 were raised in July on the pledge of a ring and a necklace. P.W. 41 had to do similar service for accused 2 even previously in 1955 when, a sum of Rs. 200 was borrowed on the pledge of some jewels. P.W. 41 is admittedly a good friend of accused 2. Ext. P. 10 is a certified extract of the loan account accused 2 had with the Co-operative Central Land Mortgage Bank, Trivandrum and that showed that the instalment payments due were defaulted from time to time. Out of an amount of Rs. 15,000 borrowed by him in 1947, Rs. 11,800 odd remained outstanding against him in August 1957. Exts. P. 19 and P. 33 are copies of complaints instituted against accused 2 for amounts borrowed by him. No doubt the suits were instituted after this case, but the debts amounting to not less than Rs. 7,000 were outstanding before that. Those debts were of 1955 and 1956. If at a time when accused 2 was hard-pressed to raise such sums as Rs. 40 and Rs. 70 on the pledge of jewels, his wife kept pressing him to make the extension to her mother's buildings at a cost of not less than Rs. 1,500 or to return the money the mother had advanced, that must certainly

cause some embarrassment to the husband and their relations also might naturally get embittered.

137. Whatever the cause of estrangement be, on the evidence it cannot be disputed that the husband and the wife were not getting on happily or even smoothly for some time before the occurrence, but whether that relationship should or would induce a husband to get rid of his wife by putting an end to her life is a difficult matter to answer. A passage from Wills on Circumstantial Evidence (Seventh Edition, Indian) may usefully be quoted here. A page 69 the learned author states:-

On a trial for murder, Lord Chief Justice Campbell thus summed up the doctrine under discussion: "With respect to the alleged motive, it is of great importance to see whether there was a motive for committing such a crime, or whether there was not; or whether there is an improbability of its having been committed so strong as not to be overpowered by positive evidence. But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from the experience of criminal courts, that atrocious crimes of this sort have been committed from very slight motives;....

138. Reference was made earlier to the fact that right from the time P.W. 2 was appraised that her daughter was found to be missing she was openly giving out that she suspected foul-play and that her fear was accused 1 and accused 2 must have got her done to death. She was repeating that even in the presence of accused 2 and some emphasis was sought to be laid by the learned Advocate-General on the conduct of accused 2 in not protesting about the accusation. Explanation 2 to section 8, Evidence Act reads:-

When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Commenting on this explanation Monir has stated as follows in his Law of Evidence (Fourth Edition), Vol. I, at page 36:-

What is relevant, according to this explanation, is the particular act upon the statement; and the statement and the act must be so blended together as to form a part of the thing observed by the witnesses and sought to be proved. Thus, if a man accused of a crime is silent, or flees, or is guilty of false or evasive response, his conduct is, coupled with the statement, in the nature of an admission and, therefore, evidence against himself.

It may be recalled here that on hearing the accusation made by P.W. 2, accused 2 not only did not protest but abruptly left the Pattom House and thereafter avoided meeting P.W. 2 even when sent for. P.Ws. 2, 4, 12 and 13 have spoken about the silence and departure and the evidence of P.W. 23 shows that when he was sent for by P.W. 2 the next day (August 6) he did not go, but only sent an emissary. During the night of August 5 after his second visit to Pattom House accused 2 went to

Pazhavangadi, but did not meet P.W. 2 or even enter her house. Further comments in Monir at the same page and on page 37, particularly those under the heading, "Silence admissible as conduct" show what weight can be attached to the conduct of an accused person such as we have in this case and the caution with which that evidence should be viewed by courts of law. The following extracts may also be usefully reproduced here:-

Whereas in illustration (g) there is no positive act but mere silence. Silence may in certain circumstances amount to conduct. Silence does not amount to admission, unless the occasion is such that a contradiction or explanation may reasonably be expected...

... The degree of weight to be attached to the silence of an accused person depends upon the nature of the case. Many factors must be taken into account in assessing it; and no hard and fast rule can be laid down. Care must be taken in all cases not to put too high a value on the absence of an immediate denial unless the surrounding facts point unequivocally to the conclusion that any accused person, whether educated or ignorant, cautious or impulsive, voluble or taciturn, would have felt bound to make a rejoinder in view of the particular charge against him and in the particular circumstances prevailing when he was made aware of it. The fact of silence of the accused may, with all the other circumstances of the case, be taken into account in a proper case. But it is to be borne in mind that an accused person always has a right to remain silent if he wishes. The silence of the accused must never be allowed to any degree to become a substitute for proof by the prosecution of its case. No presumption against the accused arises ipso facto from the silence of the accused person.

Similar observations are found in paragraph 259 of Underbill's Criminal Evidence (Fourth Edition), pages 489 to 493. The aspect referred to by the Advocate-General about the silence observed by accused 2 when the accusation was made and what he did on hearing that would also therefore appear to be relevant material to be taken into account along with other circumstances.

139. As I have sought to place great reliance on the subsequent conduct of accused 2 in determining the question of his guilt a passage from Phipson on Evidence (Ninth Edition) may also be usefully quoted here. At page 138 under the heading "Subsequent Conduct" the learned author has made the following observations:-

The presence or absence of facts showing his consciousness of having done the act may also be proved, e.g, (in criminal cases) precautions taken to avert suspicion; change of demeanour or mode of life; flight; the fabrication or suppression of evidence; or the giving of false names, addresses, and explanations,

140. Before concluding it might be stated that I have not sought to refer to what may conveniently be called the "lorry episode". I am in full agreement with the trial court and the learned Judges of the Division Bench that the prosecution was not

able to establish any connection between accused 2 and the alleged appearance of a green painted lorry at the gate of the Pattom House during the night of August 5 and August 6.

141. Further the lower court and the learned Judges of the Division Bench have repeatedly referred to Ext. P. 35, the statement which accused 2 gave before the Cantonment Police Station after the dead body was discovered. To my mind it is very doubtful whether that statement can be treated as the first information of the case. It is in evidence that P.W. 2 had reported about the disappearance of her daughter to P.W. 75 during the night of August 5 itself and that at his instance one head constable had reduced to writing her statement. The evidence of the witnesses who accompanied her to the Police Station as also the evidence of P.W. 77, whom P.W. 2 met the next morning, showed that she had told the Police that she suspected some foul-play. The statement which P.W. 2 gave at the police station during the night of August 5 has however not been forthcoming nor has there been a proper explanation for its disappearance. I fully share the view the learned Judges of the Division Bench and the learned Sessions Judge took that the police should have registered a case or at least taken more prompt action immediately. At the same time they took some action on the 6th and on the 7th. In the circumstances I have thought it proper to arrive at my conclusion in the case without reference to Ext. P. 35 at all. Its admissibility in evidence is to my mind at least questionable.

142. Likewise I have also refrained from referring to the evidence of P.W. 71 about the phone conversation accused 2 had with him or the statement accused 2 is alleged to have made to P.W. 74 about that conversation. If Ext. P. 35 cannot be legally admissible, these pieces of evidence should also be inadmissible.

143. Another matter which I would refer to is that in considering the case against accused 2 I have not overlooked the fact that at one time the police suspected accused 2 to have been the principal offender or at least one of the principal offenders. The evidence however was clear to show that he was not anywhere near or in the Pattom House after 9 a.m. in the morning of August 5 till about 9 p.m. of that day. The question whether he had abetted the acts committed by accused 1 is a matter for inference from proved facts and circular stances and as stated earlier, my view is the same as that Sankaran, J. has taken in the case.

144. The trial court as also the learned Judges of the Division Bench have animadverted upon the apathy or indifference which the police showed with respect to this case. I am sure the authorities will take appropriate action in the matter. In that connection I may also state that several exhibits filed in the case from the side of the defence showed that the investigating officers have been freely giving out the progress made in the investigation from day to day to the Press. Exts. D1, D14, D21, D22, D23, D24, D25, D26, D27 and D28 showed that some newspapers were taking rather undue or unhealthy interest about the case. It is unfortunate that information gathered by the police during the course of the investigation should have been

made available to the Press. It is not the first time such an instance comes to the notice of this Court and learned Judges have had occasion to state that the practice was highly objectionable. It is hoped that the authorities will take notice of this matter also and see that their officers as also the Press are not allowed to ride rough-shod over the provisions of the Criminal Procedure Code or the Evidence Act. Information obtained during the course of the police investigation has to be kept confidential and police officers are not entitled to give out the contents of confessional statements of accused persons or the contents of statements made by witnesses interviewed by them for the benefit of the public or the Press.

145. To come back to the case, for reasons set out earlier in this Judgment my opinion is that the prosecution has succeeded in establishing that accused 2 had abetted the acts of murder and causing disappearance of evidence thereof committed by accused 1 and that this appeal (Criminal Appeal 160) should be allowed, that the order of acquittal passed by the trial court in favour of accused 2 should be set aside and that he should be found guilty of those offences. In other words I agree with the conclusion Sankaran, J. arrived at regarding the complicity of accused 2 in the crimes committed by accused 1. Conviction need not however be entered for the subsidiary offence when he is convicted for murder.

146. As for the sentence, the death penalty has been imposed on accused 1 and Sankaran, J. has passed the same sentence against accused 2 as well. While the hand of accused 1 committed the murder, the head of accused 2 was behind it and there is therefore no ground to show any differentiation between the two regarding the sentence. The normal sentence for a conviction for murder has therefore to be passed against accused 2 as well. Even if his acquittal by the trial court and the difference of opinion as to his guilt between the learned Judges of the Division Bench might weigh with the Executive Government to commute the death sentence, if passed, that cannot influence the Court to pass the lesser sentence prescribed by law. Besides, to impose the lesser penalty would be to deprive accused 2 the benefit of an appeal which he would of right get under Article 134 (1)(a) of the Constitution, in case he is condemned to death. I therefore agree with Sankaran, J., that the extreme penalty of law should be passed against accused 2.

147. My opinion as to the guilt of accused 2 and the sentence to be passed against him being as above the judgment of the court must u/s 429, Criminal Procedure Code, follow that opinion. The State's appeal has therefore to be allowed and the trial court's order of acquittal of accused 2 on the charge of abetment of murder set aside. He has to be convicted of that offence u/s 302, Penal Code, read with section 109 of the same Code and sentenced to death.

148. This appeal will again be placed before Sankaran and Raman Nair, JJ. for giving judgment. Following the opinion of the third Judge who heard this appeal, we allow the appeal and set aside the order of acquittal of the second accused, passed by the learned Sessions Judge. We convict the second accused respondent, u/s 302 read

with section 109 of the Indian Penal Code and sentence him to be hanged by the neck till he is dead.