

**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.

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**SESSIONS CASE No. 397 OF 2017**

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

Name of accused : Shibu, S/o Narayanan, aged 45 years, Naluthaikkal House, Valiyamullakkanam, Rajakkad Village, Udumbanchola Taluk, Idukki. Now residing at C/o Shaji & Bhagyavathy, Selvapuram, Attapallam, Pampampallam P.O., Palakkad. (Custody)

Charge : Under Sections 376(2)(i), 377, 305 of IPC and Sec. 5(n) r/w Sec. 6 of the Protection of Children from Sexual Offences Act, 2012 and Sec. 3(1)(w)(i) and 3(2)(va) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

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. 376(2) (i), 377 and 305 IPC, Sec. 5(n) read with Sec. 6 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (va) of the Scheduled Castes /

Scheduled Tribes (Prevention of Atrocities) 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-A.

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,

inculping 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 girl. 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, he 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. 376 (2) (i) and 305 of IPC, Sec. 5(n) r/w Sec. 6 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (v) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

3. The prosecution case is that the accused, who is not a member of Scheduled Caste / Scheduled Tribe, on an evening of a day one week prior to 13.01.2017, committed anal penetration and rape on the victim girl aged 13 years, who is a member of Scheduled Caste, from the one room shed bearing No. XI/666 of Pudussery Grama Panchayat situated at the place called Selvapuram, Pudussery East Village belonging to the mother of the girl. 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 by making use of a churidar shawl as the ligature. Thus the accused committed the above offences.

4. On receipt of the final report, it was taken cognizance and after numbering the case as S.C 397/2017, 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, charge was framed for the offences punishable under Sec. 376(2) (i), 377 and 305 IPC, Sec. 5(n) read

with Sec. 6 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (va) of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) 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 24 were examined and Exts. P1 to P28 documents were marked. 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 he is innocent of the offences alleged. According to him, he is having acquaintance with the victim girls for about eight years. He looked after the girls like their father or one step more than that. He is of the same age as that of the father of the girls.

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 rape on the victim girl, as alleged by the prosecution?
4. Whether the accused subjected the victim girl to carnal intercourse against the order of nature, as alleged by the prosecution?
5. Whether the accused committed penetrative sexual assault against the victim girl, as alleged by the prosecution?
6. Whether the accused abetted the victim girl to commit suicide, as alleged by the prosecution?
7. Whether the accused committed the offence of rape and penetrative sexual assault against the victim girl, aged 13 years, who is a member of Scheduled Caste, as alleged by the prosecution?
8. What offences, if any, committed by the accused?
9. The offences, if proved, what should be the punishment?

10. Point Nos. 1 to 7:- All these points are considered together as they are interconnected and also for the purpose of convenience. As said

above, prosecution has examined altogether 24 witnesses in this case. PW1 is a relative and neighbour of the victim girl, who gave First Information Statement regarding unnatural death of the girl before the police. PW2 is an inquest witness. PW3 is a neighbour of the victim girl. PW4 is the stepfather and PW5 is the mother of the victim. PW6 is a scene mahazar witness. PW7 is the Headmaster of the school, wherein the victim girl studied during the period of her death. PW8 is the peon of the said school, who signed as a witness in the seizure mahazar of the school admission register produced by PW7. PW9 is a friend of the victim. PW10 is the doctor, who had conducted postmortem examination on the dead body of the victim. PW11 is the Nursing assistant, who signed as a witness in the seizure mahazar of the samples produced by PW10. PW12 is the A.S.I of Chittur police station, who is a Member of the Special Investigation Team constituted for the investigation of this crime and signed as a witness in the seizure mahazars. PW13 is yet another Civil police officer, who also signed as a witness in some of the seizure mahazars. PW14 is the Scientific Officer of Regional Forensic Science Laboratory, Thrissur, who visited the place of occurrence along with the investigating officer and collected material objects. PW15 is the village officer of Pudussery East Village, who prepared site plan of the place of occurrence. PW16 is the Tahsildar of Palakkad Taluk, who issued caste



certificate of the victim girl. PW17 is the Tahsildar of Udumbanchola Taluk in Idukki District, who issued caste certificate of the accused. PW18 is the Woman Civil Police Officer, who recorded statements of some of the witnesses under Sec. 164 Cr. P.C. PW19 is the Assistant Surgeon of District Hospital, Palakkad, who conducted potency examination of the accused and also collected samples for DNA Profiling. PW20 is the Secretary of Pudussery Grama Panchayat, who issued ownership certificate of the house of PW5. PW21 is the Additional Sub Inspector of Police, Walayar police station, who registered the F.I.R in this case on the basis of First Information Statement given by PW1. PW22 is the Sub Inspector of Police, Walayar police station, who conducted initial part of the investigation of this case. PW23 is the Deputy Supdt. of Police, Narcotic Cell, Palakkad, who headed the Special Investigation Team and conducted the investigation. PW24 is the Circle Inspector of Police, Hemambika Nagar, who held additional charge of Kasaba Circle and conducted some part of the investigation of this case. It would be appropriate to briefly narrate the evidences of prosecution witnesses before entering into the merits of the contentions raised by the learned Special Public Prosecutor and the learned defence counsel.

11. PW1 identified Ext. P1 as the First Information Statement given by him regarding the death of the victim in this case. According to him, the

victim is his aunt's daughter. He saw the victim in a hanging position in her house on the date of her death.

12. PW2, the neighbour of the victim deposed that he was present at the time of conducting inquest of the dead body and signed as a witness in Ext.P2 inquest report.

13. PW3 deposed that he is a neighbour of the victim girl. According to him, the accused in this case was residing in the house of the victim girl.

14. PW4, the stepfather of the girl deposed that he got information regarding the death of his stepdaughter as informed over phone by a neighbour. On reaching back to his house at about 5.00 pm, he saw the victim in a hanging position. Apart from his family consisting of three children and his wife, the accused namely Shibu was also residing in his house during that period. His stepdaughter committed suicide due to the intolerable sexual assault by Valiya Madhu, Shibu, Kutti Madhu and one Pradeep Kumar. After the death of his younger daughter, on a day, the accused approached him after consuming liquor and confessed that he had misbehaved with the victim in this case. It was on a Sunday the accused made such a statement to PW4. It is also told by the accused that he saw Valiya Madhu too misbehaving with the victim girl. It is after the death of the second daughter, the accused told these incidents to PW4.

15. PW5 deposed that the victim in this case is her elder daughter. On getting information over phone regarding the death of the girl, PW5 reached back to her house at 6.30 pm from her work place. During that period the accused was also residing with them in their house. All the dresses of the victim were burnt by PW5 after the death of the girl and hence could not be handed over to the police.

16. PW6 identified his signature in Ext.P3 scene mahazar of the place of occurrence.

17. PW7 deposed that while working as Headmaster of Kanjikode Govt. High School, he produced extract of school admission register to the police and the said document is marked as Ext.P4 through this witness. According to him, the date of birth of the victim as per Ext.P4 is 14.09.2004.

18. PW8 identified his signature in Ext.P5 seizure mahazar of Ext.P4 document.

19. PW9 deposed that she knows the victim and her younger sister. Mother of PW9 had given the dresses of PW9 to the victim. The grandmother of the victim in this case used to come to the house of PW9 for watching television. On a day when PW9 came to her house from her work place, the victim in this case also came to her house. It is told by the victim to PW9 that she has a wound in her rectal area and requested PW9 to give some

medicines. PW9 told the girl to wash that area with warm water and after that enquired the girl regarding the cause. It is told by the girl that Madhu uncle had penetrated his finger into that area. When PW9 enquired the girl as to why she shall not tell it in her house, it is told by the victim that in her house the accused is there and he is not a good man and therefore it could not be disclosed to her mother.

20. PW10 deposed that while working as Assistant Surgeon at District Hospital, Palakkad, she conducted postmortem examination of the dead body of the victim and issued Ext.P6 certificate. She gave the opinion that the postmortem findings were consistent with death due to hanging. It is also deposed by PW10 that the postmortem findings noted in the anal orifice leads to the possibility of penetration including sexual penetration.

21. PW11 identified his signature in Ext.P7 seizure mahazar of the samples produced by PW10 before the police.

22. PW12 identified his signature in Ext.P8 seizure mahazar of the material objects collected from the place of occurrence by the Scientific officer and in Ext.P9 seizure mahazar of the dresses of the accused. He further deposed that he received the samples from Dr. Aboobacker which were collected by the doctor on examining the accused and handed over those samples to the Dy. Supdt. of Police.

23. PW13 identified his signature in Ext.P9 seizure mahazar of the dresses of the accused and in Ext.P10 seizure mahazar of the material objects collected by the doctor from the accused. He is a signatory in Ext. P7 seizure mahazar of the samples collected by PW10 at the time of postmortem examination of the body of the victim.

24. PW14 deposed that while working as Scientific Officer in Regional Forensic Science Laboratory, Thrissur, he visited the place of occurrence and collected 31 items. Those items were packed, labelled, sealed and handed over to the investigating officer with specimen seal. The items collected by PW14 were narrated in Ext.P8 seizure mahazar.

25. PW15 identified Ext.P11 as the site plan prepared by him after visiting the place of occurrence. He gave Ext.P12 income certificate of PW5 showing her annual income as ₹ 24,000/-.

26. PW16, the Tahsildar of Palakkad Taluk identified Ext. P13 as the caste certificate of the victim issued by her and deposed that the victim is a member of scheduled caste, Hindu-Cheruman.

27. PW17 deposed that while working as Tahsildar of Idukki Taluk, he issued Ext.P14 certificate showing the caste of the accused. As per the said certificate the accused in this case had left his native place at about 22 years ago and hence his present caste could not be ascertained.

28. PW18 deposed that while working at Walayar police station she recorded the statement of some of the witnesses under Sec. 161 Cr. P.C.

29. PW19 deposed that while working as Assistant Surgeon in District Hospital, Palakkad, he examined the accused in this case and issued Ext. P15 potency certificate and after collecting the samples for DNA profiling, issued Ext.P16 certificate. According to him, there is nothing to suggest that the accused is incapable of performing the sexual act.

30. PW20 deposed that while working as the Secretary of Pudussery Grama Panchayat, he issued Ext.P17 ownership certificate of building bearing No. XI/666, which stands in the name of one Bagyavathy, W/o Shaji, Selvapuram, Pampampallam.

31. PW21 deposed that while working as Addl. Sub Inspector of Police in Walayar police station, on 13.01.2017 at 19.29 hours, PW1 appeared in the police station and gave Ext.P1 First Information Statement regarding the death of the girl. Accordingly, he registered Ext.P1(a) F.I.R under Sec. 174 Cr. P.C.

32. PW22 deposed that while working as Sub Inspector of Police, Walayar police station, as a part of investigation, he visited the place of occurrence in this case and prepared Ext.P2 inquest report of the dead body of the victim. Subsequently he recorded the statement of the doctor, who

conducted postmortem examination of the victim and sent the samples for chemical analysis and collected it's result.

33. PW23 deposed that while working as Dy. Supdt. of Police, Narcotic Cell, Palakkad, as per Ext. P18 order of Addl. Director General of Police, North Zone, he took charge of the investigation of this case on 09.03.2017. Immediately he visited the place of occurrence with the assistance of Scientific Officer and collected 33 items by preparing Ext.P8 seizure mahazar. On the evening at 5.15 pm of the very same day, the accused was arrested from the Kasaba Circle Inspector's office. Ext. P19 is the arrest memo and Ext.P20 is the inspection memo of the accused. The dresses worn by the accused at the time of arrest were seized by preparing Ext.P9 seizure mahazar. Subsequently PW23 filed Ext.P21 report to alter the penal provision in the case. After collecting samples from the accused, PW23 produced him before the court and filed Ext. P22 report to add the full name and address of the accused. Subsequently the school admission register was collected from the school and it was released to the school authorities by preparing Ext.P23 kychit. He filed Ext. P24 report to alter the penal provision. He collected the caste certificate of the victim and the accused, scene plan of the place of occurrence, ownership certificate of the house of PW5 and again filed Ext. P25 report to add the penal provision. He identified Exts. P26 and

P27 as the chemical examination reports received in this case. On completion of investigation, he filed final report in the case.

34. PW24 deposed that while working as Circle Inspector of Police, Hemambika Nagar, he held Addl. charge of Kasaba Circle. As per the order of the Assistant Superintendent of Police, he took charge of the investigation of this case on 06.03.2017 and visited the place of occurrence. He prepared Ext.P3 scene mahazar and filed Ext.P28 report to incorporate penal provisions in the case. He took steps to transfer the case records from the Sub Divisional Magistrate Court to this court. He recorded statements of some of the witnesses. On 08.03.2017, he handed over the investigation of this case to PW23, the Dy. Supdt. of Police, as per the order of the Addl. Director General of Police.

35. The learned defence counsel argued that there is no direct or circumstantial evidence against the accused, which is pointing towards the commission of any of the offences alleged by the prosecution. PW4, the father of the victim girl though allegedly stated to the police that the accused had confessed the guilt to him, did not depose anything incriminatory against the accused. The laches and contradictions in the prosecution case are highlighted by the learned counsel. On the other hand, the learned Special Public Prosecutor argued that the extra-judicial confession made by the



accused to PW4 proves that he committed sexual assault against the victim. The circumstantial evidences brought out by the prosecution unerringly points 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.

36. 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, the evidence in the form of Ext.P4, the extract of school admission register issued by PW7, proves 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.

37. 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 evidences of PWs 4 and 5, the parents of the girl, the medical evidence obtained by the postmortem conducted by PW10, the Police Surgeon and Ext. P2 inquest report of the dead body prepared by PW22, the Sub Inspector of Police, who conducted initial part of the investigation of this case.

38. It is deposed by PWs 4 and 5 that their daughter committed suicide by hanging herself on the roof of their one room shed. PW22 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 the younger sister of the girl at about 5.00 pm when she returned after grazing the cattle. PW10, 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 death of the girl was not a 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.

39. 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 in 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 person 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)**.

40. 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”.*

41. 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 offence has 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 that case. In the case in our hand, the prosecution case 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.Rs 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 PW21, 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 PW23, 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.

42. On going through the evidence adduced by the prosecution, it could be seen that none of the witnesses have deposed that they have ever witnessed the accused sexually abusing the girl. According to the prosecution, accused confessed the guilt of sexual assault committed by him against the victim girl to PW4, the stepfather of the girl on a day after the death of the second child. But this argument of the learned Special Public Prosecutor holds no merit when going through the evidence of PW4. It is deposed by PW4 that after the death of the younger girl, on a day the accused told him that he had misbehaved with the elder girl. At that time the accused was under the influence of liquor. But what is the misbehaviour done by the accused against the victim is not narrated by PW4. He further deposed that the accused told him that he had seen Valiya Madhu having sexual intercourse with the victim. If the accused also had committed any sexual assault against the victim girl and confessed the same to PW4, definitely the words of PW4 would be clear on that point when he was examined before this court. It has come out from the questions put to PW4 during his cross-examination and from the evidence of PW23 and PW24, the investigating officers that the confession of the accused as deposed by him before the court did not find a place in the statement of PW4 recorded by the investigating officer under Sec. 161 Cr. P.C. Therefore the alleged



extra-judicial confession of guilt made by the accused to PW4 is not believable and acceptable.

43. The prosecution is further relying on the circumstantial evidences to contend that the accused has committed grave sexual offence against the victim girl and it is due to that reason, she committed suicide. 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.

44. 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 evidence of PWs 3, 4, 5 and 9 are relied by the prosecution to prove that the accused was residing with the family of the victim girl during the period of incident and that gave him an opportunity to commit sexual offence against the girl. The evidence of PWs 4, 5 and 9 are relied by the prosecution to argue that the accused has committed sexual offence against the girl. Whether these evidences relied by the prosecution sufficiently proves the guilt of the accused is to be analysed now.

45. The accused did not dispute the fact that he had been residing with the family of the victim girl during the period of incident. PW3, a neighbour of the victim deposed that the accused had been residing in the house of the victim during the period of her death. PW4 and PW5 also deposed that the accused had been residing with them in their house during

the period of death of their children. PW9 also deposed that once the victim girl had told to her about the offence committed by one Madhu uncle and on further enquiry she told that the accused is there in their house and he is not a good man. From all these evidences and the unchallenge of the accused about his stay in the house of the victim, it could be concluded that the accused had been residing in the house of the victim with her family and hence he had an opportunity to commit the offence against the girl.

46. Now, I shall come to the evidence of PWs 4, 5 and 9, regarding the involvement of the accused in the alleged commission of sexual offence against the victim girl. As discussed above, PW4, the stepfather of the girl did not clarify what was the exact confession made by the accused to him. He had not stated such a thing before the police when his statement was recorded under Sec. 161 Cr. P.C. In the evidence of PW5, nothing is mentioned about the accused and his misbehaving with the victim girl. PW5 has no case that the accused committed any sexual offence against the victim. In the evidence of PW9, who is a friend of the victim, she has no case that the victim ever disclosed to her that the accused committed any sexual offence against the victim. The only deposition of PW9 is that the victim once stated to her that the accused is not a good man.

47. When the evidences of prosecution witnesses as discussed above are analyzed, it can be gathered that none of the material witnesses have deposed about the sexual assault or unnatural offence allegedly committed by the accused against the victim girl. Then the next course available to the prosecution to prove the connection of the accused with the commission of alleged offence is by producing scientific evidence. After taking over the investigation, PW23 collected thirty three 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. Exts. P26 and P27 are the reports of analysis received from the laboratory. But both the reports showed the result negative. No semen or spermatozoa could be collected either from the specimen collected from the deceased girl or from the dresses of the accused. Therefore, absolutely there is absence of scientific evidence to connect the accused with the alleged offence. Similarly, as discussed above, PW10, 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 PW11. More over, her deposition itself shows that an alternative opinion of infection in the anal region of the girl was also given by this expert.

48. During cross-examination of PW24, it has come out that he handed over the investigation to PW23 on 09.03.2017. From 06.03.2017 to 09.03.2017 PW24 did not get any piece of evidence against the accused. Admittedly, none of the witnesses named the accused, till PW23 took over the investigation. At the time of arresting the accused, his dresses were seized by the investigating officer by preparing Ext.P9 seizure mahazar. But those dresses have no relevancy as far as the decision of this case is concerned. Prosecution has no case that the dresses seized by the investigating officer were the dresses worn by the accused at the time of commission of the offence. No suspicious items, which is sufficient to link the accused with the commission of offence are detected from the clothes seized by the investigating officer.

49. On analysing the entire evidence adduced by the prosecution as discussed above, it is clear that in the chain of circumstances only two

circumstances are proved by the prosecution. First one is that the accused had been residing in the house of the victim girl and the second one is that the accused had an opportunity to commit an offence against the victim girl when he had been residing in her house. But there is absence of any other circumstance to link the accused with the commission of the alleged sexual offences. Consequently, he cannot be held responsible for the suicide of the victim. 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.

50. **Point Nos. 8 and 9:-** In the light of my findings on points 1 to 7, the accused is entitled to be acquitted of the offences punishable under Sec. 376(2) (i), 377 and 305 IPC, Sec. 5(n) read with Sec. 6 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (va) of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act. Points answered accordingly.

In the result, the accused is not found guilty of the offences punishable under Sec. 376(2) (i), 377 and 305 IPC, Sec. 5(n) read with Sec. 6 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (va) of the Scheduled Castes / Scheduled Tribes (Prevention of



Atrocities) 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.

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

**Special Judge/ I<sup>st</sup> Additional Sessions Judge**

**APPENDIX**

**The following witnesses were examined for the Prosecution :**

- PW1 : Unnikrishnan
- PW2 : Murukesan
- PW3 : Ajayan.
- PW4 : Shaji @ Sheri.
- PW5 : Bhagyavathi.
- PW6 : Suresh
- PW7 : Mathew.M. John, Headmaster, Government High School, Kanjikkode.
- PW8 : A. Thadeus Sekhar, Peon, Government High School, Kanjikkode.
- PW9 : Anjali.
- PW10 : Dr. Priyatha.P, Asst. Surgeon, District Hospital, Palakkad.
- PW11 : Krishnan, Nursing Assistant, District Hospital, Palakkad.
- PW12 : Jayakumar.M.K., Assistant Sub Inspector of Police.
- PW13 : Dharmarajan, Senior Civil Police Officer.
- PW14 : Unnikrishnan.K., Scientific Assistant, Regional Forensic Science Laboratory, Thrissur.
- PW15 : K. Chandrakumar, Village Officer, Pudussery East Village.

- PW16 : Kaverikutty.P., Tahsildar, Palakkad Taluk.  
PW17 : P.S. Bhanukumar, Tahsildar, Udumbanchola, Idukki.  
PW18 : Shiny Paul, Woman Civil Police Officer.  
PW19 : Dr. Aboobacker, Asst. Surgeon, District Hospital, Palakkad.  
PW20 : Balachandran, Secretary, Pudussery Grama Panchayat.  
PW21 : Pinson.P. Joseph, Additional Sub Inspector of Police.  
PW22 : P.C. Chacko, Sub Inspector of Police.  
PW23 : M.J. Sojan, Deputy Superintendent of Police, Narcotic Cell, Palakkad.  
PW24 : Premanandakrishnan, Circle Inspector of Police.

**For the Defence :** Nil

**The following Exhibits were marked for the Prosecution :**

- P1 : 13.01.2017 : Certified copy of F.I.S.  
P1(a) : 13.01.2017 : Certified copy of F.I.R.  
P2 : 14.01.2017 : Certified copy of Inquest Report.  
P3 : 06.03.2017 : Certified copy of Scene Mahazar.  
P4 : 24.03.2017 : Certified copy of Extract of Admission Register.  
P5 : 24.03.2017 : Certified copy of Seizure Mahazar.  
P6 : 14.01.2017 : Certified copy of Postmortem Certificate.  
P7 : 03.04.2017 : Certified copy of Seizure Mahazar.  
P8 : 09.03.2017 : Certified copy of Seizure Mahazar.  
P9 : 09.03.2017 : Seizure Mahazar.  
P10 : 10.03.2017 : Certified copy of Seizure Mahazar.  
P11 : 19.04.2017 : Certified copy of Scene Plan.  
P12 : 17.05.2017 : Certified copy of Income Certificate.  
P13 : 26.04.2017 : Certified copy of Community Certificate.  
P14 : 11.05.2017 : Caste Certificate  
P15 : 10.03.2017 : Potency Certificate

- P16 : 10.03.2017 : Certificate of collection of material objects from the body of a person for chemical examination, DNA profiling, examination at FSL, etc.
- P17 : 17.04.2017 : Certified copy of Ownership Certificate.
- P18 : 08.03.2017 : Certified copy of Proceedings of the Director General of Police, North Zone, Kozhikkode.
- P19 : 09.03.2017 : Arrest Memo.
- P20 : 09.03.2017 : Inspection Memo.
- P21 : .... : Certified copy of report for altering section.
- P22 : 10.03.2017 : Certified copy of Report for adding name and address of accused.
- P23 : 24.03.2017 : Certified copy of Kychit.
- P24 : 28.03.2017 : Certified copy of report for altering section.
- P25 : 07.06.2017 : Report for adding section.
- P26 : 13.02.2017 : Certified copy of Chemical Analysis Report.
- P27 : 23.03.2017 : Certified copy of Chemical Analysis Report.
- P28 : 06.03.2017 : Certified copy of report for altering section.

**For the Defence :** Nil.

**Material Objects marked:** Nil.

**Special Judge/ I<sup>st</sup> 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-A.

3. Description of the accused : Shibu, S/o Narayanan, aged 45 years, Naluthaikkal House, Valiyamullakkanam, Rajakkad Village, Udumbanchola Taluk, Idukki. Now residing at C/o Shaji & Bhagyavathy, Selvapuram, Attapallam, Pampampallam P.O., Palakkad.
4. Date of :
- |                       |   |  |
|-----------------------|---|--|
| Occurrence            | : | On a day one week prior to 13.01.2017                            |
| Complaint             | : | 07.06.2017   |
| Apprehension          | : | 09.03.2017   |
| Released on Bail      | : | Till Custody.  |
| Commitment            | : | .....  |
| Commencement of trial | : | Charge framed on 29.11.2018 and evidence commenced on 23.05.2019 |
| Close of trial        | : | 06.09.2019   |
| Date of Judgment      | : | 25.10.2019   |

**Explanation for the delay** : Pending of old cases.

**Special Judge/ I<sup>st</sup> Additional Sessions Judge**

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

**Fair/copy of Judgment in**

**S. C. No. 397/2017**

**Dated : 25.10.2019**