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CRL.A No.856/2017
& CRL.A (V) No.164/2018

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THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

MONDAY, THE 25TH DAY OF FEBRUARY 2025/ 6TH PHALGUNA, 1946

CRL.A NO. 856 OF 2017

AGAINST THE JUDGMENT DATED 16.08.2017 IN SC NO.20 OF 2015 OF
ADDITIONAL SESSIONS COURT-I, KOZHIKODE

APPELLANT:

BALAN NAIR @ DAMODARAN VAIDYAR
AGED 66 YEARS, S/O.CHATHUKUTTY NAIR, AMRUTHA NIVAS,
PERUVATTOOR, PANTHALAYANI VILLAGE, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

BY ADVS.
SRI.A.RANJITH NARAYANAN
SMT.A.SIMI
R.PADMA PRIYA(K/484/2002)

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM -682 031,
REPRESENTING THE SUB INSPECTOR OF POLICE, KOYILANDY,
KOZHIKODE -673001.

SRI.T.R.RANJITH, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
25.02.2025, ALONG WITH CRA(V).164/2018, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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CRL.A No.856/2017
& CRL.A (V) No.164/2018

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THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

MONDAY, THE 25TH DAY OF FEBRUARY 2025/ 6TH PHALGUNA, 1946

CRL.A (VICTIM) NO. 164 OF 2018

AGAINST THE JUDGMENT DATED 16.08.2017 IN SC NO.20 OF 2015 OF
ADDITIONAL SESSIONS COURT-I, KOZHIKODE

APPELLANT/VICTIM:

XXXX
XXXXXXXXXXXXXXXXXXXX

BY ADVS.
M.B.SANDEEP
R.ANJANA
C.C.BINDHYA
M.J.KIRANKUMAR
R.PRIYA
B.SURJITH
K.P.SREEJA
SHERIN VARGHESE

RESPONDENTS/ACCUSED & COMPLAINANT:

1 BALAN NAIR
AGED 62 YEARS, AMRUTHA NIVAS, PERUVATTOOR, PATHALAYANI
VILLAGE, PIN-673 620



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CRL.A No.856/2017
& CRL.A (V) No.164/2018

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2 STATE OF KERALA
 REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
 ERNAKULAM- 682 031

BY ADVS.
SRI.T.R.RANJITH, PUBLIC PROSECUTOR

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING COME UP
FOR FINAL HEARING ON 25.02.2025, ALONG WITH CRL.A.856/2017,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

[CRL.A No.856/2017 & CRL.A (V) No.164/2018]

Raja Vijayaraghavan, J.

Crl. Appeal No. 856 of 2017 is preferred by the accused in S.C.No. 20 of 2015 on the file of the Additional Sessions Judge -I, Kozhikode. By judgment dated 16.08.2017, the appellant was found guilty and sentenced to undergo rigorous imprisonment for a term of seven years and to pay a fine of Rs.50,000/- with a default clause for the offence under Section 304-II of the IPC.

2. Crl. Appeal (Victim) No.164 of 2018 is preferred by the victim challenging the judgment of the learned Sessions Judge convicting the accused for a lesser offence under Section 304-II of the IPC instead of under Section 302 of the IPC

3. Both these appeals are taken up and disposed of by a common judgment.

4. The deceased Geetha was the wife of Sukumaran, the younger



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brother of the appellant. According to the prosecution, Geetha spread calumny linking her husband with the wife of the appellant. On 15.12.2013, Geetha went out to the nearby pond to wash clothes. The prosecution alleges that the appellant went there and picked up a quarrel with Geetha. When Geetha refused to accede to the demand of the accused to refrain from spreading misinformation about his wife, the appellant is alleged to have hit her with a stick on her left shoulder and body and slapped her face. He is then alleged to have pushed her down into the deep pond, which resulted in her death.

5. On the same day itself, based on information furnished by PW1, the uncle of deceased Geetha, Crime No. 1256 of 2013 was registered under Section 174 of the Cr.P.C. At the time of registration of the FIR, at about 3.45 p.m., on 15.12.2013, the belief that all the people of the locality entertained was that Geetha had drowned herself in some manner.

6. The investigation was initially conducted by CW32, Ramachandran, the SI of Police, Koyilandy Police Station. He conducted Ext.P2 inquest over the dead body and seized the clothes found on the body of the deceased, as per Ext.P11 mahazar. On 20.12.2013, at 9 a.m., the appellant was arrested as per Ext.P15 arrest memo. MO2 (Lungi) alleged to have been worn by the accused at



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the time of occurrence was seized as per Ext.P10. Based on Ext.P5(a) disclosure statement given by the appellant, MO1 stick alleged to have been used by the appellant for assaulting the victim was seized. As shown by PW2 (Maimoona), Ext.P6 observation mahazar was prepared and the bucket, soap dish, thorthu and two shorts were seized on 20.12.2013. Ext.P18 report was also forwarded to the court detailing the name and address of the appellant. Steps were taken to record the 164 statement of PW2 for which the requisition was submitted.

7. Investigation was then taken over by PW12, the CI of Police on 14.02.2014. He again recorded the statement of PWs 2, 6 and 9. After completion of the investigation, the final report was laid before the jurisdictional Magistrate.

8. Committal proceedings were initiated in accordance with the law and the case was committed to the Court of Session, which court made over the case to the Additional Sessions Judge-I, Kozhikode. After hearing the prosecution, charge under Section 302 of the IPC was framed and when the same was read over, the accused pleaded not guilty and prayed that he be tried in accordance with law.

9. To prove the case of the prosecution, 12 witnesses were examined



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as PWs 1 to 12 and through them, Exts.P1 to P18 were exhibited and marked. MOs 1 to 7 were produced and identified. After the close of prosecution evidence, the incriminating materials arising from the prosecution evidence were put to the accused under Section 313(1)(b) of the Cr.P.C. The accused denied the incriminating circumstances and maintained that he was innocent. On the side of the defence, Exts.D1 to D8 Case Diary contradictions were marked.

10. The learned Sessions Judge, after evaluating the evidence, came to the conclusion that the prosecution has established in proving that the appellant had assaulted Geetha by beating her with a stick and thereafter pushed her into a pond. The court, however, concluded that the appellant could only be attributed with the knowledge that Geetha was likely to die if pushed into the water and held accordingly that only an offence under Section 304-II of the IPC was made out.

11. We have heard Smt. Padma Priya.R., the learned counsel appearing for the appellant, Sri. Sandeep, the learned counsel appearing for the victim and the learned Public Prosecutor.

12. Smt.Padma Priya. R, the learned counsel appearing for the appellant, submitted that the finding of guilt was arrived at solely on the basis of



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the evidence of PW2, Maimoona, who was projected as an eyewitness. She urged that the defence had successfully dismantled the credibility of PW2 by bringing out material omissions and contradictions in her testimony making her evidence unreliable. It was pointed out that, although PW2 was presented as an immediate neighbour of the deceased—whose husband was a close friend of the deceased's husband—her statement was recorded only on 19.12.2013. No plausible explanation has been offered for this inordinate delay, casting serious doubt on the reliability of her version. Furthermore, PW7, the brother of PW2, was examined solely to lend corroboration to her testimony. However, a meticulous evaluation of the evidence of these witnesses unmistakably reveals that they were introduced into the case merely to fabricate a false narrative before the Court. The learned counsel further submitted that PW7 and one Pradeepan (CW18), the husband of PW2, were cited as witnesses to the mahazars prepared by the Police. It is thus evident that the prosecution primarily relied on PW2 and her family members to establish the case against the appellant. Though as per the prosecution, several children had seen Geetha falling into the water and numerous persons had assembled at the spot thereafter, none of them were examined. Even with regard to the alleged overt act, PW2's testimony remains inconsistent and unreliable. Her statements before the court are materially at variance with



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both her earlier statement to the police and her recorded statement under Section 164 of the Cr.P.C. before the learned Magistrate. While PW2 alleged that the appellant assaulted the deceased with sticks on her shoulder and other parts of her body, no corresponding injuries were noted in either the inquest report or the post-mortem certificate, further exposing the falsity of the prosecution's case. It was further contended that the false nature of the prosecution case becomes apparent from the fact that MOs 4 to 7 were allegedly seized by PW11 at the time of the preparation of the observation mahazar on 20.12.2013, whereas no such materials were found when CW32 prepared the scene mahazar on 17.12.2013. This deliberate manipulation of evidence unmistakably suggests that the prosecution sought to depict the deceased as having come to the pond to wash clothes, thereby ruling out the possibility of suicide. The learned counsel also highlighted that PW3, the mother of the deceased, and PW1, the first informant, categorically stated in their testimonies that the husband of the deceased was an alcoholic and that their three children were disabled. These circumstances indicate that the deceased was driven to suicide. However, the prosecution deliberately gave a twist to the case, attempting to portray it as a homicide, with a view to ensure that the husband of the deceased was not proceeded against for abetting her suicide. Finally, the learned counsel highlighted the contradictions in the



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testimonies of PWs 2 and 7, as evidenced by Exts.D1 to D7, along with the material omissions brought on record during cross-examination. These inconsistencies, she argued, unequivocally demonstrate that the prosecution has utterly failed to prove its case against the accused beyond reasonable doubt.

13. Sri. T.R.Ranjith, the learned Public Prosecutor submitted that the evidence adduced before the court by the prosecution clearly established that the appellant had pushed the deceased into the pond with intent to commit murder. It is urged that minor omissions and embellishments, that too, from a rustic witness like PW2 are quite natural. It is urged that an overall reading of the evidence of the witness coupled with other proven facts clearly establishes that it is the appellant who had pushed Geetha into the pond and caused her death.

14. Sri. Sandeep, the learned counsel appearing for the victim, supported the submissions of the learned Public Prosecutor. He would urge that PW2 falls into the category of a reliable witness and that her evidence was rightly relied on by the learned Sessions Judge. It is further submitted that the appellant was fully aware that the deceased did not know how to swim and by pushing her into the pond, he had a clear intention to commit murder. It is submitted that the learned Sessions Judge was not justified in finding the accused not guilty for the



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offence under Section 302 of the IPC.

15. We have considered the submissions advanced and have perused the entire records. We shall now evaluate the evidence adduced by the prosecution.

16. PW1 is the Uncle of the deceased. On receiving information about the drowning of his niece in the pond, he rushed to the Police Station and lodged the FI Statement. He stated that when he reached the place where the body was found, the Fire Force personnel, Police as well as several others were present there. On his enquiry, he was told that Geetha had fallen into the pond. He immediately rushed to the Police Station and lodged Ext.P1 statement.

17. PW2 is the star witness for the prosecution. She stated that the deceased, Geetha, was her neighbour. On 15.12.2013, at about 1:00 p.m., she went to the nearby pond to wash her clothes and take a bath. While she was seated on the southwestern side of the pond, washing clothes, she noticed that Geetha was sitting on a rock on the eastern side of the pond, washing clothes with her legs immersed in the water. After some time, the appellant was seen approaching Geetha, and the two were seen conversing. PW2 overheard Geetha telling the appellant to keep his wife within bounds. In response, the appellant,



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after asking Geetha what she had seen, struck her on the back and shoulder with a stick. Despite this, Geetha insisted that she would reveal to everyone what she had witnessed. At this juncture, the appellant threw away the stick and slapped Geetha on her face. While Geetha clutched her face, grimacing in pain, the accused grabbed her by the scruff of her neck and pushed her into the pond. PW2 testified that she saw Geetha falling face-down into the water. Geetha was seen struggling and calling for help, but the accused did not respond and simply stood there. After approximately two minutes, Geetha briefly resurfaced before sinking again. By this time, the wife and daughter of the accused, along with his nephew, Akhil, had arrived at the scene. However, none of them made any effort to save Geetha. PW2 further stated that when PW1 noticed bubbles on the water's surface, indicating that Geetha had drowned, she raised a hue and cry. It was only then that the appellant noticed the presence of PW2. He then directed Akhil to save Geetha if possible, but Akhil refused, stating that he might also be pulled under the water. At that moment, the daughter of the appellant was seen dissuading Akhil from making any attempt to save Geetha. Soon after, they all left the spot. Hearing PW1's cries for help, local residents arrived at the scene. At this point, the accused and his family members returned. When the neighbours had assembled at the spot, the appellant was found informing them that Geetha had



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accidentally fallen into the water. PW2 further stated that while she was returning, she saw Rafi (PW7), her brother approaching the pond. She immediately went to him and narrated everything she had witnessed and told him not to divulge the incident to anyone. After reaching home, she lost consciousness. Later in the evening, she disclosed the details of the incident to her sister, Sameera, and her sister-in-law, Sareena. She subsequently reported the incident to the police and led them to the scene of the crime. PW2 also identified MO1 (stick) used by the accused to assault Geetha and MO2 (lungi) worn by the accused at the time of the incident.

18. During cross-examination, it was elicited that PW2 was residing in a nearby colony that comprised nine other houses, all of which were accessible within a five-minute walking distance. She stated that the location where Geetha was sitting and washing clothes was approximately 20 feet away from the spot where she was washing clothes. According to her, she reached the pond at around 1:00 PM, and it was only after 10 to 15 minutes that the accused arrived at the scene. She further stated that the altercation between the deceased and the accused, as well as the subsequent drowning of Geetha, transpired over a period of approximately 15 minutes. Ext.D1 contradiction was marked when PW2 denied having stated in her Section 164 statement before the Magistrate that, upon



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reaching the pond, she had already witnessed an ongoing altercation between the deceased and the appellant. She also asserted that Geetha was sitting facing west. However, when confronted with her Section 164 statement, where she had previously stated that Geetha was sitting and washing clothes while facing south, she answered in the affirmative, thereby exposing a material contradiction. PW2 further stated that the depth of the pond at the water's edge was shallow. Her statement before the Court, wherein she claimed that the accused had beaten Geetha on her back and shoulder, was brought out as an omission. She however maintained that the accused had struck Geetha with a stick using considerable force. Additionally, she asserted that she had informed the Magistrate that, after dropping the stick, the accused had slapped Geetha on the face and pushed her into the water; however, this statement was also brought out as an omission. When questioned about the weapon used, she admitted that she could not positively confirm whether MO1 (the stick) was the very object used by the accused to assault the deceased. Ext.D2 contradiction was marked when PW2 denied having stated before the Magistrate that Geetha was seen flailing her hands in the water for approximately half an hour. Exhibit D3 contradiction was marked when she denied having stated to the Magistrate that, while Geetha was pleading for help from the accused and his family members, all of them had



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noticed PW1 standing there. Ext.D4 contradiction was marked when she denied having stated to the police that Akhil had come running to the spot, threw one end of his dhoti to Geetha in an attempt to help her, and that by the time he did so, she had already drowned. It was also brought out that she had stated about the refusal of Akhil to save the life of Geetha as he was fearful that he would be pulled down by the drowning person. Ext.D5 contradiction was marked when she denied having stated to the police that no male members had come to the scene. Ext.D6 contradiction was marked when she denied having stated to the police that it was upon hearing the cries of the accused and his family members that the local residents had rushed to the spot. According to her, in her statement before the Magistrate, she had stated that when she cried out, the accused and his family members retreated to their house and only returned after the locals had assembled. However, when confronted with the absence of this statement in her earlier recorded statements, she merely stated that she had nothing to say if the statement was not found therein. It was further brought out that she had never mentioned to the Magistrate that while she was returning after witnessing the incident, she had met her brother and instructed him not to divulge the details to anyone else. Similarly, she admitted that she had failed to disclose, either in her police statement or before the Magistrate, that she had narrated the incident to



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individuals named Sameera and Sareena. PW2 stated that the pond was very deep and that numerous local residents regularly used it for bathing. She acknowledged that numerous houses were situated within a 25 meter radius of the pond. She further claimed to have been acquainted with Geetha for a long time and was aware of the ongoing family disputes between Geetha and her husband, Sukumaran. She stated that Sukumaran was an alcoholic who used to physically assault Geetha and that her children were disabled.

19. PW3 is the mother of the deceased. She stated that she received the news of Geetha's death in the evening. She was told about the role of the accused only on the day after the funeral. She stated that a few days before her death, she heard news about the illicit relationship between Sukumaran and the wife of the appellant. This led to an altercation between Geetha and her husband. She stated that Sukumaran used to physically abuse Geetha. The accused was in inimical terms as Geetha used to tell everyone about the affair of her husband with the wife of the appellant.

20. PW4 is an attester to the inquest. PW5 is the Doctor who conducted the autopsy and issued Ext.P3 report. He noted an antemortem abrasion on the left leg below the knee of the injured. He said that the deceased had died of



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drowning. PW6 is the Village Officer who prepared Ext.P4 plan.

21. PW7, Rafi, is the brother of PW2. He stated that on receiving information that someone had fallen into the pond, he rushed to the pond area and he saw PW2 walking towards her house, visibly distressed and crying. When he inquired, she informed him that the appellant had beaten Geetha with a stick and subsequently pushed her into the pond. When he reached the spot, he found that Fire Force personnel and the police had already arrived, and the body had been retrieved from the water. However, he did not disclose to anyone what he had heard about the incident from PW2. It was only on 17.12.2013 that the police first questioned him. Subsequently, on 20.12.2013, the police visited the scene again, and the appellant was with them. The appellant took out a stick and handed it over to the police and he stood as an attestor to Ext.P5 seizure mahazar prepared for that purpose. He further stated that he was present when Ext.P6 observation mahazar was prepared by the police. According to him, at the time of preparing Ext.P6, the police seized a basket, a thorthu, a pair of children's pants, and a soap dish. During cross-examination, he stated that it was Sameera's daughter who initially informed him that someone had fallen into the pond. He also mentioned that his son was with her at the time. He stated that he saw PW2 at around 2:00 p.m. Ext.D7 contradiction was marked when he denied having told



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the police that the appellant had beaten Geetha before pushing her into the water. He further stated that local residents had informed everyone that Geetha had drowned. When asked why he had failed to promptly disclose what he had heard to the police, he said he did not feel so. He also confirmed that Geetha's husband and PW2's husband were friends.

22. PW8 is the photographer who took Exts.P7 and P8 series photographs in respect of the scene of crime. PW9 is the Civil Police Officer, Koyilandi Police Station who stood as an attestor to Ext.P10 seizure mahazar in respect of the 'mundu' of the accused and Ext.P11 seizure mahazar prepared at the time of the seizure of the clothes of the accused.

23. As is revealed from the evidence, the entire case revolves around the evidence tendered by PW2, who is projected as an eyewitness to the occurrence. In **State of U.P. v. M.K. Anthony**¹, the Apex Court had occasion to lay down the approach that is to be adopted while appreciating the evidence of a witness in a serious crime. It was held as follows in paragraph 10 of the judgment.

10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a

¹ (1985) 1 SCC 505



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ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.



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24. In **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**², the Supreme Court, while reiterating the principles relating to appreciation of evidence observed as under:

"5 We do not consider it appropriate or permissible to enter upon a reappraisal or re-appreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

- (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed in the mental screen.
- (2) Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.
- (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.
- (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

² (1983) 3 SCC 2171



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- (5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.
- (6) Ordinarily, a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in short time span. A witness is liable to get confused or mixed up when interrogated later on.
- (7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

25. As held by the Hon'ble Apex Court, while appreciating the evidence of a witness, the fundamental approach must be to assess whether the testimony, when read as a whole, carries a ring of truth. Once such an impression is formed, the Court must then subject the evidence to rigorous scrutiny, taking into



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consideration the deficiencies, drawbacks, and infirmities pointed out therein. The Court must evaluate whether these inconsistencies contradict the overall tenor of the witness's testimony and whether the initial credibility assessment is shaken to the extent of rendering the evidence unworthy of belief. Minor discrepancies on trivial matters that do not touch the core of the case, or a hyper-technical approach that extracts statements out of context or focuses on technical lapses by the investigating officer that do not go to the root of the matter, cannot ordinarily justify discarding the evidence in its entirety.

26. Applying the aforementioned principles to the facts of the present case, we have carefully scrutinized the evidence of PW2 and find no hesitation in concluding that her testimony is wholly unreliable. Several reasons compel us to arrive at this conclusion.

A. We note that the 161 statement of PW2 was recorded for the first time only on 19.12.2013, while the statement of PW7 was recorded earlier, on 17.12.2013. Ext. P18 report, which incorporates the name and address of the appellant, was sent to the jurisdictional court only on 20.12.2013. PW3, the mother of PW2, also stated in her testimony that she came to know about the alleged role of the appellant only after the funeral, on 17.12.2013. This sequence of events unmistakably indicates that the



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appellant was implicated only on 19.12.2013. The police had arrived at the spot immediately after the incident. The house of PW1 is situated in the close vicinity. There is no justification for her to conceal the factum of the incident. Furthermore, had PW7 learned about the incident from PW2 at the earliest, the normal and natural course of events would have led to the immediate recording of her statement by the police. Thus the long delay in recording the statement of PW1 by the police raises serious doubts about the authenticity of the allegations levelled by the witness.

- B. We also find it difficult to believe the assertion made by PW2 that she had narrated the incident to PW7, Rafi, her own brother. While deposing before the Court, she stated that after witnessing the drowning, she encountered her brother and told him what she had seen. For reasons best known, she asked him not to divulge the incident to anyone. However, it was brought out during cross-examination that she had never mentioned this aspect either to the police or to the Magistrate. We feel that such a stand was taken to justify the delay in recording her statement. We feel that this omission would considerably affect her credibility adversely.
- C. First and foremost, there are serious inconsistencies regarding the time



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at which PW2 arrived at the scene. In her evidence, she initially stated that she reached the pond and saw the deceased and the accused engaged in an altercation. However, during cross-examination, she contradicted herself, stating that she reached the pond at 1:00 PM, and that the accused arrived only 10–15 minutes later.

- D. In her evidence, PW2 claimed that she saw the accused striking the deceased with MO1 stick on her shoulder and back with considerable force, and that he also slapped the deceased on the face. However, the medical evidence does not corroborate the above assertion, as no injuries were noted on the shoulder, back, or face. The only injury observed was an abrasion on the inner portion of the left leg, which further discredits her version.
- E. PW2 asserted that she was sitting and washing clothes approximately 20 feet away from the deceased. However, Ext.P4 site sketch contradicts this assertion, as it clearly indicates that the actual distance between the two locations is approximately 30 meters (about 100 feet). This deviation at the time of tendering evidence was necessitated as she had no option otherwise to substantiate her claim that she was in a position to overhear the conversation between the appellant and the deceased.



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- F. It has emerged from the evidence that there were numerous houses in the vicinity of the crime scene. PW2 stated that she was living in a colony and there were numerous houses within a radius of 25 meters. PW2 herself has stated that she had known Geetha for a long time and that her husband was a close friend of Geetha's husband. Given her proximity to the deceased—both physically and in terms of relationship—it is difficult to believe that she remained a passive observer throughout the incident.
- G. She claimed to have witnessed the entire altercation and the subsequent drowning, which according to her lasted for 15 minutes, yet she did not raise an alarm or alert anyone nearby to prevent the tragedy. This conduct is highly unnatural and defies common sense, especially considering that she was at a safe distance and could have easily called for help. Ext.D2 contradiction further undermines her credibility, as it indicates that in her Section 164 statement, she stated that Geetha was flailing her hands in the water for approximately half an hour. This claim is wholly implausible and casts serious doubt on her reliability.
- H. It is inconceivable that PW2 stood by idly for such a prolonged period without raising any alarm. Furthermore, it is highly unnatural that



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despite knowing Geetha could not swim, she failed to alert the neighbours immediately, if she was actually present there. No evidence has been adduced to suggest that PW2 was intimidated or had any fear towards the appellant, who was 62 years old at the time. In that view of the matter, it is difficult to accept that any reasonable person, having witnessed such a grave incident, would not have made even a last-ditch attempt to seek help and save Geetha's life or raise alarm. Even more incredulous is the fact that PW2 failed to disclose the incident to anyone until 19.12.2013, which further erodes the credibility of her version.

- I. The evidence tendered by PW7 evidence also contradicts her version. When he arrived at the scene, he saw police and fire force personnel already engaged in retrieving the body. He also witnessed local residents assembling at the spot. Had he known of the appellant's involvement through PW2, he would have certainly disclosed this information to the police at the earliest opportunity.

27. As the entire prosecution case rests on the evidence of PW2, the conviction can be entered into only if we can consider her as a sterling witness. For being a "sterling witness" her evidence should be of a very high quality and calibre and her version must be unassailable. The evidence tendered by the



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witness must be consistent from the beginning till the end. It should be natural and consistent with the case of the prosecution of the accused. There should not be any prevarication in the version of such a witness. Only if the version of a witness qualifies the above test, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged. The evidence tendered by PW2 would not fall into the above category owing to the numerous inconsistencies, contradictions embellishments and unnatural conduct. We hold that PW2 is a wholly unreliable witness.

28. If the evidence of PW2 is left out, all that remains is the evidence of PW7. He has merely parroted the version of PW2. His evidence will not advance the prosecution case.

29. Yet another matter which was highlighted by the learned counsel



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appearing for the appellant is with regard to the seizure of MOs 4 to 7, from the scene of crime. Ext.D8 is the scene mahazar prepared by Ramachandran (CW 32), the SI of Police on 17.12.2013. However, he did not note the presence of MOs 4 to 7 in or around the scene of crime. Ext.P6 observation mahazar was prepared by the investigating officer on 20.12.2013 and suddenly MOs 4 to 7 surfaced near the scene of the crime. The learned counsel highlighted that this was done intentionally to show that the deceased had gone to the pond to wash clothes and to rule out the possibility of suicide. There appears to be considerable merit in the said submission.

30. We are of the view that the prosecution has miserably failed to adduce any legal evidence to prove that the accused had assaulted Geetha and had pushed her into the pond with a view to causing her death. The finding of guilt arrived at by the learned Sessions Judge is liable to be set aside.

31. Crl.A.No. 856 of 2017 is allowed. The finding of guilt, conviction, and sentence passed against the appellant under Section 304-II of the Indian Penal Code in S.C. No.20 of 2015 on the file of the Additional Sessions Judge-I, Kozhikode, is set aside, and he is acquitted of all charges. The appellant/accused be set at liberty forthwith if his continued incarceration is not required in



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connection with any other case.

Consequently, Crl. Appeal (Victim) No.164 of 2018 will stand dismissed.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

Sd/-

**P.V. BALAKRISHNAN,
JUDGE**

PS/21/02/25