

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. 399 OF 2017

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

Name of accused : Madhu @ Kutti Madhu, S/o Manikandan,
aged 26 years, Pallikkad House,
Attapallam, Pampampallam P.O.,
Puthussery East Village, Palakkad.

Charge : Under Sections 450, 354 and 305 of IPC
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
and 305 of IPC and Sec. 7 r/w Sec. 8 of
the Protection of Children from Sexual
Offences Act and he is acquitted under
Sec. 235(1) Cr. P.C.

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

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. C. Sreekumar.

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, inculcating 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 10.03.2017 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. 450, 354 and 305 of IPC and Sec. 7 r/w Sec. 8 of the Protection of Children from Sexual Offences Act.

3. The prosecution case is that the accused, who is a relative of the victim girl, on 22.08.2016 at 23.00 hours, committed house trespass by entering into the one room shed bearing No. XI/666 of Pudussery Grama Panchayat situated at the place called Attapalam Selvapuram in Pudussery East village belonging to the mother of the victim girl and outraged the modesty of the girl and also sexually assaulted her by touching the girl after undressing her. 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 the 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 399/2017, 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. The accused was thereafter released on bail. After hearing both sides under Sec. 227 of Cr. P.C, charge was framed for the offences punishable under Sec. 450, 354 and 305 of IPC and Sec. 7 r/w 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 21 were examined and Exts. P1 to P23 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 filed a statement contending that he is innocent of the offences alleged and it is a false case foisted against him. It is stated that PW1 is the brother of the

accused and he married the lover of the accused. For this reason, PW1 is in inimical terms with the accused. In fact, it is PW3 Shaji, who is the stepfather of the deceased girl and PW4 Baghyavathy, the mother of the victim are responsible for the death of the girls. Since the accused told that he would give a complaint against them before the police, they gave false statements against him. PW4 Baghyavathy had consumed liquor and created problems while she was residing in the house of the accused. For this the accused advised her. Baghyavathy was caught by the police for immoral trafficking from Thrissur and for this also the accused advised her. For all these reasons, PW3 and PW4 gave false statements against the accused.

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 life imprisonment, as alleged by the prosecution?
- 4 Whether the accused outraged the modesty of the victim girl, as alleged by the prosecution?
- 5 Whether the accused sexually assaulted 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 What offences, if any, committed by the accused?
- 8 The offences, if proved, what should be the punishment?

10. **Point Nos. 1 to 6:-** All these points are considered together as they are interconnected and also for the purpose of convenience. As said above, prosecution has examined altogether 21 witnesses in this case. PW1 is the person, who gave First Information Statement regarding the death of the girl. He is the elder brother of the accused. PW2 is an inquest witness. PW3 is the stepfather and PW4 is the mother of the deceased girl. PW5 is a witness, who was allegedly there in the house of the victim and witnessed the house trespass and sexual assault committed by the accused. But this witness turned hostile to the prosecution. PW6 is a scene mahazar witness. PW7 is the Headmaster of the school wherein the victim girl had studied. PW8 is the

Peon of Govt. High School, Kanjikode, who signed as a witness in the seizure mahazar of the school admission register produced by PW7. PW9 is the Assistant Surgeon, District Hospital, Palakkad, who conducted postmortem examination of the dead body of the victim. PW10 is the Nursing Assistant of District Hospital, Palakkad, who signed as a witness in the seizure mahazar of the samples collected by PW9. PW11 is the Scientific Officer of Regional Forensic Science Laboratory, Thrissur, who visited the place of occurrence along with the investigating officer and collected the samples. PW12 is the A.S.I of Chittur police station, who signed as a witness in the seizure mahazars. PW13 is the Senior Civil Police Officer, who was a Team Member of the Special Investigation Team constituted under the Deputy. Supdt. of Police. He signed as a witness in the seizure mahazar. PW14 is the village officer of Pudussery East village, who prepared the sketch of the place of occurrence and also issued income certificate of PW4. PW15 is the Assistant Surgeon of District Hospital, Palakkad, who conducted potency examination of the accused and also collected samples for DNA Profiling. PW16 is the Panchayat Secretary, who issued ownership certificate of the house of PW4. PW17 is the Women Senior Civil Police Officer of Walayar police station, who recorded statements of some of the witnesses under Sec. 161 Cr. P.C. PW18 is the Additional Sub Inspector of Police,

who registered the F.I.R in this case. PW19 is the Sub Inspector of Police, Walayar police station, who conducted inquest of the dead body of the victim girl and also conducted the initial part of the investigation of this case. PW20 is the Deputy Supdt. of Police, Narcotic Cell, Palakkad, who lead the Special Investigation Team and filed final report on completion of investigation. PW21 is the Circle Inspector of Police, Hemambika Nagar who was holding additional charge of Kasaba Circle and conducted initial part of the investigation of this case.

11. Before entering into the rival arguments put forward by the learned Special Public Prosecutor and the learned defence counsel, it would be appropriate to go through the evidences of prosecution witnesses in brief for better appreciation of the case. PW1 deposed that he is a relative of the victim and elder brother of the accused. After the death of the girl, he gave Ext.P1 First Information Statement regarding the death of the girl before the police. According to this witness, the mother of the deceased girl had once told about the accused to him. It is told that on the night of birthday of the younger daughter of Bagyavathy, she had seen the accused sitting in her house by lifting the dress of the victim girl. On seeing this, Bagyavathy beat the accused with broom. It is after the death of the girl this fact was told to him by Bagyavathy and PW1 informed it to the police also.

12. PW2 identified his signature in Ext.P2 inquest report of the victim. It is deposed by him that as told by other witnesses, he also expressed doubt in the death of the girl to the police.

13. PW3, the stepfather of the deceased girl deposed that the death of the victim was a suicide. After postmortem examination it has come to the knowledge of PW3 that the girl was subjected to sexual abuse. The accused in this case is the son of the elder sister of his wife Bagyavathy. On a day in the month of August 2016, they had celebrated the birthday of his younger daughter. After dinner, PW3, Shibu and the accused slept outside the house. PW5 Priya, the victim girl, PW4 Bagyavathy and his son Appu slept inside the house. In the cot it was PW5 Priya, the victim and the younger daughter were sleeping. At about 11.00 pm, when PW3 woke up on hearing the sound from the house, he saw PW4 beating the accused with a broom. On enquiry PW4 told that when she switched on the light, she saw the accused untying the pants of the victim. Subsequently, they ousted the accused from the house after beating him. PW3 informed this to his relatives. Due to this reason he had suspicion regarding the death of his daughter.

14. PW4, the mother of the deceased girl deposed that on the birthday of her younger daughter the accused came to their house and during night he slept outside the house with PW3 and Shibu. The victim, her

younger sister and Haripriya were slept on the cot, inside the house. PW4 and her son slept on the floor. During night, PW4 woke up on hearing the sound of utensils. When she switched on the light, she saw the accused standing by the side of the victim girl without wearing mundu and also by pulling down the pants of the victim. PW4 beat the accused with a broom and ousted him. After this incident, the accused came to their house only after the death of the younger daughter of PW4. On the very same day of the incident PW4 informed the act of the accused to his mother. It is by thinking the future of the girl, PW4 did not file complaint against the accused before the police.

15. PW5, the friend of the victim and also her relative deposed that after the death of the girl she gave statement to the police. According to this witness, she was residing in the house of the victim occasionally. On the eve of the birthday of the younger daughter of PW4 she stayed in the house of the victim. During night, apart from PW5, it was only PW4 and her three children were there in the house. All the four children including PW5 slept on the cot and PWs 3 and 4 slept on the floor. It is further deposed by this witness that the accused did not come to that house on that day. She denied her statement allegedly made to the police to the effect that she saw the accused standing without dresses and removing the dress of the victim girl. It is also denied that she saw PW4 beating the accused with a broom.

16. PW6 identified his signature in Ext.P3 scene mahazar.

17. PW7 deposed that while working as Headmaster of Govt. High School, Kanjikode, he handed over Ext.P4 extract of the school admission register to the police. As per the said document, the date of birth of the deceased girl is on 14.09.2004.

18. PW9 deposed that while she was working as Assistant Surgeon at District Hospital, Palakkad, she conducted postmortem examination on the body of the deceased girl in this case and issued Ext.P6 certificate. She opined that the postmortem findings were consistent with death due to hanging. According to her, the findings noted in the postmortem could be a sequelae of penetration. She collected blood sample during postmortem examination and handed over to the police.

19. PW10 identified his signature in Ext.P7 seizure mahazar of the samples handed over by PW9.

20. PW11 deposed that while working as Scientific Assistant in the Regional Forensic Science Laboratory, Thrissur, he examined the place of occurrence in this case on 09.03.2017 and collected 31 items. The materials were packed, sealed, labelled and handed over to the investigating officer with specimen seal impression.

21. PW12 deposed that while working as A.S.I in Chittur police station, he signed as a witness in Ext.P8 seizure mahazar of the material objects handed over by PW11 and also collected the samples from the Medical Officer of District Hospital, Palakkad and handed over to the investigating officer.

22. PW13 identified his signature in Ext.P9 and Ext.P7 seizure mahazars.

23. PW14 deposed that while working as the village officer of Pudussery East village, he visited the place of occurrence in this case and prepared Ext.P10 site plan. He identified Ext.P11 income certificate of PW4 which shows her annual income as ₹ 24,000/-.

24. PW15 deposed that while working as Assistant Surgeon at District Hospital, Palakkad, on 10.03.2017, he examined the accused in this case and issued Ext.P12 potency certificate. He further collected the samples for DNA Profiling and handed over to the police with Ext.P13 certificate.

25. PW16 deposed that while working as Secretary of Pudussery Grama Panchayat, he issued Ext.P14 ownership certificate of the house bearing No. XI/666, which stands in the name of Bagyavathy, W/o Shaji.

26. PW17 deposed that while working in Walayar police station, as per the instructions of the investigating officer, she recorded the statements of

some of the witnesses in this case under Sec. 161 Cr. P.C.

27. PW18 deposed that while working as Addl. Sub Inspector of Police at Walayar police station, as per Ext.P1 First information Statement given by PW1, he registered Ext.P1(a) F.I.R under Sec. 174 Cr. P.C as crime No. 43/2017.

28. PW19 deposed that while working as Sub Inspector of Police at Walayar police station, he visited the place of occurrence of this case and prepared Ext.P2 inquest report. Then he recorded the statement of the doctor, who conducted postmortem examination and took steps for sending the samples collected at the time of postmortem examination for chemical analysis.

29. PW20 deposed that while working as Deputy Supdt. of Police at Narcotic Cell, Palakkad, he took charge of the investigation of this case as per Ext. P15 order of the Addl. Director General of Police, North Zone, on 09.03.2017. He inspected the place of occurrence in this case with the assistance of Scientific Officer and recorded the statements of witnesses. On 10.03.2017 at 8.15 am the accused was arrested from the office of Kasaba Circle Inspector. On 09.03.2017 itself, he filed Ext.P16 report to add penal provisions in this case. Then he filed a report to add the full name and address of the accused, conducted his potency examination and then produced

him before the court with remand report. He collected school admission register for proving the date of birth of the girl and then released the said register to the school authorities by preparing Ext. P17 bond. On 28.03.2017, he again filed Ext.P18 report to alter the penal provisions, collected the scene plan and ownership certificate and again filed Ext.P19 report to add the penal provisions in the case. He identified Exts. P20 and P21 as the chemical examination reports received in this case. On completion of investigation, he filed final report in this case.

30. PW21 deposed that on 06.03.2017 while holding Addl. charge of Kasaba Circle, as per the order of the Assistant Superintendent of Police, Palakkad, he took charge of the investigation of this case. He recorded the statements of witnesses, then visited the place of occurrence and prepared Ext.P3 scene mahazar. He filed Ext.P23 report to delete Sec. 174 Cr. P.C and to add Sec. 376, 377 and 306 of IPC and Sec. 5(n) r/w Sec. 6 of the Protection of Children from Sexual Offences Act. Thereafter he took steps to transfer the case records from the Sub Divisional Magistrate Court to this court. From 08.03.2017 onwards, the investigation was conducted by PW21.

31. The learned defence counsel argued that the incident alleged in this case is in the month of August 2016. Whereas the girl committed suicide on 13.01.2017. Hence there is no proximity between the alleged incident and

the suicide of the girl. It is further argued that the only allegation against the accused is that he sexually assaulted the girl by touching her after undressing her on the night of the birthday eve of the younger daughter of PW4. But the evidence given by PWs 3 to 5 regarding the said incident is contradictory to each other. Similarly, it has come out from the evidence of PWs 3 and 4 that after the death of the victim girl they were residing in the house of the accused for several months. They did not file a complaint or state to anybody that the accused committed the act of sexual assault against the victim. If the accused had really committed any such act against the victim, then there is no possibility of PWs 3 and 4 to reside in the house of the accused after the death of the girl. It is further argued by the learned counsel that from the evidence of PW1 it has come out that PWs 3 and 4 along with one Shibu had the habit of consuming liquor from their house. It has also come out from the evidence of PWs 3 and 4 that PW4 was taken into custody by the police for immoral trafficking from Thrissur. In fact, it was PWs 3 and 4, who are responsible for the death of the girl. The accused ousted PWs 3 and 4 from his house as they caused disturbance by vomiting after consuming liquor in his house. He advised PW4 for this act and also for her custody by the police at Thrissur. For all these reasons, PWs 3 and 4 were nurturing grudge against the accused and hence as instructed by the investigating officer, they are deposing

falsehood against the accused at present. The sexual assault alleged in the deposition of PWs 3 and 4 does not find a place in their statement recorded under Sec. 161 Cr. P.C. On the other hand, the learned Special Public Prosecutor argued that 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. The learned Special Public Prosecutor argued the case more by relying on probabilities than by relying on the evidences.

32. At first, I shall consider the age of the deceased girl at the time of her death. 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.P4, the extract of school admission register issued by PW7 to prove the same. 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.

33. 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 3 and 4, the parents of the girl, the medical evidence obtained by the postmortem conducted by PW9, the Forensic Surgeon and Ext. P2 inquest

report of the dead body prepared by PW19, the Sub Inspector of police, who conducted initial part of the investigation of this case.

34. It is deposed by PWs 3 and 4 that their daughter committed suicide by hanging herself on the roof of their one room shed. PW19 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. PW9, 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.

35. The definite case of the prosecution is that the girl was subjected to sexual assault, 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.

36. Apart from the offence of sexual assault, the accused herein is charged of having committed the offence punishable under Sec. 305 IPC. How far the prosecution succeeded in proving the commission of sexual offence against the victim girl and how far the prosecution succeeded in proving the fact that the victim girl committed suicide due to the abetment of the accused is the point to be analysed now. Sec. 305 IPC reads that “*if any*

person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, committed suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life or imprisonment for a term not extending ten years, and shall also be liable to fine". The reading of the section makes it clear that to bring home the offence under Sec. 305 IPC, the prosecution has to prove that (1) the victim of death is one under eighteen years of age or insane or a delirious, or an idiot or an intoxicated, (2) that the death has occurred by reason of suicide and (3) that the accused abetted the suicide. As far as the first two ingredients of Sec. 305 IPC is concerned, the prosecution has succeeded in proving that the victim girl herein was below the age of eighteen years and also that her death was a suicide. The third ingredient to be proved by the prosecution in the case of an offence under Sec. 305 of IPC is that the accused abetted the victim girl to commit suicide. For the purpose of Sec. 305 and 306 of IPC abetment is having the meaning as defined under Sec. 107 of IPC. As per Sec. 107 IPC, a person abets the doing of a thing, when he or she instigates any person to do that thing or engages with one or more other person in any conspiracy for the doing of that thing or intentionally aids, by any act or illegal omission, the doing of that thing. (Explanations are omitted since not necessary for discussion in this case).

37. As discussed above, the allegation against the accused in this case is that he committed sexual assault upon the victim girl. There is no allegation against the accused in this Sessions Case that he committed penetrative sexual assault or carnal intercourse against the order of nature against the victim girl. Only if the commission of sexual assault by the accused is proved, there is necessity of entering into the point whether the said sexual assault prompted or abetted the girl to end up her life.

38. When going through the evidence of prosecution witnesses and from the arguments of the learned Special Public Prosecutor, it is clear that prosecution is mainly relying the oral evidences of PWs 1, 3 and 4 and circumstantial evidence to contend that the accused has committed 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, 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.

39. As said above, the prosecution is mainly relying on the evidence of PWs 1, 3 and 4 to prove that the accused committed sexual assault against the victim. The evidences of PWs 1 and 3 are only hearsay evidences. According to PW1, he got information from PW4 that on the night of the birthday of the younger daughter of PW4, the accused was seen sitting by lifting the dress of the victim. PW3 deposed that on hearing the sound at about 11.00 pm on the birthday of the younger daughter, he woke up and went inside the house. At that time, he saw PW4 beating the accused with a broom

and on enquiry she told that the accused attempted to untie the pants of the victim girl. Said evidences given by PWs 1 and 3 are claimed as on the basis of the information received from PW4. Therefore, their evidence regarding sexual assault allegedly committed by the accused can only be taken as hearsay evidences. PW4 gave evidence to the effect that on the birthday of her younger daughter she woke up during night by hearing the sound of falling of vessels and then she saw the accused standing nude. He had removed the pants of the victim girl. Immediately the accused was sent out from the house after beating him with a broom. Whether this evidence relied by the prosecution is acceptable or whether there is any unbelievable circumstance in the evidence of PW1, PW3 and PW4 is the point to be analysed.

40. The learned defence counsel argued that PWs 1, 3 and 4 are not creditworthy witnesses and they are deposing falsehood against the accused with vested interest. Though the evidence of PW1 regarding the sexual assault allegedly committed by the accused against the victim is unacceptable, being hearsay evidence, it has come out during his cross-examination that even regarding the said hearsay evidence, he has no consistent version. During his cross-examination, at one portion he deposed that the sexual assault allegedly committed by the accused was informed to him by PW4 about 2 -3 months

after the death of the girl. But subsequently he stated that at the time of giving Ext.P1 First Information Statement itself he was aware about the said sexual assault committed by the accused. Ext.P1 was given on the very same day of the death of the victim. Even then PW1 did not state anything to the police regarding the said offence allegedly committed by the accused. He gave an explanation that he was not remembering the said fact at the time of giving Ext.P1 First Information Statement. But it has come out from the evidence of PW1 and from the evidence of the investigating officer that even in his subsequent statement given to the police, PW1 did not state to the police that he heard from PW4 that the accused sexually assaulted the victim girl. There is another circumstance pointed out by the learned defence counsel for the deposition of PW1 against the accused. PW1 is none other than the elder brother of the accused. It has come out from the evidence of PW3 that PW1 married the fiance of the accused. According to the learned defence counsel, this prompted PW1 to give a false evidence against the accused.

41. When considering the fact that PW1 did not state to the police regarding the sexual assault committed by the accused against the victim in his First Information Statement or in his further statement recorded under Sec. 161 Cr. P.C, the argument of the learned defence counsel that PW1 is

now deposing against the accused due to personal enmity cannot be brushed aside as baseless. The omission in the statement of PW1 recorded under Sec. 161 Cr. P.C regarding this material point amounts to contradiction and hence raises serious doubt about the truthfulness of his evidence.

42. 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". It has come out from the depositions of PWs 19, 20 and 21 that PWs 3 and 4 did not state to the police regarding the sexual assault committed by the accused till their statements were recorded by PW20 after the death of the younger girl. It has also come out from the depositions of PWs 1, 3 and 4 that after the death of the victim girl, PWs 3 and 4 resided in the house of the accused. Their statements were initially recorded by PW19 on 17.01.2017. In that statements also they did not state that the accused sexually assaulted the victim. If PW4 had really noticed the sexual assault committed by the accused against her daughter, it is unbelievable that even under the said circumstance also they would reside in the house of the accused. More over such a grave offence committed by the accused would have been definitely stated to the police by PWs 3 and 4, when their statements were recorded at the initial point of time itself. It is deposed by PW21 during cross-examination that in the statements of PWs 3 and 4, they did not state to him that they saw the accused on the birthday of the younger daughter in the

circumstance as deposed before the court. PW20, the Deputy Supdt. of Police deposed in his cross-examination that no such statement was given by PWs 3 and 4 during investigation that the accused sexually assaulted their daughter. This evidence given by the investigating officers and the contradictions admittedly there in the statement of PWs 3 and 4 in the form of material omissions would show that they have made substantial improvement in their depositions before the court and that creates a serious doubt about the truthfulness and credibility of these witnesses.

43. There is yet another circumstance to disbelieve the prosecution case regarding the sexual assault allegedly committed by the accused. During cross-examination of PW21, it has come out that he handed over the investigation to PW20 on 08.03.2017. From 06.03.2017 to 08.03.2017 PW21 did not get any piece of evidence against the accused. Admittedly, none of the witnesses named the accused, till PW20 took over the investigation. But immediately after taking over the investigation, PW20 arrested the accused on 10.03.2017. What evidence collected by PW20 against the accused before arresting him is not explained by the prosecution, especially, when PW20 himself admits in his cross-examination that PWs 3 and 4 did not state to him that the accused committed sexual assault against the victim girl as deposed by them before the court. The material objects seized by the

investigating officer from the place of occurrence were sent for chemical analysis. Exts. P20 and P21 are the reports received from the laboratories after conducting the chemical analysis of those materials. But those reports also show the result negative and there is nothing to connect the accused with the alleged offence.

44. Apart from all, it is pertinent to note that PW5, the friend of the deceased girl, who was admittedly there in the house of the victim on the birthday of the younger daughter of PW4, categorically deposed that on the date of alleged incident, the accused did not come to that house as alleged. It has also come out from the evidences of PWs 1 and 5 in their cross examination that PW4 also is having the habit of consuming liquor from her house with the company of PW3 and several persons from their work site were also joining with them for consuming liquor. It has also come out in evidence that PW4 was once taken into custody by the police from Thrissur on suspicious circumstance and she was sent back to Palakkad by the police. She was taken to her house by PW3 and the accused together in a motor cycle. It has also come out from the evidence of PW3 that at the time of their stay in the house of the accused, after the death of the elder daughter, the accused was also residing in that house. Therefore the claim of the accused that he advised PWs 3 and 4 for their consumption of liquor from their house by

joining with some other persons cannot be said as the one raised for the purpose of solely defending the above case. The motive for raising an allegation against the accused in a belated stage when analysed in the backdrop of above circumstance creates serious doubts regarding the genuineness of the belated statements given by PWs 3 and 4 to the police and then deposed before this court. Hence the oral evidence of PWs 1, 3 and 4 are unbelievable. Consequently, it is only to be held that the prosecution has failed to prove the chain of circumstances pointing towards the guilty of the accused beyond reasonable doubt.

45. When the alleged sexual offence committed by the accused itself is doubtful and not proved by the prosecution, it is futile to contend that the said sexual assault prompted the victim girl to commit suicide, that also after about six months of the alleged commission of the offence.

46. On analysing the entire evidence adduced by the prosecution as discussed above, it is clear that none of the chain of circumstances claimed by the prosecution is proved against the accused. Prosecution is mainly relying on probabilities to contend that the accused might have committed sexual assault against the victim and that would have prompted the girl to commit suicide. A criminal case cannot be decided on the basis of probabilities. There should be cogent evidence, which unerringly pointing

towards the guilt of the accused. Such evidence either by way of direct evidence or by way of circumstantial evidence is absent in this case. Only the assumptions of the investigating officers are put forward as proved circumstance against 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.

47. **Point Nos. 7 and 8:-** In the light of my findings on points 1 to 6, the accused is entitled to be acquitted of the offences punishable under Sec. 450, 354 and 305 of IPC and Sec. 7 r/w 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 and 305 of IPC and Sec. 7 r/w Sec. 8 of the Protection of Children from Sexual Offences Act and he is acquitted under Sec. 235(1) Cr. P.C. The bail bond of the accused stands cancelled and he is set at liberty.

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 : Abbas.
PW3 : Shaji & Sheri
PW4 : Bhagyavathi.
PW5 : Haripriya.
PW6 : Suresh
PW7 : Mathew.M. John, Headmaster, Government High School, Kanjikkode.
PW8 : A. Thadeus Sekhar, Peon, Government High School, Kanjikkode.
PW9 : Dr. Priyatha.P, Asst. Surgeon, District Hospital, Palakkad.
PW10 : Krishnan, Nursing Assistant, District Hospital, Palakkad.
PW11 : Unnikrishnan.K., Scientific Assistant, Regional Forensic Science Laboratory, Thrissur.
PW12 : Jayakumar.M.K., Assistant Sub Inspector of Police.
PW13 : Dharmarajan, Senior Civil Police Officer.
PW14 : K. Chandrakumar, Village Officer, Pudussery East Village.
PW15 : Dr. Aboobacker, Asst. Surgeon, District Hospital, Palakkad.
PW16 : Balachandran, Secretary, Pudussery Grama Panchayat.
PW17 : Shiny Paul, Woman Civil Police Officer.
PW18 : Pinson.P. Joseph, Additional Sub Inspector of Police.
PW19 : P.C. Chacko, Sub Inspector of Police.
PW20 : M.J. Sojan, Deputy Superintendent of Police, Narcotic Cell, Palakkad.
PW21 : 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 : 10.03.2017 : Certified copy of Seizure Mahazar.
- P10 : 19.04.2017 : Certified copy of Scene Plan.
- P11 : 17.05.2017 : Certified copy of Income Certificate.
- P12 : 10.03.2017 : Potency Certificate
- P13 : 10.03.2017 : Certificate of collection of material objects from the body of a person for chemical examination, DNA profiling, examination at FSL, etc.
- P14 : 17.04.2017 : Certified copy of Ownership Certificate
- P15 : 08.03.2017 : Certified copy of Proceedings of the Director General of Police, North Zone, Kozhikkode.
- P16 : : Certified copy of report for altering section.
- P17 : 24.03.2017 : Certified copy of Bond.
- P18 : 28.03.2017 : Certified copy of report for altering section.
- P19 : 07.06.2017 : Report for adding section.
- P20 : 13.02.2017 : Certified copy of Chemical Analysis Report.
- P21 : 23.03.2017 : Certified copy of Chemical Analysis Report.
- P22 : 09.03.2017 : Order No. 1963/DCRB/09 P (received through E-Mail Message) from the District Police Chief, Palakkad.
- P23 : 06.03.2017 : Certified copy of report for altering section.

For the Defence : Nil.

Material Objects marked: Nil.

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-C.
3. Description of the accused : Madhu @ Kutti Madhu,
S/o Manikandan, aged 26 years,
Pallikkad House, Attapallam,
Pampampallam P.O., Puthussery
East Village, Palakkad.
4. Date of :
 - Occurrence : 22.08.2016
 - Complaint : 07.06.2017
 - Apprehension : 10.03.2017
 - Released on Bail : 25.11.2017.
 - Commitment :
 - Commencement of trial : Charge framed on 29.11.2018
and evidence commenced on
16.07.2019
 - Close of trial : 05.09.2019
 - 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. 399/2017

Dated : 25.10.2019