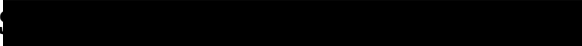
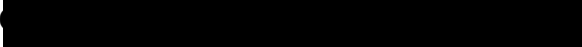
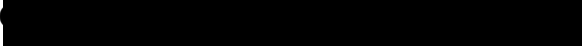


TABULAR FORM

1. Serial No. : Sessions Case No. 474/2021
 2. Name of the Police Station : Vandiperiyar Police Station,
 and the Crime No. of the Crime No.598/2021
 offence

DESCRIPTION OF THE ACCUSED

3. Name : Arjun
 4. Father's Name : 
 5. Occupation : 
 6. Residence : 
 7. Age : 21/21

DATE OF

8. Occurrence : 30/06/2021
 9. Complaint : 30/06/2021
 10. Apprehension : 05/07/2021
 11. Release on bail : Custody
 12. Committal : Nil
 13. Commencement of trial : 24/03/2022
 14. Close of Trial : 11/12/2023
 15. Sentence or Order : 14/12/2023
 16. Service of copy of judgment : Not applicable
 or finding on accused
 17. Reason for delay : Not applicable
 18. Period of detention : From 05/07/2021 onwards
 undergone during
 investigation, enquiry or
 trial for the purpose of u/s.
 428 Cr.P.C.

Special Court for the Trial of Offences
 under the POCSO Act 2012,
 Kattappana.

Dated:14/12/2023

Sd/-
 SPECIAL JUDGE

THE SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER
THE PROTECTION OF CHILDREN FROM SEXUAL
OFFENCES ACT, 2012, KATTAPPANA

Present:Smt. MANJU V., SPECIAL JUDGE

Thursday, 14th day of December, 2023/23rd day of Agrahayana, 1945

Sessions Case No : 474/2021

(Crime No. 598/2021 of Vandiperiyar Police Station)

Complainant : State of Kerala, Represented by
Inspector of Police, Vandiperiyar,
Police Station.

By Adv. M. Sunilkumar
Special Public Prosecutor.

Accused : Arjun [REDACTED]

[REDACTED]

By Adv V. Jyothi Sagar
Adv. S. K. Adhithyan
Adv. Keerthi S. Jyothi &
Adv. Diveena Sasidharan

Charge : u/ss.449, 376(2)(n), 377, 376A, 376AB,
302 of the Indian Penal Code and
u/s.5(i), (j)(iv), (l) and (m) r/w s.6 of
Protection of Children from Sexual
Offences Act

Plea : Not guilty

Finding : Not guilty

Sentence or Order : Accused is acquitted u/s.235 Cr.P.C

This case having been heard on this 11/12/2023 and the Court today delivered the following:-

JUDGMENT

The accused stands charge sheeted by the Inspector of Police, Vandiperiyar in Crime No.598/2021 of that Police Station alleging offences punishable u/ss.449, 302, 376(2)(m)(n), 376AB, 377 of the Indian Penal Code and u/s.4(2) r/w 3(a), s.6 r/w s.5(i)(l)(m), s.10 r/w s.9(i)(l)(m) of the Protection of Children from Sexual Offences Act (in short POCSO Act).

2. The prosecution case is as follows:- The deceased victim girl aged 5 ½ years old is the daughter of PW7 and PW33. The prosecution alleges that 3 months after reopening of the school in June 2019, on several days, in the residence of the victim, the accused subjected her to sexual assault. Thereafter on 30/6/2021 at 2.50 p.m., when PW4, who is the brother of the victim went outside for cutting his hair, the accused criminally trespassed into the residence of the victim who was then watching TV in the middle room of her house. The accused made her to lie on a cot in the room which is used as both pooja room and bedroom and he tried to have penetrative vaginal sexual intercourse with her, but failed to do the same resulting in injuries on the vagina and abdomen near her navel. So he made to sit the victim on his lap and had carnal intercourse against the order of the nature. While so, the victim

become unconscious and out of the fear that she would reveal the incident to others when she became conscious, the accused went to the middle room of the house and took a shawl from the almirah and wound its one end around the neck of the victim and and hanged her by entangling its other end on a plastic rope hanging from the cross-beam (കൂട്ടക്കോൽ) of the room and thereby committed her murder. Thus the accused alleged to have committed offences punishable u/s.449, 302, 376(2)(m)(n), 376AB, 377 of Indian Penal Code and s.4(2) r/w 3(a), 6 r/w 5(i)(l)(m) and s.10 r/w9(i)(l)(m) of Protection of Children from Sexual Offences Act(in short POCSO Act).

3. Originally, the case was filed before the Special Court for POCSO cases at Thodupuzha. Later the case was made over to this court for disposal. The accused is in custody. Copies of records were already served to the accused u/s.207 Cr.P.C from that court.

4. The learned Special Public Prosecutor had opened the prosecution case u/s.226 Cr.P.C. After hearing both sides u/s.227 Cr.P.C, my learned predecessor in office framed charge against the accused in respect of the offences punishable u/ss.449, 376(2)(n), 377, 376A, 376AB, 302 of the Indian Penal Code and u/s.5(i),(j)(iv), (l) and (m) r/w s.6 of Protection of Children from Sexual Offences Act (in short POCSO Act).

5. The prosecution examined as PW1 to PW49 and Ext.P1 to

Ext.P70 and MO.1 to MO.16 were marked. CW3 Murukan, CW5 Selvaraj, CW6 Ayyappan, CW15 Santhi, CW18 Pavanraj, CW19 Rosamma, CW21 Vishnu, CW24 Reni Stanly, CW26 Suresh, CW29 Ayyappan, CW31 Yesudas, CW32 P.D. Mohanan, CW34 Nithya.M, CW45 Sri. Suraj.S, CW51 Santhosh V.G, CW52 Shijumon.R, CW56 Isakki Muthu, CW59 Dr.Ani V, CW60 Smt. Bushra Beegum were given up by the prosecution as their evidence will not improve the prosecution case.

6. After closing the prosecution evidence, the accused was questioned u/s.313 (1) Cr.PC. He denied all the incriminating circumstances appearing in evidence against him. He also filed a statement in writing denying the entire allegation against him.

7. Both sides were heard u/s.232 Cr.PC. Since there is no evidence for acquitting the accused u/s.232 Cr.P.C, the accused was called upon to enter on his defence and to adduce evidence. DW1 was examined and Ext.D1 to D20 were marked from the side of accused.

8. Heard both sides.

9. Following points arise for determination in the case:-

- 1) Whether the victim is a child within the meaning of s.2(d) of POCSO Act?

- 2) Whether the death of the child is homicidal or accidental?
- 3) Whether 3 months after the reopening of the school in June 2019, on several days and thereafter on 30/06/2021 at 2.50 p.m. the accused criminally trespassed into the house of the victim in order to commit rape on her and thereby committed offence punishable u/s.449 IPC?
- 4) Whether 3 months after the reopening of the school in June 2019, on several days and thereafter on 30/06/2021 at 2.50 p.m. the accused repeatedly committed rape on the victim in the pooja room of the her residence by committing anal penetration and thereby committed offence punishable u/s.376 (2)(n) IPC ?
- 5) Whether 3 months after the reopening of the school in June 2019, on several days and thereafter on 30/06/2021 at 2.50 p.m., in the pooja room of the residence of the the victim, accused had carnal intercourse against the order of nature with the victim and thereby committed offence punishable u/s.377 IPC ?
- 6) Whether on 30/6/2021 at about 2.50 p.m, when the victim become unconscious in the course of anal sexual intercourse, accused committed the murder

of the victim and thereby the committed offence punishable u/s.376A IPC?

- 7) Whether 3 months after the reopening of the school in June 2019, on several days and thereafter on 30/06/2021 at 2.50 p.m., the accused committed rape on the victim aged below 6 years by committing anal penetration in the pooja room of her house and thereby committed offence punishable u/s.376AB IPC?
- 8) Whether on 30/06/2021 at about 2.50 p.m. the accused murdered the victim and thereby committed offence punishable u/s.302 IPC ?
- 9) Whether on 30/06/2021 at 2.50 p.m. the accused committed penetrative sexual assault causing bodily harm and injury to the sexual organs of the victim and thereby committed offence punishable u/s.5(i) r/w.6(1) POCSO Act ?
- 10) Whether on 30/6/2021 at about 2.50 p.m the accused committed penetrative sexual assault causing the death of the victim and thereby committed offence punishable u/s.5(j)(iv)r/w 6(1) POCSO Act ?
- 11) Whether 3 months after the reopening of the school in June 2019, on several days and thereafter on 30/06/2021 at 2.50 p.m. the accused repeatedly committed penetrative sexual assault on the victim in her residence by committing anal penetration and thereby committed

offence punishable u/s.5(l) r/w 6(1) POCSO Act ?

- 12) Whether the accused is guilty of the above said offences ?
- 13) If so, what is the sentence or order to be passed ?

BRIEF DISCUSSION OF EVIDENCE IN THE CASE

10. The victim aged below 6 years, was found hanged in a shawl in the locked pooja room cum bed room of her lane room on 30.06.2021. She is the younger child of PW7 and PW33. PW4 is the brother of the victim.

11. PW8 is the brother of PW7. PW9 is the wife of PW8. As PW8 and PW9 have no children, the victim was fostered by them from her 6th month of age onwards. PW7 to PW9 and PW33 are the workers of the Estate and are residing in the opposite lane buildings. The accused, PW5 to PW6, PW10 and PW17 are the residents of the nearby lane room. The lane building consists of 18 rooms and each room has a kitchen, a hall and a small varandah. The lane buildings are situated in opposite rows facing each other. The lane buildings having 5-5 rooms are situated in one row and lane buildings having 4-4 rooms are situated in the opposite row in a lower level. A way having width of 10-15 feet paved with stones is lying between the rows which also constitutes the courtyard for the lane rooms. Each lane room has doors on its front and back sides. PW20 is the manager of the tea estate in which PW7 and PW32 are

employed as workers. The evidence of PW20 shows that lane rooms were allotted to the workers and PW7 was allotted room No.184 and PW32 was allotted room No.182. The evidence of PW20 and PW1 shows that PW7 is also using the adjacent lane building allotted to another worker named Johnson. The accused is residing in the lane room adjacent to that of PW7.

12. The incident in the case happened during the covid pandemic period. At the time of the incident, the victim was studying in 1st standard. The victim was attending online classes and not started attending the school physically. She was attending tuition classes also. PW4, her elder brother, was taking her to tuition classes. Before joining school, the victim attended play school, LKG and UKG. The victim was very intimate to the accused. If PW4, PW7 or PW8 were unable to take the victim to her classes for any reason, the accused used to take her to classes. The accused used to address PW7 as 'അപ്പ' and PW33 as 'ചിറ്റ'. PW32 is the father of the accused. The accused is residing with his parents and elder sister.

13. PW4 testified that on 30.06.2021 he had on-line classes from 7 a.m to 8.00 a.m and from 8.15 a.m to 9.15 a.m. He dropped off the victim to her tuition class at 9.30 a.m and brought back her at 12.30 p.m. Then the victim went to the house of PW8. PW4 came back to his house. At that time, PW33 was present in the house for having her food. PW4 accompanied PW33 to the door while she was

leaving the house after her food. PW4 testified that at that time, the victim was present with the accused in front of his lane building. The victim also bid goodbye and kissed PW33 when she left. Thereafter the victim came to PW4. Then CW15 Santhi Amma asked PW4 to fell jack fruit and the victim also accompanied him. When they were in front of the house of the accused, PW4 gave his mobile phone to the victim to complete the game that he was playing. The victim sat with the accused and PW4 went for felling jack fruit. Thereafter he came back to his lane room and also obtained his mobile phone from the accused.

14. The evidence of PW4 shows that after some time, the victim came and told him that the accused stated to her that PW4 looks eccentric and so the victim asked PW4 to cut his hair. The portion of s.161Cr.P.C statement which shows that the victim herself asked PW4 to cut his hair was marked as Ext.D1. I find that Ext.D1 do not amount to any material contradiction. The evidence of PW4 further shows that he told the victim to bring PW5 to cut his hair. The victim went to call PW5. Thereafter she came back and she was watching television. PW4 resumed his online class from 2.30 p.m. When class started, PW5 came for cutting his hair. PW4 asked the victim to watch TV and picked scissors, water etc. and he went with PW5 and sat under a nearby jack fruit tree for cutting his hair. The accused, who was standing in front of his residence, followed them with PW6. When PW5 started cutting hair, the accused asked PW6

to pluck some passion fruits for him. The passion fruit plant was standing near the jack fruit tree. PW6 plucked some passion fruits and gave it to the accused. The accused went towards the lane building with the passion fruits.

15. While PW5 was cutting his hair, PW4 continued to attend his online class. Online class and hair cutting continued up to 3.30 p.m. and 10 minutes before that the accused came back. He laughed at PW4 commenting the way in which his hair was cut. PW4 became upset PW4 and PW5 went to the house of PW4 for looking in the mirror. The accused and PW6 followed them upto the door steps. When PW4 and PW5 were looking in the mirror, the accused called them for fetching water. PW4 took a pot for bringing water. He also called PW17 who is residing in the adjacent lane room. As there was no reply, PW4 knocked on his door and entered the house and found that PW17 was sleeping, putting the headsets on his ear. PW4 hit him with his pot and asked him to come for collecting water. PW17 told him that he will join him shortly.

16. When PW4 came outside, his grand mother (CW19 Rosamma) told him that the victim was not present in the house. PW4 went to the house of PW1 and he did not find the victim there. Then he came in front of the house of PW17 and called the name of victim and there was no reply. So PW4 went back to his house and found that the pooja room was locked from inside.

Thinking that the victim might have been sleeping in the room, he bang at on the door. Hearing the sound, PW10 came running. She also forcibly knocked on the door, but the door was not opened. Then PW10 stood on a chair and peeped into the room through the gap above the door. But she did not see anything except the rope used to hang bunch of bananas (റാപ്പാക്കു). PW4 brought a knife from the kitchen and opened the lock by inserting the knife through the gap of the door. He found the victim entangled in a shawl. There was 2 loops of shawl around her neck. Seeing the victim hanging, PW10 left the room weeping and she went to her house. PW4 lifted the victim and removed the shawl from her neck and brought her outside. At that time PW10 came out of her house with PW17 and her mother. The evidence of PW4 and PW10 shows that then the accused took the victim from the hands of PW4. When the accused came with the victim, his sister (CW34 Nithya) who is a nurse checked the pulse of the victim and told them to take the victim to hospital soon. Then PW32, the father of the accused, came running and he took the victim from the hands of the accused and rushed her to hospital in the scooty rode by CW21 Vishnu. Through PW10, Ext.D5 and Ext.D6 which are the relevant portions of her statement u/s.161 Cr.P.C were marked. Ext.D6 was marked to show that she did not see the accused taking the child from the hands of PW4 and CW34 Nithya examining her. Ext.D5 was marked to contradict her evidence before the Court that her grandmother named Saraswathy was not residing with them. I find that both Ext.D5 and Ext.D6 do

not amount to any material contradictions.

17. The accused, PW4 to PW6, PW9 and PW17 followed them to the hospital. When they reached the hospital, PW4 found the accused severely weeping by sitting outside the room where the victim was laying. After some time, PW4 understood that the victim died. The evidence of PW4 in this regard was corroborated through the testimony of PW5, PW6 and PW17. The statement given by PW4 and PW5 u/s.164 Cr.P.C was marked as Ext.P4 and Ext.P5 respectively by my learned predecessor in office. Through PW6, Ext.D2 which is the relevant portion of his statement u/s.161 Cr.P.C was marked. I find that Ext.D2 does not make out any contradiction.

18. The evidence of PW7 shows that on 30.06.2021 at 4.30 pm, while he was sitting in his spectacle shop, Shanmugham, the brother of PW2 called him and asked him to come to hospital. PW7 reached the hospital at 5.00 pm. Then PW32 and the accused told him that his daughter is no more. The statement given by PW7 u/s.164 Cr.P.C was marked as Ext.P7 by my learned predecessor in office.

19. PW33, mother of the victim, testified that at 4.00 pm while she was in her workplace, one Shanmugham asked her to go to home immediately. But he did not disclose any matter to her. On the way to her home, she heard screams from the lanes. She rushed

to the lanes and enquired the matter with her mother-in-law who was weeping. She told PW33 that a shawl was wound around the neck of the victim and she was taken to the hospital. When PW33 was about to go to the hospital, her co-workers who came there did not permit her to go. When PW7 came back at about 5.30-6.00 pm, she learned about the death of her daughter. The body of the victim was brought to home on 01.07.2021. The statement given by PW33 u/s.164 Cr.P.C was marked as Ext.P31 by my learned predecessor in office. Ext.D8 and Ext.D9 were marked through PW33. Ext.D8 is the relevant portion of her statement u/s.164 Cr.P.C which was marked to contradict her evidence that on the date of incident, when she was returning for her work in the noon, after having her food from the home, the victim who was standing in the courtyard in front of the house of the accused hugged and kissed her. Ext.D8 shows that the victim came to their lane room and hugged and kissed PW33. Ext.D9 is the relevant portion of the s.161 Cr.P.C statement of PW33 which was marked to contradict her version before the Court that the victim used to go to all other rooms in the lanes. I find that both Ext.D8 and Ext.D9 do not make out any material contradictions.

20. PW32 is the father of the accused. PW32 testified that on 30/06/2021 at 3.40 p.m he heard a hue and cry. Then his elder brother's son namely Prasanth came to him running and told that something happened to the victim and PW32 ran to the lane room

of PW4. He saw CW34 Nithya examining the victim who at that time was held by the accused. His evidence shows that CW34 Nithya told to shift the victim immediately to the hospital. PW32 received the child from the hands of the accused and took her to hospital in the scooty of CW21 Vishnu. The doctor examined the victim and told that she passed away. The evidence of PW32 further shows that the police came to his residence on 04/07/2021 at 7.30 p.m and PW32 handed over to them as demanded, MO.16 mobile phone used by the accused which was entrusted to him by the accused before he left to the police station on 04/07/2021. The learned Special Public Prosecutor was permitted to put questions to PW32 that might be asked in cross examination and marked Ext.P30 through him. Ext.P30 is the relevant portion his statement u/s.161 Cr.P.C. which shows that he produced MO.16 mobile phone at the police station in the night of 04/07/2021. I find that the said contradiction is not a material one.

21. PW34 is the civil surgeon in Community Health Centre, Vandiperiyar, who first attended the victim. His evidence shows that on 30.06.2021 at 4.00 pm, the victim was brought dead with the history of found hanged. He informed that matter to police.

22. PW1 is a resident of one of the lane rooms. He is working as a supervisor in the Estate, running a ration shop and is also a social worker. On 30.06.2021 at about 4 pm, while he was

participating in a protest against petrol/diesel price in Vandiperiyar town, PW5, his younger son, called him over phone and told that the victim was lying unconscious and asked him to come to hospital soon. PW1 along with his elder son, went to Primary Health Centre, Vandiperiyar. There he saw PW32 and he told him that the victim is no more. Thereafter at about 6 pm, he went to police station as per the direction of PW34 and lodged Ext.P1 First Information Statement regarding the incident.

23. PW39 is the Assistant Professor and Assistant Police Surgeon in the Department of Forensic Medicine, Government Medical College, Idukki, who conducted postmortem examination of the victim on 01.07.2021.

24. PW2 and PW3 are the witnesses to Ext.P2 inquest report. The evidence of PW2 shows that he noticed a mark on the neck of the victim at the time of inquest. He deposed that the police had taken into the custody the dresses and ornaments worn by the victim. Through PW2, MO.1 to MO.8 were marked. The light green frock worn by the victim was marked as MO.1. The maroon colour panties was marked as MO.2. A pair of ear rings (ജിമിക്കി കമ്മൽ) worn by the victim was marked as MO.3. The two bangles (കപ്പിവള) worn by the victim was marked as MO.4 series (2 in numbers). The bead type chain (മുത്തുമാല) worn by the victim was marked as MO.5 and the ring worn by the victim was marked as MO.6. The waistlet

(അരണതാണം) worn by the victim was marked as MO.7. A pair of anklets worn by the victim was marked as MO.8.

25. The evidence of PW41 shows that on 01.07.2021 she was working as Scientific Officer under DySP, DCB, Idukki. She was present at the time when the inquest of the victim was conducted in the mortuary of the Community Health Centre, Vandiperiyar. At the time of the inquest, she took cellophane pressing from both palms, both soles and from the neck of the victim separately and labelled and sealed and handed over the same to the investigating officer.

26. PW25 was the CPO attached to Vandiperiyar police station who guarded the dead body of the victim at Community Health Centre, Vandiperiyar. He was also present when the inquest on the body was conducted on 01.07.2021. He also received the body after inquest and produced the same in Medical College, Idukki for postmortem. After the postmortem, he handed over the body to the relatives of the victim.

27. The evidence of PW28 shows that he guarded the place of occurrence from 8.00 pm of 30.06.2021 till 12.00 noon of the next day. Through PW28, Ext.P22 mahazar prepared by the investigating officer while taking into custody the properties collected by PW41 was marked. He was also a witness to Ext.P19 mahazar prepared by the investigating officer when PW24 inspected the mobile phone of

the accused. Through him Ext.P22 and Ext.P24 mahazars were marked. PW28 further testified that he produced before the investigating officer the photographs taken during inquest by the Department Photographer and a C.D containing the photographs. He identified the said photographs as Ext.P23 series (14 numbers) and C.D as Ext.P24.

28. The police photographer, Crime Branch, Idukki District was examined as PW29. He identified the photographs of the victim taken by him during the time of inquest and photos of the scene of occurrence as Ext.P23 series (14 numbers). He also identified the C.D containing the photographs that was handed over to the investigating officer as Ext.P24. Ext.P25 is the certificate issued by PW29 u/s.65B(4) of the Evidence Act pertaining to Ext.P23 series and P24.

29. Through PW14 Ext.P10 scene mahazar was marked. He also identified MO.9 series and MO.10. PW15 is the Principal of the school, where the victim attended her LKG classes. Through him, copy of relevant extract of LKG, Admission Register for the year 2019-20 was marked as Ext.P11. The Vice Chairman of the said school was examined as PW16. Through him, Ext.P12 mahazar prepared by the police was marked.

30. On 14.07.2021, PW18 was working as Birth & Death Registrar, Arpookara Grama Panchayat. Through him the copy of

birth certificate of the child was marked as Ext.P14. PW19 is the gate watcher of the Estate. His evidence shows that on 30.06.2021 no strangers came to the Estate. The Village Officer, Periyar was examined as PW22. Through him, Ext.P17 scene plan dated 26.07.2021 was marked. PW23 was the Grama Panchayat Secretary, Vandiperiyar. Through him Ext.P18 certificate was marked which shows that building No.184 in Ward No.5 of Vandiperiyar Grama Panchayat is owned by PW20.

31. PW26 is the Senior Civil Police Officer attached to Vandiperiyar Police Station. Through him, Ext.P20 and P21 mahazars were marked. The evidence of PW30 shows that Ext.P19 mahazar was written in his handwriting. He was also cited as a witness to Ext.P26 mahazar prepared while taking into custody the photo of the child produced before the police by PW4.

32. The Assistant of Sub Inspector of Police Vandiperiyar police station, was examined as PW31. Through him Ext.P27 and P28 mahazars were marked. The photograph of the accused taken into custody as per Ext.P28 mahazar was marked as Ext. P29.

33. PW35 is the Nodal officer of Bharathi Airtel, Kerala Circle. Through him, Ext.P32, P32(a) and P33 were marked. Ext.P32, Ext.P32(a) and Ext.P33 are the printout of the customer application form, copy of aadhaar card and call details record pertaining to the

mobile phone connection of the accused. The certificate issued u/s.65B of Evidence Act in respect of the said documents was marked as Ext.P34.

34. PW36 is the State Nodal Officer of Reliance Jio Info com. Through him Ext. P35 to P38 were marked. Ext.D17 and Ext.S17(a) were marked from the side of defence through PW36.

35. PW37 was examined by the prosecution to prove that he witnessed a re-creation of incident in the case by police using a dummy.

36. The evidence of PW42 shows that on 30.06.2021 at about 6.10 p.m, PW1 came to the Vandiperiyar police station and lodged Ext.P1 FIS. On its basis he registered the above case as per Ext.P43 FIR u/s.174 Cr.P.C and forwarded the FIR and connected records to Sub Divisional Magistrate Court, Idukki.

37. The investigating officer was examined as PW43. He had taken over the investigation of the case on 01.07.2021. He conducted the inquest of the victim at Community Health Centre, Vandiperiyar and prepared Ext.P2 inquest report. In Ext.P2, PW43 noted a ligature mark on the neck of the victim, abrasions found above the umbilicus and dripping of blood (രക്തം പൊടിയുക) from the vagina of the victim. He had taken into the custody MO1 to MO8 from the body

of the victim by describing the same in Ext.P2 inquest report. Thereafter he sent the body for postmortem examination. On the same day at 12.00 noon, PW43 came to the place of occurrence and prepared Ext.P10 scene mahazar. He had taken into the custody two plastic ropes and shawl found in the place of occurrence as per Ext.P10. The said plastic ropes were marked as MO.9 series(light yellow and red in colour) and shawl was marked as MO.10. With regard to the lie of the ropes and shawl at the place of the occurrence PW43 testified as follows. “ടി പ്ലാസ്റ്റിക് കയറുകളിൽ ഒന്ന്, ടി മുറിയുടെ കഴുകോലുകളിൽ ഒന്നിൽ കെട്ടി ഇട്ട് മറ്റു ഭാഗം മുറിയിലേയ്ക്ക് താഴ്ന്നു കിടക്കുന്ന അവസ്ഥയിലും, അതിന്റെ താഴ്ഭാഗത്ത് അതിൽ ചുറ്റിയ അവസ്ഥയിൽ രണ്ടാമത്തെ പ്ലാസ്റ്റിക് കയറും കാണപ്പെട്ടു. ആദ്യ പ്ലാസ്റ്റിക് കയർ രണ്ടായി മടക്കി കഴുകോലിൽ കൂടി ഇട്ടിരുന്നതിന്റെ രണ്ട് അറ്റങ്ങളും താഴേക്ക് വന്നിരുന്നത്, താഴെ അറ്റ ഭാഗത്ത് ഒരമിച്ച് കൂട്ടി കെട്ടിയ അവസ്ഥയിലായിരുന്നു. ആയത് Ext.P23(g) യിൽ കാണുന്നതുപോലെയാണിരുന്നത്. ആദ്യ plastic കയറായ ഇളം മഞ്ഞ നിറത്തിലുള്ള കയറിന്റെ അറ്റത്തുള്ള കെട്ടിൽ, രണ്ടാമത്തെ ചുവന്ന നിറത്തിലുള്ള plastic കയർ കുരുക്കി താഴേക്ക് കിടക്കുകയായിരുന്നു. ആ കയറിൽ പിങ്ക്, മഞ്ഞ കയറുകളോട് കൂടിയ ഒരു shawl കുരുക്കി ഇട്ടിരിക്കുന്നതായാണ് കണ്ടത്. അവ മൂന്നാമത്ത് Ext.P10-ൽ വിവരിച്ച് ബന്തവസിലെടുത്തത്”. His evidence further shows that after preparing Ext.P10, he locked and sealed the pooja room in which the incident happened and kept the key in his possession. The said evidence of PW43 was corroborated through the testimony of PW4.

38. PW4 testified that on 01.07.2021 at about 11.00 am, the

police came to the lanes and asked PW4 where and in what manner the victim was found hanged. PW4 showed the Pooja room and the shawl wound around the neck of the victim to police. The police had taken into custody the ropes and shawl. PW4 identified the ropes as MO.9 series (2 in numbers) and shawl as MO.10. The police also locked the pooja room and sealed it. PW14 and PW17 are attestors to Ext.P10 scene mahazar. They also identified MO.9 series and MO.10. Their evidence shows that PW4 was present at the time when Ext.P10 was prepared.

39. The evidence of PW43 further shows that on the same day at 1.15 p.m, he had taken into custody the cellophane pressings collected during the inquest of victim by PW41 and his specimen seal impression by preparing Ext.P22 seizure mahazar. His evidence further shows that PW41 handed over the said articles to him in separate labelled and sealed packets. PW43 testified that on the same day at 8.15 p.m. the vaginal and anal swabs and smears and the nail clippings collected by PW39 at the time of the postmortem examination of the victim was produced in a sealed and labelled cover by PW25 before him and he had taken into the custody the same by preparing Ext.P20 seizure mahazar. As it was revealed from the statements of PW34 and PW39 that the victim was sexually assaulted, PW34 filed reports before Sub Divisional Magistrate Court, Idukki and Special Court for POCSO Cases, Thodupuzha for deleting s.174 Cr.P.C and stating that investigation was continuing in respect

of the offences punishable u/s. 376(2)(n), 376(3) IPC and s.4 r/w 3(a), r/w.5(i)(l)(m), s.10 r/w s.9(i)(l)(m) of POCSO Act. Thereafter PW43 produced all the records in Special Court for POCSO Act Cases, Thodupuzha that were originally filed before Sub Divisional Magistrate Court, Idukki. On 02.07.2021, PW43 filed Ext.P44 report in the Special Court for POCSO Act Cases, Thodupuzha stating that investigation was continuing in respect of offences punishable u/s.376 AB and 377 IPC also. He also filed Ext.P45 report correcting the details of lane rooms in possession of PW7 that was mistakenly stated by him in Ext.P10. The evidence of PW43 further shows that he seized, by describing in Ext.P13 mahazar, MO11 bed sheet that was spread on the cot in the pooja room in which the incident occurred, MO12 towel (തോർത്ത്) and MO13 knife which was used to unlock the pooja room. PW43 deposed that Ext.P10 scene mahazar is silent as to the presence of MO12 in the pooja room. I find that no explanation was offered by PW43 as to why he had not taken into custody MO11 bed sheet and MO13 knife when he visited the place of occurrence on 01.07.2021 for preparing Ext.P10 scene mahazar.

40. PW43 questioned PW4 to PW6 and the accused at the police station and the accused confessed his guilt. He arrested the accused and arrest records were marked as Ext.P46 series (3 in numbers). PW43 deposed that on the basis of statement made by the accused that “എന്നെ കൊണ്ടുപോയാൽ പൂജാമുറിയും ജനലും കാണിച്ചു തരാം എന്നും വസ്തുങ്ങൾ ഞാൻ എന്റെ വീട്ടിൽ വെച്ചിട്ടുണ്ട്, എന്നെ കൊണ്ടുപോയാൽ

വസ്തുങ്ങൾ വെച്ചിരിക്കുന്ന സ്ഥലം കാണിച്ചു തന്ന് വസ്തുങ്ങൾ എടുത്ത് ഹാജരാക്കി തന്നുകൊള്ളാം”, as led by the accused on 05.07.2021 at 10.55 am, PW43 reached the pooja room of the lane building in which the incident happened and the accused pointed out the window having no bars fixed on the eastern wall of the room and the accused jumped through the window to the outside courtyard. PW43 prepared Ext.P15 mahazar of the said window and the relevant portion of the statement of the accused pertaining to the pooja room and the window was marked in Ext.P15 as Ext.P15(a).

41. Thereafter PW43 along with the accused, went to the lane room of the accused and prepared Ext.P16 mahazar describing the trouser, T shirt and underwear which the accused had sorted from the dresses dumped in a cot in his residence. The relevant portion of the disclosure statement made by the accused pertaining to the same was marked as Ext.P16(a). PW43 identified the said trouser and underwear as MO14 and MO15.

42. The attestor to Ext.P15 and P16 mahazars was examined as PW21. He testified that on 05.07.2021 at 10.30 a.m the police brought the accused to the lanes. The police opened the room in which the victim was found hanged. The accused and police entered the room. PW21 saw the accused stating something to police pointing out the window and then the accused jumped through the window into the courtyard. Thereafter the police took the accused to

his house and the accused picked a light blue T shirt, a blue colour underwear and a three- fourth made from a pants from the dresses dumped in a cot and gave it to the police.

43. The evidence of PW43 further shows that PW32 produced MO.16 mobile phone of the accused at the police station and PW43 taken into custody the same by preparing Ext.P47 mahazar. He also caused MO.16 to be inspected by PW24 and prepared Ext.P19 mahazar. On 05.07.2021 he filed Ext.P48 report stating that as it was revealed during investigation that offences punishable u/s.449, 302, 376(2)(m) IPC was also committed, investigation was continuing in respect of the said offences also. He also produced Ext.P49 medical certificate and Ext.P39 potency certificate of the accused. The address report of the accused was marked through PW43 as Ext.P50. He recorded additional statement of PW17. He had taken into custody by preparing Ext.P21 mahazar, the pubic hair, blood sample, nail clippings from both hands and blood for DNA profiling collected by PW38 at the time of potency examination of the accused and produced before him by PW27.

44. PW43 had taken into custody the photograph of the victim produced by PW4 for cyber forensic examination by preparing Ext.P6 mahazar. The said photograph was identified by PW43 as Ext.P3. Thereafter he received the accused in police custody from 8/7/2021 to 13/7/2021. He also received all the records from

the Sub Divisional Magistrate court and produced the same before the Special Court for POCSO Act Cases, Thodupuzha. The proceedings of Sub Divisional Magistrate Court dated 8.7.21 regarding the same was marked as Ext.P51. The copy of the forwarding note dated 8/7/2021 prepared by him for sending properties for FSL examination was marked as Ext.P52. On 11/7/2021 PW43, along with the accused went to the place of occurrence and conducted investigation. His evidence shows that the accused had demonstrated the acts done by him on the date of occurrence. He also recorded the additional statements of PW37 and CW26 Suresh.

45. On 23.7.2021 PW43 went to the school in which the victim studied and taken into custody the school admission register by preparing Ext.P12 mahazar and thereafter returned the register to PW15 as per 3rd party kychit. The extract of the relevant page of the admission register showing the details of the admission of the victim was marked as Ext.P11. The photographs and CDs produced by the department photographer were taken into custody by PW43 by preparing Ext.P27 mahazar. He identified the said photographs as Ext.P23 series and CD as Ext.P24. On 29/7/2021, PW43 had taken into custody the Ext.P29 photograph of the accused for sending the same for cyber forensic examination. The copy of the forwarding note pertaining to the same was marked as Ext.P53. Through PW43, Ext.P32 to P38 were marked. He also identified Ext.P14, Ext.P17

scene plan and Ext.P18 ownership certificate. Through PW43, Ext.P54 and P54(a) property list (submitted before Sub Divisional Magistrate Court), Ext.P55 to P62 property lists, Ext.P53 copy of forwarding note were also marked. He also filed Ext.P63 report for deleting s.376(3) IPC and for adding s.4(2) of POCSO Act. The FSL report dated 26.08.2021 was marked as Ext.P64 through PW43. The DNA examination report of State Forensic Lab, Thiruvananthapuram dated 17.08.2021 was marked as Ext.P65 through PW43.

46. The evidence of PW38 shows that on 05.07.2021, while he was working as Causality Medical Officer, Taluk Head Quarters Hospital, Peermedu, he had examined the accused and issued Ext.P39 potency certificate. He opined that, on examination, there was nothing to suggest that the person was incapable of performing sexual act. His evidence shows that he also collected the nail clippings, hair combing, pubic hair and blood for DNA profiling from the accused and the collected materials were separately packed and kept in a box and then sealed. The specimen impression of the seal was also taken on a paper and the paper was put in a cover and the cover was sealed. Thereafter PW38 kept the same in his safe custody till the same was handed over to the police.

47. The Assistant Director, Cyber Forensic Division, Forensic Science Lab was examined as PW40.

48. The property section clerk of Sub Divisional Magistrate Court, Idukki during July 2021 was examined as PW44. Through him the relevant pages of the property registers were marked as Ext.P66 to P68. The senior superintendent of Sub Divisional Magistrate, Court, Idukki was examined as PW45.

49. The property section clerk of Sessions Court, Thodupuzha during July and August 2021 was examined as PW46. Through him, the relevant pages of the property registers after comparing with the original was marked as Ext.P69, Ext.P69(a) and Ext.P69(b).

50. The then CPO Vandiperiyar police station was examined as PW47. He deposed that the properties incorporated in Ext.P55 to Ext.P58, Ext.P60 and Ext.P61 property lists were produced before Session Court, Thodupuzha by him. He received the properties incorporated in Ext.P52 from the court and produced it before FSL, Thiruvananthapuram in two sealed packets.

51. PW48 was also working as CPO Vandiperiyar police station. He deposed that he produced all the documents and the properties incorporated in Ext.P54 and Ext.P54(a) property lists before Sub Divisional Magistrate Court, Idukki on 2/7/2021. Thereafter on 8/7/2021, PW48 received back the said documents and properties from Sub Divisional Magistrate court and produced the same before the Sessions Court, Thodupuzha as per the direction of the

investigating officer. He also identified his signature in Ext.P68.

52. Point No.1 :- PW7, the father of the victim testified that the date of birth of victim is 16.07.2015. The prosecution also examined PW49, the present Birth and Death Registrar, Arpookara Grama Panchayath to prove the date of birth of the victim. Through PW49, Ext.P70 which is the extract of the relevant page of the Birth Register containing the details of the birth of the victim after comparing with original register was marked. As per Ext.P70, the date of the birth of the victim is 16.07.2015.

53. When a question with respect to the age of a victim under POCSO Act arises, the court has to take recourse to s.94(2) of Juvenile Justice (Care and Protection of Children) Act 2015, (in short 'JJ Act'). Under S.94(2) of JJ Act, the court has to determine the age of the victim by considering the following documents:-

- (i) The date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- (ii) The birth certificate given by a corporation or a municipal authorities or a panchayat;
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted under the order of the committee or the Board.

54. The documents mentioned in s. S.94(2)(i) of JJ Act is not available in the case. The evidence of PW7 and PW49 coupled with Ext.P70 shows that on the date of death of the victim (ie., on 30.06.2021) she is aged below 6 years. Thus I find that the prosecution has succeeded in proving that the victim is a child within the meaning of s.2(d) of POCSO Act. So Point No.1 is found in favour of prosecution.

55. **Point No.2:-** The accused took a defence that after the incident PW7 revealed in his interview aired in Keraleeyam Youtube channel that the victim used to play with shawl and her death was accidental as the door and window of the pooja room was locked at that time. With regard to the same, PW7 testified that after the death of the child, he gave interviews to several news channels and Youtube channels. He stated that he did not remember whether on 14.07.2021 he had given interview to Keraleeyam Youtube channel. PW7 testified that he and PW33 gave answers to the questions put to them in the interviews on the basis of information received from other people about the incident. He stated that the child used to wear small shawls with some dresses. He denied that the child used to play by looping the the shawl around her neck. The learned defence counsel filed CrI.M.P No.374/2023 to recall and re-examine PW7 to prove that he gave interview to Keraleeyam Youtube Channel and also to examine the Chief Editor, Keraleeyam News Channel to prove he same. The said petition was allowed by this

court.

56. The Chief Editor, Keraleeyam News Channel was examined as DW1. In compliance with the order of the court in Crl.M.P No. 374/2023, he produced the Ext.P18 CD of the interview given by PW7 that was aired in his Youtube channel on 14.07.2021. The certificate u/s.65B(4) Evidence Act produced along with the CD was marked as Ext.D19. His evidence shows that the interview was conducted at the residence of the victim. DW1 testified that in the interview he asked questions to PW7, but his face was not shown in the interview. When cross examined, DW1 testified that the original video was of duration 40 minutes and its data was stored in the memory card of NICON camera by which the interview was shot. His evidence shows that the original interview that was shot is not available as such. DW1 transferred the data relating to the interview saved in the camera to a computer system in his office. He admitted that Ext.D18 is only a video clipping containing the parts of interview uploaded in the Youtube channel. His evidence shows that Ext.D18 was created by the editor of his office incorporating the visuals shown in other channels which was edited, cut and added by him in such a way as to catch the attention of viewers. On going through the evidence of DW1, I find that Ext.D18 does not qualify the conditions stipulated in s.65B(2) Evidence Act. Hence I find that the contents of Ext.D18 cannot be relied on as secondary evidence. I am of the view that even if it is assumed that the

contents of Ext.D18 were proved, it will not make out any difference for whatever PW7 had stated in the interview was on the basis of his hearsay knowledge.

57. On the other hand, the prosecution relied on the evidence of PW34 and PW39 to prove that the death of the victim is homicidal. The evidence of PW34 shows that on 30/6/2021 at 4:00 p.m., the victim was brought dead to Community Health Centre, Vandiperiyar. On examination, he also found a pressure mark around her neck usually seen in hanging cases. As PW34 felt that hanging by victim herself was quite unnatural, on seeing the mark he gave intimation to police. PW34 opined that the death might have happened within 1 ½ to 4 hours.

58. The evidence of PW39 shows that on 01.07.2021, while he was working as Assistant professor and Assistant Police Surgeon in the Department of Forensic Medicine, Government Medical College Idukki, he conducted the postmortem examination on the body of victim aged about 5 years and issued the Ext.P40 certificate. His evidence shows that the postmortem examination started at 4.05 pm and concluded at 5.05 pm on the same day. The postmortem findings are as follows:-

The body was that of a moderately built and nourished female victim of height 116cms and weighing 18.4kgs. Eyes were closed. Conjunctivae congested. Corneae was clear. Pupils were mild dilated. Blood stained mucoid froth was seen at nostrils. Anus was patulous

with opening measuring 1cm in diameter. Radial folds of skin were noted around anus and skin around anus was smooth and ironed out. Other external body orifices were normal. Fingernails and lips were pale.

Rigor mortis was feeble. postmortem staining was on the back and on the lower part of lower limbs, not fixed. There were no sign of decomposition. Body was kept in cold chamber.

Injuries Ante mortem

- (1) Pressure abrasion almost horizontal, 14 cm long on front and sides of neck, being placed 2.5 cm below right ear, 1.6 cm broad, 5 cm below chin, 1 cm broad; and 3 cm below left ear and it was 0.5 cm broad. The left extreme of the injury showed a downward curve followed by an upward curve along a length of 5 cm. Subcutaneous tissue and muscle beneath the abrasion was pale and dry.
- (2) Contusion 4.5x 1x 0.3 cm under the chin on right side its anterior medial end, 3cm behind chin in midline;
- (3) Abrasion 1.2 x 0.1cm on right side of abdomen, 2cm to right of midline, 5cm above umbilicus and showed brown adherent scab;
- (4) Superficial laceration 0.6 x 0.2 cm along the rim of hymenal orifice, 6 o'clock to 9 o'clock position, along the posterior part. Fresh blood clots and bleedings were noted. Hymen was reddish and inflamed;
- (5) Linear superficial laceration 0.8x 0.1 cm noted on right labia majora, 1.2 cm lateral to introitus and 2.5 cm below pubic symphysis, the base was pale and margin showed adherent brown scab.

Brain was congested and oedematous. Air passages were congested and contained blood stained mucoid fluid and froth. Lungs were congested and

oedematous. stomach was full with partly digested starchy food particles having no unusual smell. Its mucosa was congested. Uterus was under developed and measured 1.5 x 1x 0.5cm. Urinary bladder was empty. All other internal organs were congested, otherwise appeared normal.

59. Samples of anal and vaginal swabs and smears, and nail clippings were collected and packed in a single container by PW39 and he handed over the same to the police in a sealed packet. PW39 deposed that in Ext.P40, by mistake, he had omitted to mention the taking of samples of anal swab and smear. So he issued Ext.P41 letter to Sub Divisional Magistrate Court, Idukki for correcting the said mistake.

60. The evidence of PW39 shows that in Ext.P40 he stated that rigor mortis was feeble. Through PW39, Ext.D10 contradiction was marked to show that he stated before the police that rigor mortis was fully established. So I find that PW39 had two different versions as to whether rigor mortis was established or not.

61. PW39 opined that death was due to constriction force around neck. He further testified that in this case the anus was patulous with opening measuring 1 cm in diameter which could be caused by muscle injury during a forceful penetration. According to him, the other possibilities are, due to injury to sphincter muscle or injury to the nerves supplying the sphincter muscles. PW39 stated that such a condition due to injury to the nerves is not probable in

children with smoothened and ironed out skin around anus and it may be due to repeated penetration into anus, over a long period of time.

62. When learned Special Public Prosecutor suggested a question that whether injury Nos.4 and 5 could be caused due to forceful penetration, PW39 answered in the affirmative. When learned Special Public Prosecutor suggested another question that whether scab appeared along the margins of the injury stated in injury No.5 could be due to the accumulation of fluid discharges and fresh blood clots and drying up of the same even after the death, PW39 answered in the affirmative and replied that scab formation is a passive process which could happen even after death. He further stated that as the vital reactions like tissue contraction and reddish inflamed surroundings were not seen in injury No.5 and also the same thing could have occurred in injury No.3. He deposed that the cold chamber in which dead bodies are kept is having dry and cold environment, the small fresh injuries get dried up and appear to have adherant scab.

63. When learned Special Public Prosecutor put a question that why injury Nos.4 and 5 showed different appearance, PW39 answered that injury No.4 is a mucosal injury and is covered by labia majora and labia minora and thereby preventing drying up of the injury, whereas injury No.5 was on an exposed area and of a smaller size,

which could have accelerated its drying process. PW39 deposed that he arrived at the opinion that the cause of death was due to constriction force around neck on the basis of the 1st injury and the science of asphyxia which is the generalized congestion of the internal organs, the presence of lung oedema and the blood stained fluid and froth in air passages. He stated that because of the injuries in private parts coupled with injury No.1, he suspected the death was a homicidal one.

64. PW39 further stated that the history told to him at the time of postmortem examination was accidental hanging. He deposed that he can not rule out completely the possibility of a suicidal hanging because both in suicidal and homicidal cases and also in postmortem suspension, similar pressure abrasion and ligature mark could be seen on the neck of the body.

65. Again, during cross-examination, Ext.P23(a) photograph was handed over to PW39 by the learned defence counsel and asked him that in the photograph, the 1st injury is not seen horizontal as he deposed. Then PW39 answered that in the photograph shown to him, it is not horizontal and that the photograph shows only the side view of the neck. According to him, the patulous opened anus in this case suggests recent penetration.

66. On having a careful scrutiny of the evidence on record,

I find that the evidence of PW39 shows that pressure abrasion is present on the neck of the victim that can be seen in all cases of hanging. The victim in the case is a child aged below 6 years. The evidence of PW4 shows that at the time he left the lane room for hair cutting, the child was watching T.V. I am of the view that a child of such a tender age cannot even think of committing suicide after locking the room. So the chances of suicidal hanging is ruled out in the case.

67. The defence had a case that the victim had vaginal infection and injury No.4 and 5 was caused by scratching due to itching over the infected area. With regard to the same, the evidence of PW7, PW8 and PW9 shows that 6-7 months before the death of the victim, once she had itching in the vaginal area and a white discharge was also seen in her panties for which no medical consultation was done. During cross-examination of PW39, the learned defence counsel put a question that whether 4th and 5th injuries are possible due to scratching with nails, then PW39 replied that the 4th injury at the deeper part of the vagina is not likely to happen, by scratching. When the learned defence counsel again made a suggestion that whether the inflammation noted in the hymen could have been due to itching and irritation, PW39 answered that it might be and he further added that if an inflamed area is scratched using nails, exudation will happen. With regard to this, I find that there is no evidence to show that the victim was

suffering from any kind of vaginal infection at the time of her death and hence there is no merit in the defence case.

68. I find that the patulous opened anus and the injury on the private parts also showed recent sexual assault. So the 1st injury coupled with injury No.4 and 5 in Ext.P40 with patulous opened anus shows that the death of the child is homicidal. Hence I find that the prosecution has succeeded in proving that the death of the victim was homicidal. Hence Point No.2 is found in favour of the prosecution.

69. **Point No.3 to 11:-** These points are considered together for the sake of convenience as the evidence to be discussed is the same. This is a case in which the prosecution entirely relies on circumstantial evidence to prove the guilt of the accused. The prosecution case is that three months after the re-opening the school in July 2019, on many days and thereafter on 30.06.2021 at 2.30 p.m, the accused criminally trespassed into the house of the victim and committed rape/penetrative sexual assault on her and finally murdered her. The prosecution relied on the following circumstances to prove the guilt of the accused:

- 1) The accused developed an intimacy with the victim by giving his mobile phone and chocolates to her and sexually abused her. On the date of the incident also (i.e; on 30.6.21) the accused purchased chocolates and gave it to the victim in

order to sexually assault her.

2) Statements made by the accused to PW43 while under his custody and facts thereby proved.

3) Scientific evidence

4) Previous and subsequent conduct of the accused.

Each circumstances is discussed in detail as follows:-

Circumstances No.1

70. According to the prosecution, the accused used to give mobile phones and chocolates to the victim and sexually abused her. It is alleged by the prosecution that even on the date of occurrence also, the accused purchased chocolates from the shop of PW11 and PW12 for giving to the victim. The evidence of PW7 and PW33 shows that the victim played games in the mobile phone of the accused and as she was very fond of chocolates, the accused used to give chocolates to her. PW7 and PW33 witnessed one such incident. Their evidence shows that on a day, before 5-8 months from the date of the incident, PW7 and PW33 did not go for work as they had to participate in a marriage. Then the accused came to their house and by standing outside, he called the name of the victim, but she did not hear him. The accused ran into the house and on seeing PW7 and PW33 inside, he became very upset. He told them that he came there to give candy to the victim and gave candy to her. PW7 and PW33 told the accused not to give candy to the victim for her teeth would get damaged. Through PW7, Ext.D3 and Ext.D4 were marked to show that 6 months before the incident, in

the afternoon of a day, when PW7 and PW33 were in their house, on seeing the victim sitting on a sofa, the accused entered their house with chocolates and on seeing PW7 and PW33, he immediately left the place. Ext.D4 is not seen proved through PW43, the investigating officer who recorded the previous statement. Ext.D5 shows that PW7 had inconsistent versions as to whether he had seen the accused giving chocolates to the victim. Thus I find that the evidence of PW7 in this regard is not reliable.

71. PW12 is the wife of the PW11. PW11 and PW12 were conducting Sarada stores opposite to petrol pump at Vandiperiyar. PW11 testified that since 3 years from the year 2021, the accused used to come to their shop and he used to purchase munch, diary milk, and cake for Rs.50/- to Rs.100/-. PW12 also stated that the accused used to purchase candies from their shop from the last 2-3 years. PW11 testified that on 30.06.2021, before noon the accused came to their shop and purchased diary milk and munch for Rs.50/-. The statement given by PW11 and PW12 u/s.164 Cr.P.C was marked as Ext.P8 and Ext.P9 respectively by my learned predecessor in office. But the prosecution adduced no evidence to prove that the accused gave chocolates purchased by him on 30.06.2021 to the victim. The evidence of PW43 also shows that he did not conduct any investigation with regard to the chocolates purchased by the accused on 30.6.21 as the accused did not disclose to him, while questioning, what happened to the said chocolates. So I find that the

story of the prosecution regarding giving chocolates to the victim by the accused on 30.6.21 is false.

Circumstance No.2

72. The evidence of PW43 shows that on 4/7/21 when questioned the accused at the police station, he confessed his guilt and PW43 arrested him. On 5/7/2021 at 11:00 a.m. PW43 came to the lanes along with the accused. PW43 deposed that on the basis of statement made by the accused that “എന്നെ കൊണ്ടുപോയാൽ പൂജാമുറിയും ജനലും കാണിച്ചു തരാം”, as led by the accused on 05.07.2021 at 10.55 am PW43 reached the pooja room of the lane building in which the incident happened and the accused pointed out the window having no bars fixed on the eastern wall of the room and accused jumped into the outside courtyard from the pooja room through that window. PW43 prepared Ext.P15 mahazar of the said window and the relevant portion of the statement of the accused pertaining to the pooja room and the window was marked in Ext.P15 as P15(a).

73. The evidence of PW43 shows that on 05.07.2021, on the basis of statement made by the accused that "വസ്ത്രങ്ങൾ ഞാൻ എന്റെ വീട്ടിൽ വെച്ചിട്ടുണ്ട്, എന്നെ കൊണ്ടുപോയാൽ വസ്ത്രങ്ങൾ വെച്ചിരിക്കുന്ന സ്ഥലം കാണിച്ചു തന്ന് വസ്ത്രങ്ങൾ എടുത്ത് ഹാജരാക്കി തന്നു കൊള്ളാം" as led by the accused, he went with the accused to the lane room in which the accused resided and prepared Ext.P16 mahazar describing the trouser (a three-fourth made from a pants), light blue T shirt and a blue

colour underwear which the accused sorted from among the dresses dumped in a cot in his residence. The relevant portion of the disclosure statement made by the accused pertaining to the same was marked as Ext.P16(a). PW43 identified the said trouser and underwear as MO.14 and MO.15. The attessor to Ext.P15 and P16 mahazars was examined as PW21.

74. In his statement filed u/s.313(5) Cr.P.C., the accused contended that while questioning him on 4.7.2021, PW43 physically and mentally tortured him asking him to confess the guilt. He was also threatened by the police stating that PW32 and his sister would be included in the murder case. Due to the threat and continuous harassment of the police, the accused heeded to their demand that on the next day when he was taken to lanes, in the presence of people gathered, he would pass through the window into the courtyard. So on 05.07.2021 when the accused was brought to lanes, as per the compulsion of the police, he opened the window of the room in which the victim was found hanged and jumped into the outside courtyard through the window in the presence of visual media and people gathered there.

75. However, in this regard I find that the defence has no case that the accused made a complaint that he was subjected to mental and physical torture by the police to confess the guilt when he was produced before the Court after his arrest. So the question to be

decided is whether Ext.P15(a) and Ext.P16(a) are relevant s.27 of the Evidence Act. s.27 which provides as an exception to s.25 and s.26 of the Act reads as follows:-

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

76. In **State of Maharashtra v. Damu S/o. Gopinath Shinde and Others** reported in **2000 KHC 1248** the Hon'ble Supreme Court held as follows:-

"35. The basic idea embedded in S.27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

77. Thus the first condition for the applicability of s.27 is that information given by accused must lead to discovery of fact, which is the direct outcome of such information. Fact discovered within the meaning of S.27 must refer to a material fact to which the information directly relates. In **Siju Kurian v. State of Karnataka** reported in **2023 KHC 6396**, the Hon'ble Apex Court held as follows:-

S.27 permits the derivative use of custodial statement in the ordinary course of events. There is no automatic presumption that the custodial statements have been extracted through compulsion. A fact discovered is an information supplied by the accused in his disclosure statement is a relevant fact and that is only admissible in evidence if something new is discovered or recovered at the instance of the accused which was not within the knowledge of the police before recording the disclosure statement of the accused. The statement of an accused recorded while being in police custody can be split into its components and can be separated from the admissible portions. Such of those components or portions which were the immediate cause of the discovery would be the legal evidence and the rest can be rejected vide Mohmed Inayatullah Vs. State of Maharashtra(- AIR 1976 SC 483).

78. So, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. In criminal proceedings, the expression "fact is deposed to as discovered" as incorporated u/s.27 of the Evidence Act shall be understood as relevant incriminating factor. In order to have the application of s.27 of the Evidence Act in criminal matters, the fact should be an incriminating fact discovered pursuant to the confession made by the accused while under custody. (see **Ashraf V.P. v. State of Kerala** reported in **2018 KHC 164** para.16)

79. In view of the evidence and legal aspects discussed above,

I find that Ext.P15(a) pertains only to the pooja room and the window and the information received from the accused does not relate to discovery of a new incriminating fact. Hence I hold the view that Ext.P15(a) statement does not come under the purview of s.27 Evidence Act. Again, I find that the discovery of dresses worn by the accused at the time of incident in pursuance of Ext.P16(a) disclosure statement is a discovery of new fact which was not within the knowledge of police and as such the same is admissible u/s.27 of the Evidence Act.

80. Another mooted question at this point is that whether the act of the accused jumping through the window of the pooja room into the front courtyard of lane room is relevant as his conduct u/s.8 or of the Evidence Act.

81. I find that the mere act of the accused jumping through the window has no nexus with the guilt of the accused in respect of the offences charged against him and the same is not relevant u/s.8 or u/s.27 of the Evidence Act. It is seen that the learned Special Public Prosecutor asked a specific question to PW43 that what he understood from Ext.P15(a) statement of the accused. Then PW43 replied that from Ext.P15(a) he was convinced that the accused went outside after committing the offence through the said window and that Ext.P15(a) statement is true. The said opinion of PW43, the investigating officer, lacks any legal basis and it cannot be substituted for legally admissible evidence u/s.8 of the Evidence Act.

82. Another crucial aspect brought to the notice of this court during evidence also needs to be discussed here. The specific case of the prosecution is that the window through which the accused jumped outside and the door of the pooja room were locked from inside at the time of the occurrence and that the accused after committing the crime, left the room through the window. The evidence of PW6 shows that the window was fixed on the outside wooden wall of each lane room and it opens towards outside courtyard paved with stones. He deposed that if a person having 5-5½ feet height stands in the courtyard, the window will be above his head. The evidence PW1 shows that the pooja room in which the incident happened and the lane room of Shivakumar(father of PW17) is separated by a wood panelled wall.

83. Though none of the prosecution witnesses deposed that the window of the pooja room was locked from inside on the day of incident, the prosecution examined PW17 to show that the window was found slightly opened after the incident. The evidence of PW17 shows that he was sleeping in his lane room at the time of incident. His evidence shows that hearing the sound of PW10, his sister, he came out and saw the accused running, taking the child from the hands of PW4. PW17 and PW4 followed the victim to the hospital in the scooty owned by PW8. On reaching the hospital, PW17 understood that the victim is no more. PW17 spent 30-45 minutes in

the hospital and thereafter came back to the lanes. His evidence shows that the hospital is at a distance of 1 kilometer from the lanes. The evidence of PW17 shows that when he came back to lanes, he saw PW10 was standing near their lane room. Then he noticed that the window of the pooja room in which the victim was found hanged was slightly opened. He became suspicious as the said window was usually closed. So he partly opened the window. Then PW10 told him not to open the same and then he closed the window(ചാരി ഇട്ടു). The portion of the statement u/s.161 Cr.P.C dated 06/07/2021 given by PW17 to PW43 which shows that he opened the window was marked as Ext.D7. I find that Ext.D7 does not make out any contradiction as his both statements show that the window was found opened after the incident.

84. In contrary to the evidence of PW17 discussed above, it is seen that PW43 stated during his re-examination that in Ext.P10 scene mahazar prepared by him, he stated that the eastern window of the pooja room was seen locked at the time he prepared the mahazar. In answer to a question put by the learned defence counsel, PW47 replied that he understood the importance of that window only when he recorded the confession statement of the accused. This being so, after the arrest of the accused and after his jumping through the window, PW43 recorded additional statement of PW17 on 6.7.21 and made him as a witness in the case to prove that the window was seen slightly opened after the incident. No

explanation was offered by the prosecution to such a material discrepancy which is a crucial factor in deciding the credibility of the prosecution case. Thus I came to the conclusion that the prosecution case loses all its genuineness at this point.

Circumstances No.3

85. The scientific evidence in this case consists of the the FSL examination results of:-

- a) MO.14 trouser and MO.15 underwear taken into custody as per Ext.P16 mahazar in pursuance of Ext.P16(a) disclosure statement of the accused.
- b) MO.9 series ropes and MO.10 shawl taken into custody as per Ext.P10 scene mahazar.
- c) MO.11 bed sheet and MO.12 towel seized as per Ext.P13 mahazar
- d) Cellophane pressing collected by PW41 during the inquest of the victim.
- e) MO.1 to MO.8 collected during the inquest of the victim
- f) The vaginal and anal swabs and smears and nail clippings of the victim collected by PW39 during postmortem.
- g) The pubic hair, blood sample, nail clippings and blood for DNA profiling collected by PW38 during the potency examination of accused.
- h) MO.16 mobile phone of the accused taken into custody as per Ext.P19 mahazar.

86. MO.11 bed sheet, MO.12 towel(തോർത്ത) and MO.13 knife taken into custody as per Ext.P13 mahazar on 03.07.2021 was produced by PW43 before the Special Court for POCSO Act Cases, Thodupuzha on 07.07.2021 by incorporating the same in Ext.P56 property list(T.260/2021). PW43 produced MO.14 trouser and MO.15 underwear seized as per Ext.P16 mahazar on 05.07.2021 in Special Court for POCSO Act Cases, Thodupuzha as per Ext.P55 property list on 07.07.2021. The Court received the same as T No.259/21. PW43 deposed that he packed the properties seized as per Ext.P16 at the spot. But, he admitted that in Ext.P16 seizure mahazar and Ext.P55 property list it is not stated that the said properties were packed. I find that Ext.P55 and Ext.P56 also shows that the properties taken into custody as per Ext.P13 and Ext.P16 mahazars were not packed and sealed when taken into custody. During cross examination of PW43, when asked about 2 days' delay in producing the property before the Court, PW43 replied that the properties seized as per Ext.P13 and Ext.P16 mahazars were produced before the Special Court for POCSO Act Cases, Thodupuzha as per Ext.P55 and Ext.P56 property lists only on 07.07.2021 as it was informed that the properties would be received in that Court when FIR and another connected records were received from Sub Divisional Magistrate Court, Idukki. According to PW43, the said properties were in his safe custody till the same were produced before the court. So it is revealed from the evidence of PW43 that the MO.11 bed sheet,

MO.14 trouser and MO.15 underwear were in his custody in unpacked and unsealed condition since its seizure till the same were produced in Court on 07.07.2021.

87. PW34 testified that he had taken into custody, the cellophane pressing collected by PW41 during the inquest of the victim on 01.07.2021 along his specimen seal impression as per Ext.P22 seizure mahazar. His evidence shows that the said properties were produced by PW41 in separate 5 sealed and labelled packets. PW43 testified that on the same day at 8.15 p.m, the vaginal and anal swab, smear and nail clippings of the victim collected by PW39 during postmortem were produced before him by PW25 in a single sealed and labelled cover. PW43 taken into custody the same by preparing Ext.P20 mahazar. His evidence further shows that the pubic hair, blood sample, nail clippings from both hands and blood for DNA profiling collected by PW38 during the potency examination of accused on 07.07.2021 were produced before PW43 by PW27 in a sealed labelled box along with a sealed cover containing specimen seal impression.

88. MO.9 series ropes and MO.10 shawl taken into custody on 1.7.21 by PW43 as per Ext.P10 scene mahazar was initially produced in Sub Divisional Magistrate Court, Idukki as per Ext.P54(a) property list and the same was returned from that court and received in Special Court for POCSO Act, Thodupuzha on 08.07.2021 as per

Ext.P59(a) property list(T. No.263/21). MO.1 to MO.8 taken into custody as per Ext.P2 inquest report of the victim, the body samples of victim collected by PW39 during postmortem and cellophane pressing collected from the right and left palms, right and left soles and also from the neck of the victim by PW41 were also produced before Sub Divisional Magistrate Court, Idukki by PW43 as per Ext.P54 property list and the same were returned and received in Special Court for POCSO Act, Thodupuzha on 07.07.2021 as per Ext.P59 property list(T.262/21).

89. Ext.P52 is the copy of the forwarding note prepared by PW43 for sending the properties for FSL examination. The reports received from FSL were marked as Ext.P64 and Ext.P65 through PW43. On persual, I find that Ext.P64 FSL report containing the examination results of material objects (except MO.16) forwarded to FSL Thiruvananthapuram discloses as follows:-

1. The nail clippings of victim contains fibers similar to those in MO.14 trouser.
2. The cellophane pressings collected from left palm, contains fiber similar to those in MO.15 underwear.
3. The cellophane pressings collected from right palm and right sole contains fibers similar to those in MO.14 trouser.
4. Fibers similar to those in MO.10 shawl and MO.9 red colour plastic ropes are not detected in cellophane pressings collected from left and right palm and neck of the victim.

5. Fibers and particles similar to those in MO.9 light yellow colour plastic rope are not detected in cellophane pressings collected from left and right palm and neck of the victim.

6. The hairs collected from MO.11 bed sheet are human pubic hairs which are similar to the sample pubic hairs of the accused.

7. MO.11 bed sheet contains human spermatozoa and semen.

8. Seminal stains and human spermatozoa are not detected in the vaginal and anal swabs and smears, and in MO.1 frock, MO.2 underwear of the victim and MO.12 towel. (At this point, it is pertinent to note that the role of MO.12 towel in the crime is silent in the prosecution case and that the vaginal and anal swabs and smears collected were packed in a single container by PW39).

9. Fibers similar to those in MO.1 frock and MO.2 underwear of the victim are not detected in the nail clippings of the accused.

90. The perusal of Ext.P65 DNA profiling report reveals the examination results as follows:-

1. The cells in MO.3 series ear rings, MO.4 series bangles and MO.7 metallic waistlet belongs to the deceased victim to whom the right and left hand nail clippings sent for examination belongs.

2. Right and left hand nail clippings of the accused contain

only cells and tissues of the accused to whom in the sample blood sent for examination belongs.

3. The cells in MO.5 bead type chain(മുത്തുമാല), MO.8 anklets and MO.6 ring and spermatozoa in MO.11 bed sheet are insufficient for DNA profiling.

91. On having a careful scrutiny of Ext.P64 and P65, it is seen that nail clippings and cellophane pressing collected from the right palm and the right sole of the victim contains fibers similar to those in MO.14 trouser and that the cellophane pressings collected from left palm contains fiber similar to those in MO.15 underwear. Ext.P64 further shows that the hairs collected from MO.11 bed sheet are human pubic hairs which are similar to the sample pubic hairs of the accused. Ext.P64 also discloses that the pubic hairs collected from MO.11 bed sheet had been completely utilised for the purpose of examination. So DNA profiling of pubic hairs was not done. As per Ext.P64, MO.11 bed sheet contains human spermatozoa and semen. But Ext.P65 reveals that the quantity of DNA in MO.11 bed sheet is insufficient for DNA profiling.

92. Thus the only evidence that relates to the accused as per Ext.P64 FSL report is with regard to similarity of fibers and pubic hairs. The learned defence counsel challenged the finding in Ext.P64 report on the ground that the scientific evidence regarding hair and fiber analysis do not help the prosecution unless the hairs and fibers

are found identical and not similar. The defence relied on **Biju Kumar v. State of Kerala** reported in **2022 (1) KHC 463** and **Muhammed Yousaf @ Sajid and Another v. State of Kerala** reported in **2022 KHC 136** in support of their argument.

93. In **Biju Kumar v. State of Kerala** reported in **2022 (1) KHC 463**, while considering scientific evidence with regard to fibers, the Hon'ble High Court held as follows:-

29. The other scientific evidence strongly relied on by the prosecution is the fibre found in the palm of the deceased which tallies with the fibre of the pants recovered from the house of the accused. Ext. P19 report of FSL indicates that Item Nos. 9 & 10, cellophane tape pressings from the right and left palm of the deceased are similar to that found on item 27, pants worn by the accused. Definitely there cannot be a conviction entered on the sole finding of similarity of fibers. Especially the opinion being of a similarity as distinguished from an opinion of being identical. Here too, the scientific analyst does not speak on how the fibers are similar, without which the Court is unable to satisfy itself. As observed earlier the prosecution would have the Court blindly accept the opinion of the expert; even when there is no material offered before Court to satisfy itself that, in fact the fibers are similar. The expert has to point out the similarities, based on which he forms the opinion, which should also satisfy the Court.

94. So in the absence of materials offered before this court to satisfy that the fibers are similar, on the basis of a mere statement in Ext.P64 report of the expert that fibers are similar as distinguished from an opinion of being identical, no conviction can be entered into against the accused. Moreover, it is also seen from

evidence that MO.14 trouser and MO.15 underwear were taken into custody as per Ext.P16(a) disclosure statement of the accused by PW43 from among the dresses dumped in a cot in his residence after 5 days from the date of occurrence. As already stated, MO.14 trouser and MO.15 underwear were kept in unpacked and unsealed condition by PW43 till the same is produced in Court on 7.7.2021.

95. Again, as already stated Ext.P64 shows that the hairs collected from MO.11 bed sheet are human pubic hairs which are similar to the sample pubic hairs of the accused. The question is whether in the absence of DNA profiling, such similarity of pubic hairs is sufficient to find that the accused is guilty of the offences alleged against him.

96. At this juncture, it is pertinent to note that MO.11 bed sheet was taken into custody by PW43 on 03/07/2021. No explanation was offered by him as to why he did not take into custody MO.11 on 01/07/2021 when he visited the place of occurrence to prepare Ext.P10 scene mahazar. MO.11 bed sheet was in his custody till 07/07/2021 in unpacked and unsealed condition. The accused was also in the custody of PW43 from 04/07/2021 to 05/07/2021 on which date he was produced before the Judicial First Class Magistrate Court-II, Peermedu. In such circumstances it is the bounden duty of the prosecution to rule out all probabilities of tampering with the evidence and that was not done by the prosecution in this case.

97. In **Sudheer Babu v. State of Kerala**, reported in **2013 KHC 226**, the Hon'ble Court held that *"Though examination of hair is having some importance in identification, even by careful comparison, one cannot say that a hair came from a particular individual. At the most, it can be said that it could have come from him. Therefore, it may not be proper to find an accused guilty on the sole basis of the report that the hair samples collected from the scene of crime have resemblance with the hair sample collected from him, though the same may have relevance for consideration along with other incriminating circumstances against the accused"*.

98. The Hon'ble High Court in **Muhammed Yousaf @ Sajid and Another v. State of Kerala** reported in **2022 KHC 136** held that *"It is not safe to rely on FSL report relating to matching of hair samples when the result only shows that hairs were 'similar' in nature. There is substantial difference between the words 'identical' and 'similar'.*

99. Thus in the light of the decisions cited above, I find that the report of the scientific expert in Ext.P64 regarding similarity in pubic hair found in MO.11 bed sheet with sample pubic hairs of the accused is of no consequences in proving the guilt of the accused.

100. The evidence of PW43 shows that PW32 produced MO.16 mobile phone of the accused in the police station and PW43 taken into custody the same by preparing Ext.P47 mahazar. He also caused MO.16 to be inspected by PW24 in the presence of the accused and

prepared Ext.P19 mahazar.

101. PW24 is the Senior Civil Police Officer attached to Cyber Police Station, Idukki. He deposed that he had Degree in Computer Applications and passed a course by name 'Master Trainer in Cyber Crime and Cyber Forensic' from CDAC, Thiruvananthapuram. His evidence shows that on 5.7.21 he reached Vandiperiyar Police Station and inspected the mobile phone of the accused which he identified as MO.16. PW25 testified that he examined the mobile phone in detail and gave the details to the investigating officer for preparing Ext.P19 mahazar in which he also subscribed his signature as a witness. He deposed that the phone had 2 SIM cards(Jio and Airtel) and he unlocked the mobile phone using the password given by the accused and inspected IMEI numbers, various applications installed therein and various folders. He also found links of porn sites including the links of a child porn site sent to the accused by another person in Telegram. He also inspected the hidden folder found in the phone using the password given by the accused. In the camera gallery of the phone, he found two photographs of the victim wearing yellow colour dress and he also viewed photograph of the victim wearing red colour dress in another folder. He had shown all these details to the investigating officer on the basis of which he prepared Ext.P19 mahazar. Thereafter PW25 switched off the mobile phone, wrapped, sealed and put his signature and that of the witnesses thereon and then handed over the same to the

investigating officer for sending it to Cyber Forensic Lab. PW25 further testified that when MO.16 was given to him for inspection, it was not in sealed condition.

102. The Assistant Director, Cyber Forensic Division, Forensic Science Lab was examined as PW40. Her evidence shows that she is a Certified mobile Forensic expert and also a notified Examiner of Electronic Evidence u/s.79A of Information Technology Act, 2000. Her evidence shows that she examined MO.16 mobile phone and two SIM cards and a memory card contained in it. She also received two photographs contained in two separate sealed packets along with the forwarding note. After examining the phone, she prepared Ext.P42 report. The soft copy of datas retrieved from the mobile phone and memory card was copied in a pen drive and submitted as Annexure-II along with Ext. P42. The said annexure was marked as Ext.P42(a). Her evidence shows that three photographs in which the accused and victim were standing together and several photographs of the victim alone were retrieved from the mobile phone memory and memory card and that were included in Ext.P42. The soft copies of the said photographs, nude pictures and obscene videos including that of anal sex were retrieved from the phone were saved in different folders in Ext.P42(a). The evidence of PW40 shows that the 19 images of the victim saved in Ext.P42(a) were taken during different periods. She stated that the file path of the obscene videos retrieved from the phone shows that the accused viewed the obscene

videos. She testified that the said documents were retrieved from the phone using Universal Forensic mobile Phone Data Extraction Device Software.

103. In **Vijesh V. State of Kerala** reported in **2018 (5) KHC 328**, the Hon'ble High Court held in (para.9) as follows:-

In a case in which a mobile phone is used for the commission of the crime, the first and foremost thing the officer should have done was to secure the phone to prevent the destruction / manipulation of data. He should have first recorded the status of the device after taking a photograph and record any on - screen information. If the device was switched on, it should have been switched off and the batteries should have been removed. Turning off the phone would preserve the various information, metadata and call logs and it would also prevent any attempt to wipe off the contents of the phone remotely. The officer also was bound to seize all cables, chargers, packaging, manuals etc. if possible to assist the enquiry and minimise the delays in any examination by the digital evidence specialist. The password/pin of the device, if any, also had to be obtained from the owner of the phone. The phone had to be packed and sealed in antistatic packaging such as plastic bag, envelope or cardboard box and the secured device along with the collected data had to be sent to the digital evidence specialist. Only the said specialist can obtain and copy the digital evidence and also provide an analysis of the evidence.

104. I find that in this case no such procedure was followed by the police. Moreover, the evidence of PW40 shows that the images

of the child retrieved were seen taken during the period between 2017 to 2021. The accused is the immediate neighbour of the victim and it is borne out from the prosecution evidence that the child was very intimate to the accused. So retrieving photos of the child from the mobile phone of the accused, taken over a long period of time cannot be viewed with suspicion. The learned Special Public Prosecutor argued that the evidence of PW40 coupled with Ext.P42 report shows that the accused used to view obscene videos relating to anal sex in his mobile phone. I find that the said evidence by itself, in the absence of other evidence pointing to the guilt of the accused, is not relevant to find that the accused committed the offences alleged. Moreover, there is no evidence to show that the accused had browsed or downloaded child pornographic material so as to make out any offence u/s.67B of the Information Technology Act.

Circumstances No.4

105. The Learned Special Public Prosecutor argued that in this case, even in the absence of scientific evidence, the previous and subsequent conduct of the accused is relevant as circumstantial evidence to prove his guilt. The prosecution pointed out that the following circumstances and statements of the accused brought out in evidence are relevant as the previous and subsequent conduct of the accused u/s.8 Evidence Act:-

a) The evidence of PW4 shows that on 30.06.2021 at 2.30pm

PW5 came to his house and called him for cutting his hair. PW4 went along with him and started hair cutting by sitting under a nearby Jack fruit tree. PW6 and the accused followed them. The evidence of PW4 shows that at that time the victim was watching TV in the house. PW4 testified that the hair cutting started at 2.40-2.45 pm. When PW5 started hair cutting, the accused asked PW6 to pluck some passion fruits from the plant near the jack fruit tree under which they were sitting. PW6 plucked some passion fruits and gave it to the accused. PW4 to PW6 testified that the accused went to the side of lane buildings with the fruits and came back at about 3.20 pm. The hair cutting was completed at 3.30 pm. The evidence of PW4 shows that about 30-35 minutes the accused was not present with them. According to prosecution, the accused purposefully asked PW6 to pluck passion fruits in order to leave the place during hair cutting and in that gap he committed the offences alleged. Hence according to the learned Public Prosecutor, the statement made by the accused to PW6 to pluck passion fruits for him and his leaving the place with the fruits and coming back after about 35 minutes is relevant as his conduct u/s.8 of the Evidence Act.

b) As the accused and PW6 mocked PW4 the manner of his hair cutting, PW4 and PW5 came to the house of PW4 for looking into the mirror. Then at 3.30 p.m the accused called PW4 and PW5 for fetching water from the well. The evidence

of PW5 shows that usually at 5.00 p.m, they used to go for collecting water. At this juncture, the learned Special Public Prosecutor argued that the accused called PW4 to PW6 for collecting water at 3.30 p.m solely with the intention that they did not see the victim hanging in the pooja room at that time which is relevant as his conduct u/s.8 of the Evidence Act.

c) PW1 testified that on 30.6.21 after lodging Ext.P1 FIS at about 8.00 p.m, he returned to the hospital and accused was present there. The accused asked PW1 "കുട്ടി ഷാളിൽ തൂങ്ങി മരിച്ചതല്ല, എന്തിനാണ് കേസ് എടുക്കുന്നത്. എന്തിനാണ് പോസ്റ്റ്മോർട്ടം ഒക്കെ ചെയ്യുന്നത്, അവൾ കുഞ്ഞല്ലേ". Then PW1 told him that as the victim is a girl, the police would investigate her death. His evidence further shows that the body of the victim was cremated in the evening of 01.07.2021. When they came to home after that, the accused wept more than any person present there. According the prosecution, the statement made by the accused to PW1 and the fact that the accused severely wept after the cremation of the child is a relevant conduct u/s.8 Evidence Act.

d) PW2 was a member of Ward No. 19 of Vandiperiyar Grama Panchayat and Vice President. On 30.06.2021, hearing about the incident, he reached Vandiperiyar Health Centre at 4.30 pm. His evidence shows that at that time the accused, PW2 and other persons were present there. The police came there at about 8.30 pm. Then the accused asked him “മാമാ ഷാളിൽ

ഇങ്ങിച്ചത്തതിനൊക്കെ കേസ് എടുക്കുമോ”. PW2 told him that it is a part of police investigation. The learned Special Public Prosecutor argued that the said statement of accused is also relevant u/s.8 of the Evidence Act.

e) PW3 is a sales man in a pesticides shop. On hearing about the death of the child, he reached the hospital at 4.00 pm on 30.06.2021. The accused was also present there. He testified that the accused asked him whether any case would be registered for ordinary death. PW3 replied that it would be decided by the police and the relatives of the child. The prosecution submitted that the statement made by the accused to PW3 is relevant as his conduct.

f) PW13 is a relative of the victim. His evidence shows that he reached the house of the victim in the morning of 01.07.2021 and was busy in preparing food for the persons coming there along with accused and other persons. Whileso they all went for collecting water from a well situated at a distance of about 50 meter from the lanes. When PW13 was washing a pot besides the well, he saw the police coming towards the lanes. Then PW13 told the accused that the police would book the culprits if anything was found suspicious in the case. Then the accused told him that the police would not get any evidence and that after 2 days' investigation, they would leave the place. It is also argued that the said statement of accused is relevant as his conduct.

g) The evidence of PW5 shows that the police came to lanes and questioned him and other residents on 02/07/2021. On 03/07/2021 the accused occasionally came to PW5 and remained him 2-3 times that he was present at the time of hair cutting. According to the prosecution, the said statement of accused to PW5 is relevant as his conduct.

h) In the evening of 3/7/21, the police came and asked PW5 and accused to attend the police station on 4/7/21 and the police told that PW4 and PW6 would be questioned at their residence. The evidence of PW4 to PW6 shows that the accused asked PW4 and PW6 to come to the police station along with them. PW5 testified that in the evening of 3/7/2021, the accused told PW4 that they should give identical statements at the police station. According to the prosecution, the said statement of accused to PW5 is relevant as his conduct.

i) PW4 to PW6 deposed that on 04.07.2021, while they were walking to police station, the accused told them that they should give identical statements to police and that the incidents of plucking of passion fruits and that the victim was present with him while felling jack fruit should not be disclosed to police. It is submitted that the said statement of the accused is a conduct within the meaning of s.8 of the Evidence Act.

j) The evidence of PW5 and PW43 shows that PW5 and accused were asked to attend the police station with their mobile phones. But the accused did not took his mobile phone

and entrusted the same with PW32 before going to the police station. According to the prosecution, the same is also a conduct relevant s.8 of the Evidence Act.

k) The evidence of PW4 and PW5 shows that When PW4 came outside after questioning by the police, the accused enquired them about the questions asked by the police. PW4 and PW5 told the accused that the police asked them about the nail marks found on the body of the victim. Then the accused asked PW4 that as his nails were grown, whether the police would suspect him. Then PW5 told the accused that if the police had any such suspicion, he should cut his nails and gave it to police for testing as now there is methods to test the same. The prosecution submitted that the said statement of the accused to PW5 is a conduct relevant u/s.8 Evidence Act.

l) The evidence of PW1 shows that on 4/7/2021, PW4 to PW6 and the accused were called to the police station for questioning, but the accused was not released by the police after questioning. As per the request of PW32, PW1 reached the police station at 8.00 p.m. and he, with the permission of CI, PW1 gave food to the accused. When he gave food to the accused, he told him by folding his hands (കൈകൂപ്പി കൊണ്ട്) that he committed a mistake and that he might be pardoned. Hearing this, PW1 became very upset. According to the learned Special Public Prosecutor, the statement made by the accused to PW1 is relevant as his conduct.

106. s.8 of the Evidence Act states as follows:-

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.-- The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.-- 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.

107. Thus mere statements made by the accused to the prosecution witnesses does not amount to conduct relevant u/s.8 Evidence Act consistent with his guilt. Again, it is well settled that conduct of the accused must have a nexus with the crime committed. In this case it is an admitted fact that the accused left the place of hair cutting with passion fruits during hair cutting and came back after about 30 minutes. His absence during that time was explained by the accused in his statement u/s.313(5) Cr.P.C. According to him, at that time PW32, his father, was cutting fire

woods and he asked the accused to carry dry fire woods to home as there was a chance of raining and accused obeyed him. Then PW6 came there and the accused with PW6 returned to the place of hair cutting. PW32, who turned hostile during prosecution evidence, also adduced evidence in tune with the said statement of the accused. According to the prosecution, PW32 omitted the said statement in his previous statement given to PW43. The evidence of PW6 shows that while they were at the place of hair cutting and also when they were plucking passion fruits PW32 was cutting firewood by standing near to them. But his evidence shows that he did not see the accused carrying away fire woods that were cut by PW32. With regard to this, I find that the mere absence of the accused from the place, without other inculcating evidence, is not sufficient to show his guilt. The same view was expressed by the Hon'ble Apex Court in **Ramanand @ Nandlal Bharti v. State of Uttar Pradesh** reported in **2022 KHC 7083**. In that case, reiterating the earlier views, the Hon'ble court held that *"Although the conduct of an accused may be a relevant fact under S.8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are trying to convey is that the conduct of the accused alone, though may be relevant under S.8 of the Evidence Act, cannot form the basis of conviction."*

108. Thus the conduct of the accused in the above case by itself is not a ground to find the accused guilty of the offences alleged against him.

109. The defence case is that after the death of the child all are under the impression that the death of the child was accidental as the child used to play with shawls. It is contended that after the arrest of the accused, PW43 recorded the additional statement of all the material witnesses as to falsely implicate the accused in the case. The learned defence counsel pointed out that PW43 testified that in Ext.P2 inquest report prepared on 1.7.21, the witnesses therein stated that the victim used to sit in locked room and used to wear shawl regularly and that her death was accidental. So it is argued that the benefit of the same will also goes in favour of the accused.

110. In **Pookunju v. State of Kerala** reported in **1993 (1) KLT 876**, a Division Bench of Hon'ble High Court considered the admissibility of inquest report under S.174 of Cr.PC in evidence and it was held as under:

101. "Inquest report would, in the ordinary course, consist of three types of recitals. First category consists of the statements made by persons interrogated by the investigating officer during inquest. Second category consists of the opinions of the persons in whose presence the inquest was held. Third is the record of what the investigating officer had seen with his own eyes. The first category has no evidenciary value. Second category cannot be used as

evidence on account of more than one inhibition, main among them is the bar contained in S.162 of the Code. But the third category is not subject to any such legal disability. We have not come across any legal hurdle against accepting them as admissible evidence. If the inquest report is proved under law, the recitals falling under the third category mentioned above are relevant under S.35 of the Evidence Act and are admissible in evidence even if the officer fails to repeat them in his oral evidence.”

111. In the light of the decision discussed above, I find that the opinion of the witnesses expressed in Ext.P2 regarding cause of death of the victim is hit by s.162 Cr.P.C.

112. The learned defence counsel argued that PW43 purposefully did not collect the chance finger prints from the place of occurrence with a view to falsely implicate the accused in the case. The evidence of PW43 shows that on 01.07.2021 he prepared Ext.P10 scene mahazar in the presence of finger print expert. He testified that the finger print expert stated to him that there is no chance for obtaining chance finger prints from the place of occurrence. His evidence also shows that the expert gave a letter to him stating that chance finger prints were not available. However the said finger print expert was not cited as a witness and that the letter stated to be given to PW43 by the expert is not proved in the case. Hence the prosecution failed to prove their case that chance prints were not available from the place of occurrence. I am of the view that this is also a serious lapse on the part of the investigating

officer.

113. According to the defence, PW1 played a leading role in falsely implicating the accused in the case and he had gone to police station on 4.7.21 along with the accused and PW5 and he manipulated the things there. PW1 denied that he was present in the police station from 10.30 am to 3.15 p.m. on 4.7.21. In order to contradict his above version, Ext.D11 to D15 were marked by the prosecution. I find that Ext.D11 to D15 shows that PW1 was also present in the police station. Thus I find that PW1 has contradictory versions as to his presence in the police station on 04/07/2021. Ext.D16 contradiction was also marked through PW1 which is not a material one.

114. No eye witnesses are available in the case and as already stated the prosecution entirely relies on circumstantial evidence to prove the guilt of the accused. In **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **1984 (4) SCC 116** the Hon'ble Supreme Court laid down the following five golden principles which must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused

is guilty,

*(3) the circumstances should be of a conclusive nature and tendency
(4) they should exclude every possible hypothesis except the one to be proved, and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused."*

115. Again in **Ubaidu v. State of Kerala** reported in **2015 KHC 952**, the Kerala High Court held that *"It is well settled that when the prosecution relies on circumstantial evidence, all the circumstances from which the conclusion of guilt is to be drawn should be established. The fact so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be conclusive and definite, unerringly pointing towards the guilt of the accused. The circumstances should be such as to exclude every hypothesis of innocence of the accused. It is also well settled that it is not necessary that each and every circumstance should be conclusively established but the circumstances should cumulatively form an unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can be explained by any of the reasonable hypothesis, then the accused must have the benefit of that hypothesis. However, in adducing the evidence, imaginary probabilities have no role to play."*

116. Thus in case resting on circumstantial evidence, the prosecution must establish a chain of unbroken events unerringly pointing to the guilt of the accused and none other. In order to sustain conviction, circumstantial evidence must be complete and

incapable of explanation of any other hypothesis than the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. Taking all the circumstances into account discussed above, I came to the finding that in this case the prosecution failed to establish all the circumstances which are consistent with the guilt of the accused and inconsistent with his innocence.

Defects in investigation

117. Before concluding, I find it necessary to comment on the manner in which the investigation was conducted in the case. This is a case in which a small child aged below 6 years was cruelly done to death and the wrongdoer has to be booked for the injustice done to the child and her family. In cases of unnatural death, it is the bounden duty of the investigating officer to reach the place of occurrence without any delay and to inspect the premises and to collect all evidence and notice every minute details with care and caution till the mystery is unravelled. In this case, the defects in investigation is summerised as follows:-

1) In cases of hanging, the presence of blood, feces, urine etc. in the scene of occurrence are very important factors to be noted and such important details must find a place in the investigation records and that was not done by the

investigating officer.

2) The investigating officer inspected the place of occurrence only on the next day of the incident at noon and hence failed to collect all first hand evidence available in the spot.

3) The prosecution has a specific case that the ligature material was taken from the almirah kept in the middle room of the victim's house. But the prosecution evidence reveals that the investigating officer did not inspect the said almirah and its surroundings, the arrangement of clothes and the availability of chance finger prints from therein.

4) The investigating officer inspected the place of occurrence on 1.07.2021 and prepared Ext.P10 scene mahazar. His evidence shows that he did not then notice in Ext.P10 the presence of MO.12 towel on cot that was laid in the pooja room. Thereafter on 3.07.2021, he again visited the place of occurrence and he had taken into custody MO.11 bed sheet, MO.12 towel and MO.13 knife in unsealed condition by preparing Ext.P10. I find that early collection of material objects from the place of occurrence in proper manner will surely save important piece of evidence in the case.

5) The evidence of the investigating officer shows that he had collected all material objects in unsealed condition without caring for the possibility of tampering with the same.

6) The evidence of investigating officer shows that when he visited the place of occurrence on 1.07.21, he noticed in

Ext.P10 that the particular window through which the accused jumped was locked. Thereafter PW17 was made as a witness to prove that the said window was lying slightly open after the incident. The said discrepancy is not explained by the investigating officer which affected his credibility.

7) The evidence of PW1 shows that each lane room has doors on its front and back sides. The evidence of PW5 shows that tea plantation is situated on the back side of lane rooms. In this case the prosecution kept a culpable silence as to through which entrance the culprit trespassed into the lane room in which the incident happened. The evidence of PW4 shows that the jack fruit tree under which they sat for hair cutting is at a distance of 18-20 feet from the lane room of the accused. His evidence also shows that while they were cutting hair, PW32 was cutting fire woods by standing in an open place in the side of his lane room. PW6 testified that the front portion of all the 18 lane rooms were visible when viewed from the place where they were engaged in hair cutting. So chances of the culprit jumping through the front window after committing the offence, with the risk of being noticed by PW4 to PW6 and PW32, is very remote as it is more safe and convenient for him to leave through the back door. The investigating officer did not conduct any investigation regarding the said probability.

8) The evidence of investigating officer shows that he did not take any steps to cause the finger print expert to examine the

place of occurrence for collecting the chance prints. He is trying to escape from such a serious lapse happened on his part by merely giving an evasive reason that the finger print expert told him that there is no chance for obtaining chance finger prints from the place of occurrence.

Thus I find that adopting lethargic attitude throughout the investigation and unscientific way of collecting of evidence without showing the shrewdness and intelligence reasonably expected from an investigating officer, seriously affected the prompt and timely collection of evidence in the case.

118. So in view of the evidence discussed above, I find that the prosecution failed to prove its case that the accused committed offences punishable u/s.449, 376(2)(n), 377, 376A, 376AB, 302 of Indian Penal Code and u/s.5(i), (j)(iv), (l) and (m) r/w s.6 of Protection of Children from Sexual Offences Act. Accordingly Point No.3 to 11 is found against the prosecution.

119. **Point No.12 and 13:-** In the result, the accused is found not guilty for the offences punishable u/s.449, 376(2)(n), 377, 376A, 376AB, 302 of Indian Penal Code and u/s.5(i), (j)(iv), (l) and (m) r/w s.6 of Protection of Children from Sexual Offences Act and he is acquitted u/s.235 Cr.P.C in respect of the said offences. The bail bond executed by the accused stands cancelled and he is set at liberty.

120. I am of the view that no amount of money can compensate the loss caused to the parents of the victim due to her death in her tender age. However, DLSA, Thodupuzha is recommended to pay adequate compensation to PW7 and PW33 u/s.357A Cr.PC, after conducting due enquiry. Send a copy of judgement along with a copy of final report, FIR and FI statement to the Secretary, District Legal Services Authority, Thodupuzha.

Dictated to the Confidential Assistant, and typed by her and myself, corrected and pronounced by me in the open Court on 14th day of December 2023.

Sd/-

MANJU V.

Special Judge

Special Court for the Trial of Offences
under the POCSO Act 2012, Kattappana

APPENDIX**A. Prosecution Witness**

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
PW1	M.Mani	Supervisor, MMJ Churakkulam Estate, Vandiperiyar and Public Worker
PW2	Sree Raman	Vice president of Vandiperiyar Grama Panchayath and Member of Ward No.19 of Vandiperiyar Grama Panchayath
PW3	Santhoshkumar.S	Salesman, Pesticide shop in Kumily
PW4	Brother of the victim	Occurrence witness
PW5	Ashok	Occurrence witness
PW6	Sujin	Occurrence witness
PW7	Father of victim	
PW8	Foster father of the victim	-
PW9	Foster mother of the victim	-
PW10	Sivarenjini Sivakumar	Occurrence witness
PW11	Ravi	Other witness
PW12	Geetha Ravi	Other witness
PW13	Jayakumar.A.	Other witness
PW14	Balan	Mahazar witness
PW15	Mini.T.V	Principal of SN English Medium School, Vandiperiyar

PW16	C.D. Sukumaran	Vice Chairman of SN English Medium School, Vandiperiyar
PW17	Renjith Kumar.S.	Neighbour of Victim
PW18	Manoj Chandran	Secretary of Arpookkara Grama Panchayath
PW19	Ayyappan	Gate Watcher of Churakkulam Estate, Vandiperiyar
PW20	Unnikrishnan Nair	Manager of Churakkulam Estate, Vandiperiyar
PW21	Subash.T	The attestor to Ext.P15 and P16 mahazars
PW22	Rajappan.C	Village Officer, Periyar
PW23	S.N.Ajith	Secretary, Vandiperiyar Grama Panchayath
PW24	Rajan.T.S.	SCPO Cyber-Cell and Cyber Police Station Idukki
PW25	Kaliammal M.	WCPO, Vandiperiyar Police Station
PW26	Shimal K. P.	SCPO, Vandiperiyar Police Station
PW27	Asharaf P.H	CPO, Vandiperiyar Police Station
PW28	Dinulal.D.Mohan	CPO, Vandiperiyar Police Station
PW29	V.P. Sasi	Police Photographer of Crime Branch, Idukki
PW30	Asharaf.I	SCPO, Vandiperiyar Police Station
PW31	Sunilkumar.P	Assistant Sub Inspector, Vandiperiyar Police Station
PW32	Sundhar.R	Father of accused

PW33	Mother of Victim	-
PW34	Dr. Don Bosco	Medical Officer in Community Health Centre, Vandiperiyar
PW35	K. Vasudevan	Circle Nodel Officer, Bharathi Airtel Ltd. Cochin
PW36	Aji Shankar	State Nodel Officer, Reliance Jio Infocom Ltd, Kochi
PW37	Gireesh	Worker of Churakkulam Estate
PW38	Jithin.M Antony	Assistant Surgeon, Medical Officer, Taluk Head Quarters Hospital, Peermadu
PW39	Dr. Jinu M	Junior Consualtant, Forensic Medicine and Assistant Police Surgeon, Medical College Hospital Idukki
PW40	Deepa.A.S.	Assistant Director (Documents) Forensic Science Laboratory, Thiruvananthapuram
PW41	Irine Maria Jose	Scientific Officer, DCB, Idukki.
PW42	Joy E.P.	Sub Inspector of Police, Vandiperiyar Police Station
PW43	T.D. Suni Kumar	Inspector of Police, Vandiperiyar Police Station
PW44	Veena K. (Additional witness)	Property Section Clerk, Sub Divisional Magistrate Court, Idukki.
PW45	Manoj Rajan (Additional witness)	Senior Superintendent, Sub Divisional Magistrate Court, Idukki
PW46	Vinod V.T. (Additional witness)	Property Section Clerk, Sessions Court, Thodupuzha

PW47	Alex Raju (Additional witness)	CPO, Vandiperiyar Police Station
PW48	Shibu (Additional witness)	CPO, Vandiperiyar Police Station
PW49	Asha Gopal	Birth and Death Registrar, Arppookara Grama Panchayath

B. Defence Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
DW1	Padma Kumar K. K.	Director of Keraleeyam News Channel

C. Court Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical witness, Other Witness
	NIL	NIL

A. Prosecution Exhibits

Sl.No.	Exhibit Number	Description
1.	Exhibit P1/PW1	First Information Statement of PW1
2.	Exhibit P2/PW2	Inquest Report
3.	Exhibit P3/PW4	Photograph of Victim
4.	Exhibit P4/PW4	Statement of PW4 u/s.164 Cr.P.C
5.	Exhibit P5/PW5	Statement of PW5 u/s.164 Cr.P.C
6.	Exhibit P6/PW6	Statement of PW6 u/s.164 Cr.P.C
7.	Exhibit P7/PW7	Statement of PW7 u/s.164 Cr.P.C

8.	Exhibit P8/PW11	Statement of PW11 u/s.164 Cr.P.C
9.	Exhibit P9/PW12	Statement of PW12 u/s.164 Cr.P.C
10	Exhibit P10/PW14	Scene Mahazar
11.	Exhibit P11/PW15	Copy of relevant extract of LKG, Admission Register for the year 2019-20
12.	Exhibit P12/PW16	Seizure mahazar of school admission register
13	Exhibit P13/PW17	Seizure mahazar collected MO.11 to MO13
14	Exhibit P14/PW18	Birth Certificate of victim
15	Exhibit P15/PW21	Mahazar regarding window
16	Exhibit P15(a)/PW43	The relevant portion of the statement of the accused
17	Exhibit P16/PW21	Seizure Mahazar relating to dress of the accused
18	Exhibit P16(a)/PW43	The relevant portion of the disclosure statement made by the accused
19	Exhibit P17/PW22	Scene Plan
20	Exhibit P18/PW23	Ownership Certificate
21	Exhibit P19/PW24	Mahazar

22	Exhibit P20/PW26	Seizure mahazar of body samples of victim
23	Exhibit P21/PW26	Seizure mahazar body samples of accused
24	Exhibit P22/PW28	Seizure mahazar items collected body of victim
25	Exhibit P23 series (14 in numbers) /PW28	Photographs
26	Exhibit P24/PW28	CD
27	Exhibit P25/PW29	Certificate u/s.65B(4) of the Evidence Act
28	Exhibit P26/PW30	Seizure mahazar Photograph of victim
29	Exhibit P27/PW31	Seizure mahazar inrespect of Ext.P23 series to P24 photographs
30	Exhibit P28/PW31	Seizure mahazar, Photograph of accused
31	Exhibit P29/PW31	Photograph of accused
32	Exhibit P30/PW32	The relevant portion of s.161 Cr.PC statement of PW32
33	Exhibit P31/PW33	Statement of PW33 u/s.164 Cr.P.C

34	Exhibit P32/PW35	Print out of the customer application form
35	Exhibit P32(a)/PW35	Copy of aadhaar card
36	Exhibit P33/PW35	Call details record
37	Exhibit P34/PW35	Certificate u/s.65B(4) of the Evidence Act
38	Exhibit P35/PW36	Print out of customer application form
39	Exhibit P36/PW36	Call Data Records (112 pages)
40	Exhibit P37/PW36	Tower ID list (2 pages)
41	Exhibit P38/PW36	Certificate u/s.65B(4) of the Evidence Act
42	Exhibit P39/PW38	Potency certificate of the accused
43	Exhibit P40/PW39	Postmortem certificate of the victim
44	Exhibit P41/PW39	Letter to Sub Divisional Magistrate Court, Idukki
45	Exhibit P42/PW40	FSL Report of mobile phone
46	Exhibit P42(a)/PW40	Annexure-II along with Ext.P42. (Pen drive)

47	Exhibit P43/PW42	FIR in Crime No.598/2021 of Vandiperiyar Police Station
48	Exhibit P44/PW43	Section adding report in respect of offences punishable u/s.376 AB and 377 IPC
49	Exhibit P45/PW43	Correction Report in scene mahazar
50	Exhibit P46 series/PW43	Arrest memo, Inspection memo and Arrest notice
51	Exhibit P47/PW43	Seizure mahazar of mobile phone
52	Exhibit P48/PW43	Section adding report in respect of offences punishable u/s.449, 302, 376(2) (m) IPC
53	Exhibit P49/PW43	Medical certificate of the accused
54	Exhibit P50/PW43	Address report of the accused
55	Exhibit P51/PW43	Proceedings of Sub Divisional Magistrate Court, Idukki
56	Exhibit P52/PW43	Copy of the forwarding note
57	Exhibit P53/PW43	Copy of the forwarding note
58	Exhibit P54 series (2 in numbers) /PW43	Property lists (submitted before Sub Divisional Magistrate Court, Idukki),

59	Exhibit P55/PW43	Property list
60	Exhibit P56/PW43	Property list
61	Exhibit P57/PW43	Property list
62	Exhibit P58/PW43	Property list
63	Exhibit P59 series (2 in numbers) /PW43	Property list
64	Exhibit P60/PW43	Property list
65	Exhibit P61/PW43	Property list
66	Exhibit P62/PW43	Property list
67	Exhibit P63/PW43	Section alteration report for deleting s.376(3) IPC and for adding s.4(2) of POCSO Act.
68	Exhibit P64/PW43	FSL report dated 26.08.2021
69	Exhibit P65/PW43	The DNA examination report of State Forensic Lab, Thiruvananthapuram
70	Exhibit P66/PW44	The copy relevant page of the property register, Sub Divisional Magistrate Court, Idukki

71	Exhibit P67/PW44	The copy of valuable register Sub Divisional Magistrate Court, Idukki
72	Exhibit P68/PW44	The copy of relevant page of register of Material Objects sent to FSL and other Courts from Sub Divisional Magistrate Court, Idukki
73	Exhibit P69 series (3 in numbers) /PW46	The copy of relevant pages of Property register
74	Exhibit P70/PW49	The copy of relevant page of Birth register of victim

B. Defence Exhibits

Sl. No.	Exhibit Number	Description
1	Exhibit D1/PW4	The relevant portion of u/s.161 Cr.P.C statement of PW4
2	Exhibit D2/PW6	The relevant portion of u/s.161 Cr.P.C statement of PW7
3	Exhibit D3/PW7	The relevant portion of u/s.161 Cr.P.C statement of PW7
4	Exhibit D4/PW7	The relevant portion of u/s.161 Cr.P.C statement of PW7
5	Exhibit D5/PW10	The relevant portion of u/s.161 Cr.P.C statement of PW10

6	Exhibit D6/PW10	The relevant portion of u/s.161 Cr.P.C statement of PW10
7	Exhibit D7/PW17	The relevant portion of u/s.161 Cr.P.C statement of PW17
8	Exhibit D8/PW33	The relevant portion of u/s.164 Cr.P.C statement of PW33
9	Exhibit D9/PW33	The relevant portion of u/s.161 Cr.P.C statement of PW33
10	Exhibit D10/PW39	The relevant portion of u/s.161 Cr.P.C statement of PW39
11	Exhibit D11/PW1	The relevant portion of u/s.161 Cr.P.C statement of PW1
12	Exhibit D12/PW1	The relevant portion of u/s.161 Cr.P.C statement of PW1
13	Exhibit D13/PW1	The relevant portion of u/s.161 Cr.P.C statement of PW1
14	Exhibit D14/ PW1	The relevant portion of u/s.161 Cr.P.C statement of PW1
15	Exhibit D15/PW1	The relevant portion of u/s.161 Cr.P.C statement of PW1
16	Exhibit D16 PW1	The relevant portion of u/s.161 Cr.P.C statement of PW1
17	Exhibit D17 series (2 in numbers) / PW36	Call Data Records

18	Exhibit D18/DW1	CD of video clipping containing the parts of interview uploaded in the Youtube channel.
19	Exhibit D19/DW1	Certificate u/s.65B(4) of the Evidence Act produced along with the CD

C. Court Exhibits

Sl.No.	Exhibit Number	Description
	NIL	NIL

D. Material Objects

Sl.No.	Exhibit Number	Description
1	MO1/PW2	Frock worn by the victim (light green)
2	MO2/PW2	Panties of victim (Maroon Colour)
3	MO3/PW2	A pair of ear rings (ജിമിക്കി കമ്മൽ) worn by the victim
4	MO4/PW2	The two bangles (കപ്പിവള) worn by the victim
5	MO5/PW2	Chain (മുത്തുമാല) worn by the victim
6	MO6/PW2	Ring worn by the victim
7	MO7/PW2	The waistlet (അരഞ്ഞാണം) worn by the victim
8	MO8/PW2	The pair of anklets worn by the victim
9	MO9 series (2 in numbers) /PW4	Ropes
10	MO10/PW4	Shawl
11	MO11/PW4	Bed sheet

12	MO12/PW4	Towel
13	MO13/PW4	Knife
14	MO14/PW4	Shorts
15	MO15/PW21	Panties
16	MO16/PW24	Mobile Phone

Sd/-
MANJU V.
Special Judge
Special Court for the Trial of Offences
under the POCSO Act 2012, Kattappana

// True Copy//

Sd/-
SPECIAL JUDGE

Typed by: Pratheeksha
and Officer concerned
Compd.by:Princy

Copy of Judgment in
SC 474/2021
Dated: 14/12/2023