# Mathew Alias Mathachan vs State Of Kerala on 19 March, 1991

## Equivalent citations: AIR1991SC1376, 1991CRILJ1679, (1992)1SCC74, AIR 1991 SUPREME COURT 1376, 1992 (1) SCC 74, 1991 AIR SCW 1017, (1992) MAD LJ(CRI) 403, (1992) 1 CRILC 566

## Author: A.M. Ahmadi

## Bench: A.M. Ahmadi, K. Ramaswamy

ORDER

A.M. Ahmadi, J.

1. The appellant has been convicted for murdering his father-in-law, Thomas alias Pappachan. The facts reveal that the appellant and his wife, P.W. 3 were not carrying on well. PW 3 had, therefore, left the appellant and was residing with her father. On October 7, 1978, at about 1.00 p.m. P. W. 3 took away her youngest child, Jiji, from the house of C.W. 4 where she was at the relevant point of time. On the appellant coming to know about the same, he went to the house of his father-in-law and a quarrel ensued. On the same day at about 6.00 p.m., while P.W. 1 and the deceased were passing by the shop of P.W. 2, the appellant met them and once again there was an exchange of abuses, grappling and ultimately the appellant stabbed his father-in-law. There is no doubt that a scuffle had ensued between the two, both had fallen down and in the process the stab wounds were inflicted. The Trial Court, therefore, thought that the accused was provoked by the removal of his child, Jiji, from the residence of G.W. 4 where she was kept and on account of that provocation a quarrel had ensued between him and his father-in-law in the afternoon and later when they accidentally met at the shop of P. W. 2. In the course of the quarrel there was a heated argument followed by a scuffle and thereafter the knife wounds. In the backdrop of these facts, the Trial Court thought that the case fell within clause Thirdly of Section 300, I.P.C. The Trial Court, therefore, convicted the appellant under Section 304, Part II and awarded a sentence of rigorous imprisonment for six years. The High Court on a re-appreciation of the evidence concluded as under:

> There was no sudden fight in the heat of passion upon a sudden quarrel. The attack was all one-sided. Considering the manner of attack, the nature of the injuries caused, the parts of the body chosen for the attack and the type of weapon used, there need not be any hesitation to hold that the offence committed by the appellant is nothing short of murder.

> We are afraid, we cannot agree with this line of reasoning of the High Court. The facts clearly show that there was an estrangement between the appellant and his wife, P.W. 3. This had led to their separation. The youngest child, Jiji, was with the appellant and had been kept at the house of C.W. 4. When the appellant learnt that the said child was removed from the house of C.W. 4, he was agitated. He went to the house of his father-in-law where there was a quarrel. Later, they again met at the shop of P.W. 2 and a heated argument took place. In the course thereof there was a sudden fight which led to grappling. Both of them fell on the ground and it was in that heat of the moment that the appellant whipped out a knife which he was carrying and caused the injuries in question. We are, therefore, of the opinion that the view taken by the Sessions Court was not one which demanded interference by the High Court. The High Court is not right when it says that there was no sudden quarrel and that the injuries were not caused in the heat of passion. In fact, the High Court has not appreciated the mental state of the appellant when he learnt that his. youngest child was removed from his custody. In the backdrop of the facts, we are of the opinion that the view taken by the learned Sessions Judge did not call for interference by the High Court.

2. In the result, we allow this appeal and set aside the order of the High Court and restore the order of the learned Sessions Judge.