

IN THE COURT OF SESSION, PALAKKAD DIVISION
Present: Sri. Muralee Krishna. S, Ist Addl. Sessions Judge
(Special Judge)

Friday, the 25th day of October, 2019
3rd day of Karthika, 1941 S.E.

.....

SESSIONS CASE No. 396 OF 2017

Complainant : State represented by the Deputy Superintendent of Police, Narcotic Cell, Palakkad.

Name of accused : Madhu @ Valiya Madhu, S/o Vellappan, aged 28 years, Kallankadu, Attapallam, Pampampallam P.O., Pudussery East Village, Palakkad. (Custody)

Charge : Under Section 450, 354, 376(2)(f), (i) and (n), 377, 305 of IPC and Sec. 5(1) and (n) r/w Sec. 6 and Sec. 7 r/w Sec. 8 of the Protection of Children from Sexual Offences Act, 2012.

Plea of the accused : Not guilty.

Finding of the judge : Not guilty.

Sentence or Order : The accused is not found guilty of the offences punishable under Sec. 450, 354, 376(2) (f) (i) and (n), 377 and 305 IPC, Sec. 5(1) and (n) read with Sec. 6 and Sec. 7 read with Sec. 8 of the Protection of Children from Sexual Offences Act and he is acquitted under Sec. 235(1) Cr. P.C. He is set at liberty. Accused shall be released forthwith if his custody is not necessary in any other case.

Name of Police Station and : Walayar Police Station.
Crime Number : Crime No. 43/2017.

Name and designation of committing:
Magistrate and the No. of the case
on his file.

Prosecution conducted by : Smt. Latha Jayaraj, Special Public
Prosecutor. (POCSO)

Accused defended by : Adv. Renjith Krishna.V.

Date on which copy of judgment :
given to the accused

J U D G M E N T

This is one of the series of cases charge sheeted by the Deputy Superintendent of Police, Narcotic Cell, Palakkad, which arose out of the suicide committed by two minor girls, who are sisters, aged 13 years and 9 years respectively. The elder girl committed suicide on 13.01.2017 and the younger girl committed suicide on 04.03.2017 by hanging themselves on the roof of the one room shed belonging to their mother. The Deputy Supdt. of Police, who headed the Special Investigation Team constituted for the purpose of investigation of the case filed altogether Six final reports before this court, inculpating altogether four persons for the death of the girls.

Another final report was filed before the Juvenile Justice Board against a child in conflict-with-law. The above Sessions Case is in respect of the death of elder girl.

2. The sequence of events which lead to the filing of final reports by the Deputy Supdt. of Police are as follows:- On 13.01.2017, the elder girl aged 13 years was found dead by hanging herself on the rafter of the one room shed belonging to her mother. She used a churidar shawl as the ligature. On the very same day, on the basis of the First Information Statement given by one Unnikrishnan, who is a relative of the girl, police registered the F.I.R as crime No. 43/2017 of Walayar police station under Sec. 174 Cr. P.C. While the said crime was under investigation, on 04.03.2017, the younger sister of the deceased girl, who was aged only 9 years also committed suicide in the very same manner. With regard to her death also, police registered the F.I.R under sec. 174 Cr. P.C as crime No. 240/2017 of Walayar police station on the basis of the information received from one Radhakrishnan, a neighbour of the girls. The investigation of the offence was initially conducted by the Sub Inspector of Police, Walayar police station. Subsequently, it was handed over to the Circle Inspector of Police, who was holding charge of Kasaba Circle. In his investigation, it was found that the girls were subjected to sexual abuse. Hence, he filed report to incorporate the penal provisions under

Sec. 376, 377 and 306 of IPC and Sec. 5 r/w Sec. 6 of the Protection of Children from Sexual Offences Act and proceeded with the investigation. But due to public agitation, a Special Investigation Team headed by the Deputy Superintendent of Police, Narcotic Cell, Palakkad was constituted as per the order of the Additional Director General of Police, North Zone and investigation was handed over to the Deputy Supdt. of Police, Narcotic Cell, Palakkad. In his investigation, he reached to a conclusion that the girls were repeatedly subjected to unnatural sexual intercourse and the intolerable pain in the anal region lead the girls to commit suicide. He arrested the accused in this case on 09.03.2017 and he was remanded in judicial custody. On completion of investigation, the Deputy Supdt. of Police filed separate charge sheets against each of the accused. One of the accused is a minor and hence the charge sheet against him was filed before the Juvenile Justice Board. Against the accused in this Sessions Case, final report was filed for the offences punishable under Sec. 450, 354, 376 (f), (i) and (n) and 305 of IPC, Sec. 7 r/w Sec. 8 and Sec. 5(n) and (l) r/w Sec. 6 of the Protection of Children from Sexual Offences Act.

3. The prosecution case is that from April 2016 till 13.01.2017 on various occasions, the accused trespassed into the one room shed bearing No. XI/666 of Pudussery Panchayat belonging to the mother of the victim

girl aged 13 years and also into the half constructed house of the mother of the victim situated adjacent to the said one room shed and from those houses repeatedly subjected the girl to carnal intercourse against the order of nature. It is also the case of prosecution that the accused subjected the girl to the aforesaid activities from the house bearing No. XII/242 of Pudussery Panchayat situated at Attappallam Kallankadu, which belongs to the grandmother of the victim. He further sexually assaulted the girl from her house by touching her breasts and private parts. Because of the intolerable sexual assault and harassment of the accused in the above Sessions Case and other persons who were charge sheeted by the police, the victim committed suicide on 13.01.2017 between 14.30 hours and 17.00 hours by hanging herself on the rafter of her one room shed bearing No. XI/666, wherein she was residing with her parents and siblings.

4. On receipt of the final report, it was taken cognizance and after numbering the case as S.C 396/2017, the Principal Sessions Judge made over the case to this court for trial and disposal.

5. On production of the accused, he was served with copies of all relevant prosecution records as provided under Sec. 207 of Cr. P.C. After hearing both sides under Sec. 227 of Cr. P.C, my learned predecessor-in-

office framed charge for the offences punishable under Sec. 450, 354, 376(2) (f), (i) and (n), 377 and 305 IPC, Sec. 5(1) and (n) read with Sec. 6 and Sec. 7 read with Sec. 8 of the Protection of Children from Sexual Offences Act against the accused. The accused pleaded not guilty, when charge was read over and explained to him in Malayalam.

6. From the side of the prosecution, PWs 1 to 30 were examined and Exts. P1 to P39 documents were marked. MO1 to MO12 material objects were identified by the prosecution witnesses. During cross-examination of prosecution witnesses, Ext. D1, the contradictory portions of the statement of PW5 recorded by the police under Sec. 161 of Cr. P.C and Ext. D2 document were marked from the side of the accused. The remaining witnesses were given up by the prosecution. On completion of the prosecution evidence, the accused was examined under Sec. 313(1) (b) Cr. P.C. He denied all the incriminating circumstances brought out in the evidence and further stated that the deceased girl is his niece. He usually helped the girl and did not commit any offence against her. He does not know as to why he is implicated in a false case.

7. Subsequently, both sides were heard under Sec. 232 Cr. P.C. Having found the case as unfit for acquittal under Sec. 232 Cr. P.C, the

accused was called upon to enter into his defence. No defence evidence was adduced from the side of the accused.

8. Heard both sides.

9. The points for consideration are:-

1. What is the cause of death of victim girl in this case ?
2. Whether prosecution has succeeded in proving that the victim girl was aged 13 years at the time of her death ?
3. Whether the accused committed house trespass with an intention to commit an offence punishable with imprisonment for life, as alleged by the prosecution?
4. Whether the accused committed rape on the victim girl, as alleged by the prosecution?
5. Whether the accused subjected the victim girl to carnal intercourse against the order of nature, as alleged by the prosecution?
6. Whether the accused sexually assaulted the victim girl, as alleged by the prosecution?
7. Whether the accused abetted the victim girl to commit suicide, as alleged by the prosecution?
8. Whether the accused outraged the modesty of the victim girl, as alleged by the prosecution?

9. Whether the accused committed the offence of penetrative sexual assault against the victim girl, as alleged by the prosecution?
10. What offences, if any, committed by the accused?
11. The offences, if proved, what should be the punishment?

10. **Point Nos. 1 to 9:-** All these points are considered together as they are interconnected and also for the purpose of convenience. As said above, prosecution has examined altogether 30 witnesses in this case. PW1 is a relative of the victim, who gave First Information Statement regarding the death of the girl, after appearing at Walayar police station on the date of death of the girl. PW2 is a person, who is residing near to the house of grandmother of the victim. This witness turned hostile to the prosecution, though he is examined for the purpose of proving that the accused came to the house of the victim just before her death. PW3 is an inquest witness. PW4 is a neighbour of the victim, who also turned hostile to the prosecution. PW5 is the stepfather of the victim. PW6 is the mother of the victim. PW7 is the grandmother of the victim. PW8 is a girl, with whom the victim claimed as disclosed about the sexual offence allegedly committed by the accused. PW9 is a boy aged 15 years, who was usually playing with the victim. This

witness turned hostile to the prosecution. PW10 is also a person residing near to the house of the victim, who also turned hostile to the prosecution. PW11 is yet another neighbour of the victim, who is examined by the prosecution to prove that the accused had been visiting the house of the victim and vice versa. PW12 is a scene mahazar witness. PW13 is the photographer, who took photograph of the dead body of the victim at the time of inquest. PW14 is the Headmaster of the school, where the victim studied during the period of her death. PW15 is the peon of said school, who signed as a witness in the seizure mahazar of the school admission register produced by PW14. PW16 is yet another scene mahazar witness. PW17 is a seizure mahazar witness of the dresses of the accused. PW18 is the Assistant Surgeon of District Hospital, Palakkad, who conducted autopsy on the body of the victim. PW19 the Civil Police Officer of Walayar Police Station, is a seizure mahazar witness of the Ration card of the accused. He is a signatory in the seizure mahazar of the photographs of the dead body and the seizure mahazar of the inventory prepared at the time of recovery effected on the basis of the confession statement of the accused. PW20 is a Senior Civil Police Officer of Chittur police station, who signed as a witness in the seizure mahazar of the material objects collected by the doctor after examining the accused and in the seizure mahazar of the blood samples of the victim collected at the

time of postmortem examination. PW21 is the Scientific Assistant of the Regional Forensic Science Laboratory, Thrissur, who visited the place of occurrence in this case and collected the samples. PW22 is the Grade A.S.I of Police, Chittur police station, who was a Member of the Special Investigation Team constituted under the Dy. Supdt. of Police. He signed as a witness in Ext.P16 seizure mahazar of the samples collected by PW21 and also in Ext.P14 seizure mahazar of the material objects collected from the accused by the doctor of the District Hospital, Palakkad. PW23 is the village officer of Pudussery East village, who prepared Ext.P17 scene plan of the house of the deceased and Ext.P18 scene plan of the house of the accused and also issued relationship certificate of the accused and the victim and income certificate of the mother of the victim. PW24 is the Panchayat Secretary, who issued ownership certificates of the house of the mother of the victim as well as that of the grandmother of the victim. PW25 is the Woman civil police officer of Walayar police station, who recorded the statements of some of the material witnesses in this case. PW26 is the Assistant Surgeon of District Hospital, Palakkad, who examined the accused and issued potency certificate. He collected samples for DNA profiling. PW27 is the Addl. Sub Inspector of Police, Walayar police Station, who recorded the First Information Statement of PW1 and registered the F.I.R. PW28 is the Sub Inspector of Police,

Walayar police station, who conducted inquest of the dead body of the girl and initial part of the investigation. PW29 is the Circle Inspector of Police, Hemambika Nagar, who conducted second part of investigation while holding additional charge of Kasaba Circle. PW30 is the Dy. Supdt. of Police, Narcotic Cell, Palakkad, who conducted later part of the investigation and laid the final report, on completion of the same.

11. It would be appropriate to briefly narrate the evidences adduced by these witnesses, before entering into the merits of the contentions raised by the learned Special Public Prosecutor and the learned defence counsel. PW1 deposed that the mother of the victim girl is his aunt. He is residing half kilometer away from her house. He identified Ext. P1 as the First Information Statement given by him before the police in the evening of the death of the victim girl. After few days of the death of the elder girl of his aunt, her younger daughter also died in a similar manner. After the death of the younger girl, the husband of his aunt told PW1 that on a day when he was sitting in his house as he was suffering pain on his leg he saw the accused standing inside the house by caught holding the elder girl. The incident was happened few days prior to the death of the girl. It is told by the parents of the girl that they had warned the accused on several occasions and told him not to enter into their house. Two other children namely one Kutti Appu and

the younger sister of the victim told PW1 that on the date of death of the girl, the accused had come to the house of the victim. It is also told by them that the mother of the victim beat one Kutti Madhu with a broom. PW1 suspected that it was due to fear, the children committed suicide and he told that fact to the police. It is also deposed by PW1 that he heard that even though the parents of the victim girl restrained the accused from entering their house, he usually visited their house.

12. PW2 deposed that he is residing about 100 meters away from the house of the victim. On an evening he heard the cry of the younger sister of the victim and went to their house. At that time he saw that the victim has committed suicide by hanging herself. From the house of PW2 he could able to see the persons coming to the house of the victim. At the time of death of the girl two other children namely one Kutti Appu and the younger sister of the victim were playing near to that house. But this witness turned hostile to the prosecution and denied his statement allegedly made to the police that he saw the accused coming to the house of the victim.

13. PW3 deposed that at the time of conducting inquest of the dead body of the victim he was present there and signed in the inquest report. He identified his signature in Ext. P2 inquest report. He further deposed that his house is situated 400 meters away from the house of the victim and for going

to his agricultural land he has to pass through the side of the house of the victim. While going to his farm land he used to see several persons gathered in the house of the victim and laughing aloud. One Shibu was also residing in the house of the victim. He saw one Unnikrishnan, one Kutti Madhu, one Pradeep and the grandmother of the victim namely Sarojini in the house of the victim. The accused, the children of Bagyavathy and her relatives were all usually playing in the vacant land situated near to the house of PW3. According to this witness whenever he saw the accused in the house of Bagyavathy, the father of the children as well as their friends were there along with them.

14. PW4, who is the neighbour of the victim deposed that he knew about the death of the girl in the evening after returning from his work place. But this witness turned hostile to the prosecution and denied all the statements allegedly made to the police to the effect that the accused had been visiting the house of the girl.

15. PW5, the stepfather of the girl deposed that during the period of the death of the victim he was residing with his wife, daughters, son and one Shibu. While he married the mother of the victim, the girl was aged only nine months. The girl committed suicide by hanging herself in their house. The accused in this case is the uncle's son of his wife Bagyavathy. In the year

2016, PW5 was laid up in the house due to fracture on his left leg. It was a school vacation period. One day when he called the children for water, they did not respond. Therefore, PW5 reached up to the window of their partly constructed house by crawling and managed to peep inside. At that time he saw the accused and the victim inside that house. The accused was committing unnatural sex on the victim. On seeing PW5, the accused ran out from the house through the back door. The victim told PW5 that the accused threatened her that if she tells the incident to her parents the accused would kill her. Since PW5 was suffering from illness, he could not do anything against the accused. When his wife returned from her work place PW5 told all these facts to her and accordingly she called the sister of the father of the accused and told that the accused shall not come to her house. After the death of the girl it has come to the knowledge of PW5 from his younger daughter and from one Kutti Appu that on the date of death of the girl the accused came to their house. Since her daughter was a minor girl, PW5 did not file complaint against the accused to the police. But after the death of the younger girl he told all these facts to the police as well as before the learned Magistrate.

16. PW6 deposed that the victim is her elder daughter and the accused is her uncle's son. The girl had suffered ill-treatment from the

accused and it was for that reason, the girl committed suicide. But she came to know about the ill-treatment of the accused only after the death of the girl. It was from the postmortem certificate she knew that the girl was subjected to sexual abuse. Before that, on a day, when she returned from her work place, she saw the accused caught holding the breast of the victim from their partly constructed house. It is about six months prior to the death of the girl the said incident happened. When PW6 called the accused he ran out from the house. The said incident was happened on a day prior to the date of incident narrated by PW5. Yet another day in the evening when PW6 came back to her house she saw PW5 crying. On enquiry he told that when he called the girl for water, she did not respond and hence he peeped inside the house through the window. At that time he saw the accused abusing the girl. But PW5 could not do anything as he was not doing well. On coming to know this incident, PW6 contacted the accused over phone and told him not to come to her house. She informed the incident to her aunt also. After the death of her younger daughter PW6 told all these facts to the police as well as to the Magistrate.

17. PW7 deposed that she is residing alone in a house situated at Kallankadu. The accused in this case is her husband's younger brother's son. The mother of the victim is her younger daughter. They are residing at the

place called Selvapuram. The daughters of her younger daughter are now no more. Those girls loved PW7. After school hours the girls used to visit the house of PW7. The girls were going to all the neighbouring houses and their relatives' houses. The house of the accused is situated in the very same compound of PW7. Accused was visiting the house of the victim. But this witness turned hostile to the prosecution and denied her statement allegedly made to the police to the effect that she came to know about abusing of the girls after their death and she had seen the accused taking the girls to his house and misbehaving with the girls.

18. PW8 deposed that she was acquainted with the victim girl from her childhood. The house of PW7 is situated near to her house. She has been working at Thrissur. Some of her dresses were given to the victim in this case. After few days of giving her dresses to the victim, on a day, the girl came to her house and asked PW8 as to whether she can give some ear studs to her. Thereafter the girl told PW8 that she has to tell something to her. The girl told that she is suffering pain on her rectal area and requested PW8 for some medicines. PW8 then told the girl to wash that area with warm water. On enquiry the girl told that the accused in this case has done something on her and that is why she is suffering pain in her rectal area. When PW8 asked the girl as to why she did not tell this to her parents, the girl told that if she

tells it in her house her parents will beat her and her stepfather is not a good man. PW8 consoled the girl and sent back her.

19. PW9 is a witness, who has now aged only 15 years. He deposed that he used to play with the victim and her younger sister. Their house is situated about 1 Km. away from the house of PW9. On a day at noon he went to the house of the victim and played with her and her younger sister. At that time he saw the accused going near the house of the girls towards the house of one Kumar. The accused used to play with them and on some occasions PW9 bring water to the accused from the house of the victim. But he denied his alleged statements made against the accused to the police.

20. PW10 is working as a Security Guard at the place called Elippara in the Campus of Ahaliya College. He is residing at Selvapuram near to the house of the victim. He had seen the accused coming to the house of the victim occasionally. On the date of death of the victim he was there in his house as he had night duty on that day. On hearing the cry of younger daughter of PW6 Bagyavathy he went to the house of the victim at about 4.40 hours and saw that younger daughter of PW6 in a hanging position. This witness also turned hostile to the prosecution and denied the statement allegedly made to the police that he came to know from the younger sister of the victim and PW9 that on the date of death of the victim the accused had

come to the house of the victim.

21. PW11 deposed that he is residing near to the house of PW7. The house of the accused is also situated near to the house of PW7. He had seen the victim and her younger sister coming to the houses of PW7 and the accused and playing therein.

22. PW12 identified his signature in Ext.P3 scene mahazar dated 06.03.2017.

23. PW13 deposed that he is running a Photo Studio at Chandrapuram Walayar and he took photographs at the time of inquest. Ext.P4 series photographs and Ext.P5 C.D of those photographs are marked through this witness.

24. PW14 deposed that while working as Headmaster of Govt. High School Kanjikode, he handed over school admission register showing the date of birth of the victim in this case. He identified Ext.P6 as the extract of school admission register. As per the said document, the date of birth of the victim is 14.09.2004.

25. PW15 identified his signature in Ext.P7 seizure mahazar of the school admission register handed over by PW14 to the police.

26. PW16 identified his signature in Ext.P8 scene mahazar of the house of the victim.

27. PW17 identified his signature in Ext.P9 scene mahazar cum seizure mahazar of the dresses of the accused. According to this witness the dresses were seized from the house of the accused.

28. PW18 deposed that while working as Assistant Surgeon at District Hospital, Palakkad on 14.07.2017, she conducted postmortem examination of the victim in this case and issued Ext.P10 certificate. She gave the opinion that the postmortem findings were consistent with the death due to hanging.

29. PW19 deposed that he witnessed the production of Ration Card of the accused by the brother of the accused at the Circle Inspector's Office and signed as a witness in Ext.P11 seizure mahazar of the same. He further identified his signature in Ext.P12 seizure mahazar of the photographs produced by PW13 and in Ext.P13 seizure mahazar of the C.D containing videograph recorded at the time of effecting recovery on the basis of confession of the accused.

30. PW20 deposed that while working as a Team Member of the Special Investigation Team constituted in this case, he signed as a witness in Ext.P14 seizure mahazar of the material objects collected from the accused and in Ext.P15 seizure mahazar of the blood samples of the victim.

31. PW21 deposed that while working as Scientific Assistant in Regional Forensic Science Laboratory, Thrissur, on 09.03.2017 he visited the place of occurrence in this case and collected the material objects. They were packed, sealed, labelled and handed over to the investigating officer with specimen seal. The items collected by PW21 are noted in Ext.P16 seizure mahazar marked through this witness.

32. PW22 identified his signature in Ext.P16 seizure mahazar of the samples handed over by PW21 and in Ext.P14 seizure mahazar of the samples collected from the accused.

33. PW23 deposed that while working as Village officer of Pudussery East village, he inspected the place of occurrence in this case and prepared Ext.P17 scene plan. He further visited the house of the accused and prepared Ext.P18 scene plan. He identified Ext.P19 as the relationship certificate given by him showing the relationship between the accused and the victim. He deposed that the accused is the son of victim's mother's paternal uncle. He identified Ext.P20 as the income certificate of the mother of the victim issued by him.

34. PW24 deposed that while working as the Secretary of Pudussery Grama Panchayat, he issued Ext.P21 ownership certificate of the house bearing No. XI/666, which stands in the name of PW6 Bagyavathy and

Ext.P22 ownership certificate of the house bearing No. 12/242 which stands in the name of one Valli, SC Colony, Kallamkadu, Attapallam.

35. PW25 deposed that while working as woman civil police officer in Walayar police station, as instructed by the Sub Inspector of Police, she recorded the statements of some of the witnesses in this case.

36. PW26 deposed that while working as Assistant Surgeon in District Hospital, Palakkad, he examined the accused in this case on 10.03.2017 and issued Ext. P23 certificate. On his examination there was nothing to suggest that the accused is incapable of performing sexual act. On the very same day he collected samples for DNA Profiling and handed over to the police with Ext.P24 certificate.

37. PW27 deposed that while working as Addl. Sub Inspector of Police in Walayar police station on 13.01.2017 at about 6.00 pm PW1 Unnikrishnan appeared in the police station and gave Ext.P1 First Information Statement. On the basis of said statement, PW27 registered Ext.P1(a) F.I.R under Sec. 174 Cr. P.C.

38. PW28 deposed that while working as Sub Inspector of Police in Walayar police station, on 14.01.2017, he took charge of the investigation of this case, visited the place of occurrence and conducted inquest. The properties seized at the time of inquest were produced before this court as

per Ext.P25 property list. He identified MO1 as the churidar top, MO2 as the petticoat, MO3 as the bottom of churidar, MO4 as the underwear, MO5 shawl as the ligature and the MO6 series as the samples collected using cellophane tape.

39. PW29 deposed that while working as the Circle Inspector of Police, Hemambika Nagar, he was holding additional charge of Kasaba Circle. On 06.03.2017 as per the order of the Assistant Superintendent of Police, Palakkad, he took charge of the investigation of this case. Immediately he visited the place of occurrence and prepared Ext.P3 scene mahazar. He recorded the statement of parents of the girl and that of the scene mahazar witnesses. Subsequently he filed Ext. P26 report to alter Sec. 174 Cr. P.C. into Sec. 376, 377 and 306 IPC and Sec. 5 r/w Sec. 6 of the Protection of Children from Sexual Act. On the very same day he took steps to transfer the case records to this court from the Sub Divisional Magistrate Court. Then he recorded the statements of the police surgeon and some other witnesses.

40. PW30 deposed that while working as Deputy Supdt. of Police in Narcotic Cell, Palakkad, as per Ext.P27 order of the Additional Director General of Police, North Zone, he took charge of the investigation of this case on 09.03.2017. On the same day he visited the place of occurrence with

the assistance of Scientific officer of Regional Forensic Science Laboratory, Thrissur and collected 31 items. On the very same day at 5.00 pm, he questioned the accused from the Circle Inspector's Office at Kasaba and arrested him by preparing Ext.P28 arrest memo, Ext.P29 inspection memo and Ext.P30 arrest intimation. Then he filed Ext.P31 report to alter the penal provision and Ext.P32 report for incorporating the full name and address of the accused in this case. He took steps to conduct potency examination of the accused, collected samples for DNA profiling and then produced the seized properties before the court as per Ext.P33 property list. On 11.03.2017 as pointed out by PW6, he prepared Ext.P8 scene mahazar of the place of death of the girl. On 15.03.2017 the accused confessed the guilt and gave statement that if he is taken he will show the room and dresses. Accordingly as lead by the accused he went to the house of the accused and seized the clothes allegedly worn by the accused at the time of commission of offence, by preparing Ext.P7 seizure mahazar. Relevant portion of the confession statement of the accused is marked as Ext.P34 through this witness. PW30 identified MO7 and MO8 lungies, MO9 full sleeve shirt, MO10 'T' shirt and MO11 underwear as the dresses produced by the accused. Then PW30 collected the school admission register from the school wherein the victim studied and thereafter released it to the Headmaster as per Ext.P35 bond. He

again filed Ext.P36 report to alter the penal provisions. The seized Ration card of the accused was released as per Ext. P37 bond. Again PW30 filed Ext.P38 report to add the penal provision. On completion of investigation, he laid the final report against the accused. Ext. P39 relationship certificate of the accused and the deceased girl and MO12 DVD are also marked through PW 30.

41. The learned defence counsel argued that no proper investigation is conducted in this case and false and fabricated evidences are created against the accused by the investigating officer with a view to inculcate the accused so as to escape himself from the pressure of detecting the actual culprits. According to the learned counsel, there are contradictions in the statements of witnesses who have supported the prosecution and their evidences are inadmissible. The laches and the contradictions in the prosecution case are highlighted by the learned counsel. On the other hand, the learned Special Public Prosecutor argued that the evidences of PWs 5, 6 and 8 are sufficient enough to prove that the accused has committed sexual abuse of the victim girl. More over there are circumstantial evidences which unerringly pointing towards the guilt of the accused and it is due to the passive abettment of the accused, the girl committed suicide. I will come to those arguments in the later parts of this judgment, at the relevant places.

42. There is no dispute that the girl who died in this case was aged only thirteen years at the time of her death. More over, there is evidence in the form of Ext.P6, the extract of school admission register issued by PW14. From his evidence it is proved that the date of birth of the girl as per the school records is 14.09.2004. The girl died on 13.01.2017. Therefore it can be concluded that she was of the age of thirteen years at the time of her death.

43. Now coming to the cause of death of the girl, the evidences available to ascertain the cause of death of the girl are the oral evidence of PWs 5 and 6, the parents of the girl, the medical evidence obtained by the postmortem conducted by PW18, the Forensic Surgeon and Ext. P2 inquest report of the dead body prepared by PW28, the Sub Inspector of police, who conducted initial part of the investigation of this case.

44. It is deposed by PWs 5 and 6 that their daughter committed suicide by hanging herself on the rafter of their one room shed. PW28 deposed that he conducted inquest of the dead body of the girl on 14.01.2017 and prepared Ext.P2 inquest report. In that report it is stated that the girl was found hanging in the house by her younger sister at about 5.00 pm, when she has returned after grazing the cattle. PW18, the Assistant Surgeon of Forensic Medicine, who conducted postmortem examination of the dead body noted the following antemortem injuries on the body.

Neck findings: A dark blue synthetic cloth was seen around neck measuring 145cm with fresh cut open loop at one end measuring 41cm with a slip knot.

There were horizontal wrinkles across breadth of 82cm.

1. Pressure abrasion, dark brown in colour, non continuous, non grooved, parchmented, having no specific pattern over upper part of neck, over and above the level of thyroid cartilage measuring 29cm against a total neck circumference of 30cm. It was oblique coursing upwards from right to left. The location of pressure abrasion was as follows:
6cm below right mastoid (2cm broad), 7cm below right ear (2cm broad), 6.5cm below right angle of jaw (2cm broad), 7cm behind chin (1.5cm broad), 4cm below left angle of jaw (1.5cm broad), 2cm below left ear (2cm broad), 1.5cm below left mastoid (1cm broad), 8cm occipital protuberance (1cm broad). It was not well visualised for 8cm on left side of back of neck.

After post mortem examination she gave the finding that the death was due to hanging. During investigation, no other reason was found by the investigating officer to say that the girl died other than by way of suicide. Neither the prosecution nor the defence has a case during evidence that the girl died not by committing suicide. Therefore, from the available evidence it can be concluded that the victim in this case, who is aged only thirteen years committed suicide by hanging herself by making use of a churidar shawl as the ligature, in the one room shed wherein she was residing with her family.

45. The definite case of the prosecution is that the girl was subjected to rape and carnal intercourse against the order of nature repeatedly by about five persons including the accused in this case and the intolerable pain suffered on the anal canal lead the girl to commit suicide. How far the prosecution succeeded in proving the offence alleged against the accused, who faced trial in this Sessions Case is the main point to be decided now. Only if the commission of sexual offence by the accused is proved, there is necessity of entering into the point whether the said sexual abuse prompted or abetted the girl to end up her life. At this juncture, the learned counsel for the accused argued that as per the prosecution version, there are five persons involved in the commission of the offence. Though the exact time and period of the offence committed by each of the accused is not specified, the definite case of the prosecution is that those persons have committed independent sexual offences against the girl at different points of time. Prosecution has no case that the offences were committed by the accused in the course of same transaction or with common intention. Hence according to the learned counsel, separate F.I.Rs ought to have been registered by the police in respect of each of the accused, whenever it has come to the knowledge of the investigating officer that more than one persons have committed separate offences against the girl. In support of said argument, the learned counsel

relied on the judgment of the Hon'ble Supreme Court of India in **Anju Chaudhary v. State of U.P. and Another (2012 KHC 4760)**, **Sreekumar P v. State of Kerala and Others (2018 KHC 6196)** and **Pattu Rajan v. State of Tamil Nadu (2019 KHC 6361)**.

46. On going through the decisions relied by the learned defence counsel, I am of the opinion that the facts of those cases are different from the facts of the case in our hand. In **Anju Chaudhary's** case (referred supra), the Hon'ble Supreme Court held that *“On the plain construction of the language and scheme of S.154, S.156 and S.190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of S.154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in - charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of S.173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it*

does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered". In **Sreekumar's** case also (referred supra) the Hon'ble Supreme Court held that *"In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law"*. Similarly, in **Pattu Rajan's** case (referred supra) the Hon'ble Supreme Court held that *"In case a fresh offence is committed during the course of the earlier investigation, which is distinct from the offence being investigated, such fresh offence cannot be investigated as part of the pending case, and should instead be investigated afresh. It is pertinent to note that the facts on hand are similar to the facts in the case of Awadesh Kumar Jha v. State of Bihar, 2016 KHC 6017 : 2016 (3) SCC 8 : 2016 (1) KLD 276 : 2016 (1) SCALE 200 : AIR 2016 SC 373 : 2016 (1) KLT SN 84 : 2016 CriLJ 1129, wherein this Court held that the case arising out of a second FIR, if relating to a separate transaction, cannot be investigated along with a previous FIR under the clause 'further investigation' as contemplated under Sub-S.8 to S.173 of the Cr.P.C"*.

47. In all the above cases, the Hon'ble Supreme Court held that when a fresh offence was committed during the course of investigation of the crime which is distinct from the offence being investigated, the registration of fresh F.I.R is not barred. But in none of the above decisions it is held by the

Hon'ble Supreme Court that it is mandatory to register fresh F.I.Rs when the commission of similar offence by more than one accused has come to the knowledge of investigating officer during the course of investigation on the basis of the first F.I.R. The fresh investigation and fresh registration of F.I.Rs are mandated by the Hon'ble Supreme Court only in the case where a distinct and different offences have been committed during the pendency of the earlier crime or commission of a distinct offence has come to the knowledge of the investigating agency after the filing of final report. Is it necessary to register a fresh F.I.R in a particular case is a matter which depends upon the facts and circumstances of the case. In the case in our hand, the prosecution version is that during an interval of about two years all the accused have intermittently committed similar offences against the deceased girl. The F.I.R in this case was originally registered under Sec. 174 of Cr. P.C for unnatural death of the girl. The involvement of several persons in the commission of the offence against the deceased girl came to the knowledge of the investigating officer when he recorded the statements of witnesses. Therefore, on completion of investigation he filed split charges against each of the accused. Statements of witnesses were collected in respect of each of the accused separately. Therefore it cannot be said that the moment involvement of another accused has come to the knowledge of the investigating officer, he

had to register new F.I.Rs one after another. More over, nothing was brought out during cross-examination of the material witnesses or during argument to show that any prejudice has been caused to the accused due to the non-registration of separate F.I.R against him. It is settled position of law that the registration of F.I.R is the first stage by which the criminal law was set into motion. In this case the F.I.R was registered on the basis of information regarding unnatural death of the girl received by PW27, the Addl. Sub Inspector from PW1. He registered the F.I.R. under Sec. 174 Cr. P.C and subsequently investigation was proceeded with. The alleged involvement of the accused in the commission of the crime came into light only during the investigation conducted by PW30, the Dy. Supdt. of Police, who headed the Special Investigation Team. Therefore, I find no merit in the argument of the learned defence counsel regarding non-registration of separate F.I.Rs by the investigating officer.

48. In this case prosecution is trying to prove the offences of sexual abuse alleged against the accused by the direct evidence of PWs 5 and 6 regarding the sexual abuse of the victim girl allegedly witnessed by them and the hearsay evidence of PWs 1 and 8. Prosecution is also relying on circumstantial evidence to contend that the accused has committed grave offence against the victim girl and it is for that reason she committed suicide.

The learned counsel for the accused vehemently argued that the evidence of PWs 5 and 6 relied by the prosecution is unbelievable for the reason that they have not narrated the incident allegedly witnessed by them to the police, till the investigation is taken over by PW30, the Dy. Superintendent of Police. It is argued that the explanation offered by PW6 for not complaining against the accused or for not disclosing the act of the accused to anybody till PW30 took over the investigation is unbelievable as it is against natural human conduct. The learned defence counsel further argued that the oral evidences of PWs 1 and 8 are hearsay evidences which would not come under the mischief of Sec. 6 or Sec. 32 of Indian Evidence Act and hence not admissible in evidence.

49. Admittedly the statements of PWs 5 and 6 were recorded by the police for several times. Immediately after the death of the victim in this case police recorded the statements of PWs 5 and 6. There is no whisper in that statements regarding any sexual abuse of the victim girl committed by the accused. Subsequently, PW25 also recorded the statement of PWs 5 and 6. But in those statements also PWs 5 and 6 did not state to the police that they ever witnessed the accused abusing the victim, as now deposed before this court by them. PW5 admitted during cross-examination that he witnessed the alleged incident of sexual abuse of his stepdaughter in the month of April

2016, which is much prior to the suicide of the girl. According to PW6, she witnessed an incident of sexual assault about one week prior to the incident narrated by PW5. But till the death of younger daughter in the month of March 2017, neither PW5 nor PW6 stated to anybody about the act committed by the accused. Allegedly it is a grave offence of anal penetration was witnessed by PW6. According to PWs 5 and 6, the act of the accused was told to PW6 immediately after the incident by PW5. If PWs 5 and 6 are really bothered about welfare of the daughter, definitely they would have taken action against the accused, atleast after the death of the victim. But for about two months after the death of the victim no such allegation of sexual abuse was made in the statements of PWs 5 and 6 given to the police. When PW30 took over the investigation, PWs 5 and 6 allegedly made the statements to him that PW5 witnessed the penetrative sexual assault committed by the accused on the victim. On the date of taking over the investigation itself PW30 arrested the accused at 5.00 pm. Till 09.03.2017 it was PW29 investigated the matter. He also recorded the statements of the witnesses. But he has not received any incriminating evidence against the accused. In none of the statements recorded by PW30, there is date or time of recording of statements of witnesses. The possibility of manipulating the statements suiting to the case, after arresting the accused cannot be ruled out in that

circumstance. More over, it is pertinent to note that the prosecution case is that the girl was subjected to anal penetration by five persons at different intervals and at different time and places. It is highly unbelievable to think that five different persons at different intervals at different places without any correlation with each other committed anal penetration against the girl.

50. Now coming to PW8, she is a witness relied by the prosecution to say that about one month prior to her death the victim girl disclosed to PW8 that the accused has done something in the anal region of the victim and because of that act the girl suffered injury in that area. In none of the provisions of law the evidence of PW8 regarding this disclosure allegedly made by the victim is acceptable. Hearsay evidence is admissible only under Sec. 6 and 32 of the Indian Evidence Act. But to accept under Sec. 6 of the Indian Evidence Act as 'res gestae' the incident should have been disclosed at the time of occurrence or immediately before or after the incident.

51. Sec. 6 of the Indian Evidence Act reads as follows:

"6. Relevancy of facts forming part of same transaction. - Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places."

Illustration (a) to the said Section is important in this context, which is extracted hereunder:

"A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact."

The principle embodied in S.6 of the Evidence Act is usually known as the principle of *res gestae*, which is a kind of exception to the rule against hearsay. What it means is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. To form a particular statement as part of the same transaction, utterances must be simultaneous with the incident or immediately before or after its occurrence.

52. The Hon'ble Supreme Court in **Gentela Vijayavardhan Rao and Another v. State of A.P., (1996 KHC 965)** referring to S.6 of the Evidence Act held that "*The principle of law embodied in S.6 of the Evidence Act is usually known as the rule of *res gestate* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is to connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is roughly speaking an exception to the*

general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under S.6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication, then the statement is not part of res gestate."

The Apex Court in **Rattan Singh v. State of H.P., (1997 KHC 823)** examined the applicability of S.6 of the Evidence Act to the statement of the deceased and held that *"Here the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so interlined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under S.6 of the Evidence Act."*

A Division Bench of the Hon'ble High Court of Kerala in **Biju v. State of Kerala (2006 KHC 1456)** held that *"The test of admissibility of evidence as part of res gestae is that the declaration should be so contemporaneous, so*

intimately interwoven or connected with the transaction in issue, giving no room for any premeditation or opportunity for fabrication of evidence."

53. Sec. 6 of the Indian Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provision of Sec. 6, what is required to be established is that it must be almost contemporaneous with the act and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of *res gestae*, must have been made contemporaneously with the act or immediately thereafter. In the evidence of PW8, the time and place of the occurrence is not deposed as stated to her by the victim. When was the act allegedly committed by the accused is also not allegedly stated to her by the victim. According to her the victim told the act of the accused to her about one month prior to her death. Therefore, the evidence of PW8 cannot be accepted as *res gestae*.

54. The principle of dying declaration admissible in evidence is indicated in the legal maxim "Nemo Moriturus peaesumitur mentiri" which means "a man will not meet his mentor with lie in his lips". In this case, the statement of the victim girl allegedly made to PW8 is not as to the cause of her death or as to any circumstances which resulted in her death. More over it is allegedly made much prior to the death of the girl. The deposition of

PW8 is only that, about one month prior to the death of the victim when PW8 had an opportunity to meet the girl she told her that the accused in this case has done something on her and that is why she is suffering pain in her rectal area. It is unbelievable to think that a girl aged 13 years, who has the only relationship with PW8 is by receiving her used clothes would disclose about the sexual offence committed against her by the accused to PW8. What is the act committed by the accused is not deposed by PW8 as stated to her by the victim. Likewise, the statement of PW8 is also recorded by the police after the death of the younger girl. How police reached near PW8 and gathered that the victim girl would have stated against the accused to PW8 is also unknown, especially when PW8 is working in Thrissur and occasionally coming to her native place. Till PW30 took over the investigation, PW8 did not approach any of the police officers and disclosed the facts known to her. How PW30 reached to PW8 and gathered information from her is also unknown. While considering the nature of the evidence given by PW8, it can only be said that PW8 is a planted witness. Therefore, the evidence given by PW8 cannot be accepted under Sec. 6 or Sec. 32 of the Indian Evidence Act. The evidence of PW1 regarding the sexual abuse of the girl allegedly narrated to him by PW5 is also purely hearsay evidence which also cannot be accepted under Sec. 6 or Sec. 32 of the Indian Evidence Act. Therefore hearsay evidences

given by PWs 1 and 8 have no relevancy as far as the decision of this case is concerned.

55. The judgment of the Hon'ble Supreme Court in **Subhash v. State of Haryana** reported in **2010 KHC 5008** is relied by the learned defence counsel to argue that if a significant omission is made in the statement of a witness recorded under Sec. 161 Cr. P.C, the same may amount to a contradiction. In the said decision, the Hon'ble Supreme Court held that *“A bare reading of this Explanation would reveal that if a significant omission is made in the statement of a witness recorded under S.161 of the Cr.P.C., the same may amount to a contradiction and that whether it so amounts is a question of fact in each case”*. Similarly, the learned defence counsel relied on the judgment of the Hon'ble Supreme Court in **Harbeer Singh v. Sheeshpal and Others** reported in **2016 KHC 6715** in support of his argument. In the said decision the Hon'ble Supreme Court held that *“The Explanation to S.162 Cr.P.C. provides that an omission to state a fact or circumstance in the statement recorded by a police officer under S.161 Cr.P.C., may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, while it is true that every*

improvement is not fatal to the prosecution case, in cases where an improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same". As discussed in the preceding paragraph, the long delay in giving the statements against the accused by PWs 5 and 6 itself is a doubting circumstance with regard to their deposition. Though PW5 deposed that he did not file complaint against the accused, thinking future of the victim, it has come out in evidence that no such reason is stated to the police by PW5. More over it has come out from the evidence of PW5 that when PW28 questioned him he gave statement to the effect that when he had peeped inside to his house he saw the accused caught holding private parts of the girl. That portion of the statement given by PW5 to PW 28 is denied by him and it is marked as Ext.D1. The said contradictory portion of statement PW5 shows that even at the time of recording of his statement by PW28, he had no case that the girl was abused by the accused by committing anal penetration. At that time PW6 also did not state to the police that the accused sexually assaulted her daughter by touching her breasts and she witnessed that incident. The persons to whom PWs 5 and 6 claimed to have disclosed about the sexual assault committed by the accused denied the same in their evidence. PW7, the mother of PW6 also denied the fact that PW6 ever stated to her that the accused sexually abused

the victim. PW7 is more near to PW6 than to the accused. She is the mother of PW6. The accused is the brother's son of the husband of PW7. Even then the said witness turned hostile to the prosecution and denied her statement allegedly made to the police to the effect that she saw the accused coming to the house of the victim and she questioned that act of the accused. Similarly, some of the neighbours, who were examined by the prosecution as PWs 2, 9 and 10 have also turned hostile to the prosecution and denied their alleged statements made to the police to the effect that they saw the accused in the house of the victim. When analysing all these evidences, I have no hesitation to hold that statements of some of the material witnesses are fabricated or gathered under compulsion against the accused so as to see that he would be put behind the bar. This aspect would be more clear when going through the circumstantial evidence relied by the prosecution.

56. As discussed above, when direct evidence is not available to inculcate the accused, then the course open to the prosecution is to prove the offence by circumstantial evidence. It is settled position of law that in a case wherein circumstantial evidence alone is available against the accused, then the chain of circumstances must in all probability leads towards the guilt of the accused. The golden rules to be followed in the case of circumstantial evidence is laid down by the Hon'ble Supreme Court in **Hanumant Govind**

Nargundkar V. State of M.P. (AIR 1952 SC 343). The court held that “*It is well to remember those in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused*”.

In **Bhagat Ram v. State of Punjab (1954 KHC 533)**, the Hon’ble Supreme Court held that “*where a case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt*”.

In **Sharad Birdhichand Sardar Vs. State of Maharashtra, (AIR 1984 SC1622)**, the Hon'ble Supreme Court held that “*A close analysis of this*

decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793 : 1973 SCC (Cri) 1033 : 1973 CriLJ 1783) where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(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

(5) 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”.

The Hon’ble Supreme Court in **Chengal Reddy v. State of A.P.**, (AIR 1996 SC 3390) held that *"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."*

It is in the light of the above principles; the evidence adduced by the prosecution in this case has to be analyzed.

57. The prosecution is mainly relying on the postmortem findings to say that the girl was subjected to carnal intercourse against the order of nature repeatedly and she suffered intolerable pain. The evidences of PWs 1, 3, 5, 6,

7, 8 and 9 are relied by the prosecution to contend that the accused had been going to the house of the victim girl and that gave him opportunity for the commission of the offence. The evidences of PWs 5, 6 and 8 are relied to contend that the accused has committed sexual offence against the girl when she visited his house. Whether these evidences relied by the prosecution sufficiently proves the guilt of the accused is to be analysed now.

58. The accused did not dispute the fact that he is a near relative of the victim girl. Ext. P39 relationship certificate issued by the village officer would prove that accused is the near relative of the victim. From the evidences of PWs 1, 3, 5, 6, 7, 8 and 9 it is proved that the accused had been going to the house of the victim as her relative. But none of these witnesses, except PWs 5 and 6 deposed that they ever saw the accused alone with the victim in her house. It is only PWs 7 and 8 are turned hostile to the prosecution. PW3 gave evidence that whenever he saw the accused in the house of the victim some other persons including the parents of the victim were also present. PW9, the friend of the victim girl also not deposed that the accused ever came to the house of the victim alone. As discussed above, the evidence of PWs 5 and 6 regarding the presence of the accused in their house when victim was alone is unbelievable. No witnesses deposed that they ever saw the victim alone with the accused in his house. So there is absence of

evidence to say that the accused had an opportunity to commit the offence when he visited the house of the girl and vice versa.

59. After taking over the investigation, PW30 collected thirty one items from the scene of death of the girl. Similarly, he seized the clothes of the accused. He collected samples for DNA Profiling also. All the material objects collected from the scene of death and the clothes of the accused were sent for chemical analysis. Ext. D2 is the report of analysis received from the laboratory. But the report showed the result negative. No semen or spermatozoa could be collected from the specimen collected from the deceased girl. No evidence is adduced by the prosecution to prove that any semen or spermatozoa was detected from the dresses of the accused. There is no such case for the prosecution. Therefore, absolutely there is absence of scientific evidence to connect the accused with the alleged offence. Similarly, as discussed above, PW18, the Assistant Surgeon of Forensic Department, who conducted postmortem examination though opined that the injuries noted in the anal canal of the girl could be due to anal penetration, she gave an alternative opinion also to the effect that it could be the result of an infection in the region. The opinion given by the doctor after postmortem examination is not the conclusive proof to say that the girl was subjected to anal penetration. An expert evidence can be used only for the purpose of

corroboration. In this case, there is absence of substantive evidence to be corroborated by the opinion evidence given by PW18. More over, her deposition itself shows that an alternative opinion of infection in the anal regions of the girl was also given by this expert.

60. During cross-examination of PW29, it has come out that he handed over the investigation to PW30 on 09.03.2017. From 06.03.2017 to 09.03.2017, PW29 did not get any evidence against the accused. Admittedly, none of the witnesses named the accused, till PW30 took over the investigation. He arrested the accused on 09.03.2017 itself. In none of the statements recorded by PW30 there is date or time of recording of statements of witnesses. Then there is force in the argument of the learned defence counsel that it is after taking into the custody of the accused, the statements of witnesses were manipulated by the investigating officer to suit his case.

61. Some of the clothes of the accused were seized on the basis of Ext.P34 confession statement of the accused. According to the investigating officer, the accused confessed that if he is taken, he would show the room and produce the clothes. The relevant portion of the confession statement of the accused is marked as Ext.P34 through PW30. There is no relevancy for this alleged confession of the accused for the purpose of completing the chain of circumstances put forward by the prosecution. In order to accept the

confession made to a police officer as provided under Sec. 27 of the Indian Evidence Act, the facts disclosed and thereby discovered should be within the exclusive knowledge of the accused and it should be connected with the crime committed. But here prosecution has no clear case that accused has committed sexual offence against the girl from his house. The case of the prosecution regarding that point is very vague. Even though some clothes were claimed as discovered on the basis of the confession of the accused, there is nothing in evidence to show that the clothes were worn by the accused while committing the offence against the victim girl. There is no scientific or other evidence to say that the accused was wearing those dresses at the time of commission of the offence and he concealed them in a place within his exclusive knowledge. Hence, the disclosure of the place of commission of offence as his house and the production of clothes by the accused as claimed by PW30 cannot be taken as a disclosure which is coming under the purview of Sec. 27 of the Indian Evidence Act and is not helpful for the prosecution.

62. On analysing the entire evidence adduced by the prosecution as discussed above, it is clear that prosecution evidence is insufficient to complete the chain of circumstances unerringly pointing towards the guilt of the accused. Therefore, I have no hesitation to hold that prosecution has

miserably failed to prove the alleged offences against the accused beyond reasonable doubt. The accused is therefore entitled to be acquitted of the offences charged. Points answered accordingly.

63. **Point Nos. 10 and 11:-** In the light of my findings on points 1 to 9, the accused is entitled to be acquitted of the offences punishable under sections 450, 354, 376(2) (f), (i) and (n), 377 and 305 IPC, Sec. 5(l) and (n) read with Sec. 6 and Sec. 7 read with Sec. 8 of the Protection of Children from Sexual Offences Act. Points answered accordingly.

In the result, the accused is not found guilty of the offences punishable under Sec.450, 354, 376(2) (f) (i) and (n), 377 and 305 IPC, Sec. 5(l) and (n) read with Sec. 6 and Sec. 7 read with Sec. 8 of the Protection of Children from Sexual Offences Act and he is acquitted under Sec. 235(1) Cr. P.C. He is set at liberty. Accused shall be released forthwith if his custody is not necessary in any other case.

Disposal of MO1 to MO12 can be considered after ascertaining the status of the case pending against the child in conflict-with-law before the Juvenile Justice Board.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court on this the 25th day of October, 2019.

Special Judge/ Ist Additional Sessions Judge

APPENDIX

The following witnesses were examined for the Prosecution :

- PW1 : Unnikrishnan
PW2 : K. Mani
PW3 : Babu.N.
PW4 : Ajayan.
PW5 : Shaji @ Sheri.
PW6 : Bhagyavathi.
PW7 : Sarojini.
PW8 : Anjali.
PW9 : Akhil Prasad.
PW10 : Sreekrishnan.
PW11 : Rajeev.
PW12 : Suresh
PW13 : Issac.
PW14 : Mathew.M. John, Headmaster, Government High School, Kanjikkode.
PW15 : A. Thadeus Sekhar, Peon, Government High School, Kanjikkode.
PW16 : Anilkumar.
PW17 : Ajayan.
PW18 : Dr. Priyatha.P, Asst. Surgeon, District Hospital, Palakkad.
PW19 : Pushpadas, Civil Police Officer.
PW20 : V. Dharmarajan, Senior Civil Police Officer.
PW21 : Unnikrishnan.K., Scientific Assistant, Regional Forensic Science Laboratory, Thrissur.
PW22 : Jayakumar.M.K., Grade Assistant Sub Inspector of Police.
PW23 : K. Chandrakumar, Village Officer, Pudussery East Village.
PW24 : Balachandran, Secretary, Pudussery Grama Panchayat.
PW25 : Shiny Paul, Woman Civil Police Officer.
PW26 : Dr. Aboobacker, Asst. Surgeon, District Hospital, Palakkad.

- PW27 : Pinson.P. Joseph, Additional Sub Inspector of Police.
PW28 : P.C. Chacko, Sub Inspector of Police.
PW29 : Premanandakrishnan, Circle Inspector of Police.
PW30 : M.J. Sojan, Deputy Superintendent of Police, Narcotic Cell, Palakkad.

For the Defence : Nil

The following Exhibits were marked for the Prosecution :

- P1 : 13.01.2017 : F.I.S.
P1(a) : 13.01.2017 : F.I.R.
P2 : 14.01.2017 : Inquest Report.
P3 : 06.03.2017 : Certified copy of Scene Mahazar.
P4 : : Photographs (16 Nos.)
series
P5 : ... : CD of Photographs.
P6 : 24.03.2017 : Copy of extract of Admission Register.
P7 : 24.03.2017 : Seizure Mahazar.
P8 : 11.03.2017 : Scene Mahazar.
P9 : 15.03.2017 : Scene Mahazar cum Seizure Mahazar.
P10 : 14.01.2017 : Postmortem Certificate.
P11 : 17.05.2017 : Seizure Mahazar.
P12 : 23.05.2017 : Seizure Mahazar.
P13 : 23.05.2017 : Seizure Mahazar.
P14 : 10.03.2017 : Seizure Mahazar.
P15 : 03.04.2017 : Seizure Mahazar.
P16 : 09.03.2017 : Seizure Mahazar.
P17 : 19.04.2017 : Scene Plan.
P18 : 19.04.2017 : Scene Plan.
P19 : 17.05.2017 : Relationship Certificate
P20 : 17.05.2017 : Income Certificate

P21	: 17.04.2017	: Ownership Certificate
P22	: 20.04.2017	: Ownership Certificate
P23	: 10.03.2017	: Potency Certificate
P24	: 10.03.2017	: Certificate of collection of material objects from the body of a person for chemical examination, DNA profiling, Examination of FSL. etc.
P25	: 14.01.2017	: Property List.
P26	: 06.03.2017	: Report for altering section.
P27	: 08.03.2017	: Proceedings of the Director General of Police, North Zone, Kozhikkode
P28	: 09.03.2017	: Arrest Memo.
P29	: 09.03.2017	: Inspection Memo.
P30	:	: Arrest Intimation.
P31	:	: Report for altering section.
P32	: 10.03.2017	: Report for adding name and address of accused.
P33	:	: Property List.
P34	: 14.03.2017	: Relevant portion of Confession extract of accused.
P35	: 24.03.2017	: Bond
P36	: 28.03.2017	: Report for altering section.
P37	: 17.05.2017	: Bond
P38	: 07.06.2017	: Report for adding section.
P39	: 17.05.2017	: Relationship Certificate

For the Defence :

D1	:	: Relevant portion of 161 statement of PW5
D2	: 23.03.2017	: Chemical Analysis Report.

Material Objects marked:

MO1 - Maroon coloured churidar top.

MO2 - Rose coloured petticoat.

MO3 - Green coloured churidar bottom.

MO4 - Underwear.

MO5 - Blue coloured shawl.

MO6 Series - Samples collected using cellophane tape (6 Nos.).

MO7 - Lungi.

MO8 - White lined brown black coloured lungi.

MO9 - Full sleeve shirt.

MO10 - T-Shirt.

MO11 - Blue coloured underwear.

MO12 - DVD

Special Judge/ Ist Additional Sessions Judge

Tabular Statement as per Rule 132 Criminal Rule of Practice of Kerala.

1. Serial No. :
2. Name of Police Station and Crime No. of the offence : Walayar Police Station
Crime No. 43/2017.
3. Description of the accused : Madhu @ Valiya Madhu,
S/o Vellappan, aged 28 years,
Kallankadu, Attapallam,
Pampampallam P.O., Pudussery East
Village, Palakkad.

4.	Date of :	
	Occurrence	: On several occasions from April, 2016 till 13.01.2017
	Complaint	: 07.06.2017
	Apprehension	: 09.03.2017
	Released on Bail	: 22.08.2017
	Apprehension	: 11.12.2017
	Released on Bail	: Till Custody.
	Commitment	:
	Commencement of trial	: Charge framed on 05.07.2018 and evidence commenced on 12.12.2018
	Close of trial	: 04.09.2019
	Date of Judgment	: 25.10.2019

Explanation for the delay : Pending of old cases.

Special Judge/ Ist Additional Sessions Judge

Typed by: Radhika. P.S.
Compared by: Bindhu.K.

Fair/copy of Judgment in

S. C. No. 396/2017

Dated : 25.10.2019