

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. 400 OF 2017

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

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

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

Plea of the accused : Not guilty.

Finding of the judge : Not guilty.

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

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Name of Police Station and : Walayar Police Station.
Crime Number : Crime No. 240/2017.

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

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

Accused defended by : Adv. Renjith Krishna. V.

Date on which copy of judgment :
given to the accused

J U D G M E N T

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

2. The sequence of events which lead to the filing of final reports by the Deputy Supdt. of Police are as follows:- On 13.01.2017 the elder girl aged 13 years was found dead by hanging herself on the rafter of the one room shed belonging to her mother. She used a churidar shawl as the ligature. On the very same day, on the basis of the First Information Statement given by one Unnikrishnan, who is a relative of the girl, police registered the F.I.R as crime No. 43/2017 of Walayar police station under Sec. 174 Cr. P.C. While the said crime was under investigation, on 04.03.2017, the younger sister of the deceased girl, who was aged only 9 years also committed suicide in the very same manner. With regard to her death also, police registered the F.I.R under Sec. 174 Cr. P.C as crime No. 240/2017 of Walayar police station on the basis of the information received from one Radhakrishnan, a neighbour of the girls. The investigation of the offence was initially conducted by the Sub Inspector of Police, Walayar police station. Subsequently, it was handed over to the Circle Inspector of Police, who was holding charge of Kasaba Circle. In his investigation, it was found that the girls were subjected to sexual abuse. Hence, he filed report to incorporate the penal provisions under Sec. 376, 377 and 306 of IPC and Sec. 5 r/w Sec. 6 of the Protection of Children from Sexual Offences Act and proceeded with the investigation. But due to public agitation, a Special Investigation Team headed by the

Deputy Superintendent of Police, Narcotic Cell, Palakkad was constituted as per the order of the Additional Director General of Police, North Zone and investigation was handed over to the Deputy Supdt. of Police, Narcotic Cell, Palakkad. In his investigation he reached to a conclusion that the girls were repeatedly subjected to unnatural sexual intercourse and the intolerable pain in the anal region lead the girls to commit suicide. He arrested the accused in this case on 09.03.2017 and the accused 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, 376(2) (f), (i) and (n) and 305 of IPC and Sec. 7 r/w Sec. 8 and Sec. 5(1) and (n) r/w Sec. 6 of the Protection of Children from Sexual Offences Act.

3. The prosecution case is that the accused, who is a near relative of the victim girl, aged 9 years, on several occasions one year prior to 04.03.2017, trespassed into the one room shed bearing No. XI/666 of Pudussery Grama Panchayat situated at the place called Selvapuram, Pudussery East Village, which stands in the name of the mother of the victim wherein the victim was residing with her parents and brother and repeatedly

committed rape and unnatural offence against 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 04.03.2017 between 16.30 hours and 18.00 hours by hanging herself on the rafter of the said house.

4. On receipt of the final report, it was taken cognizance and after numbering the case as S.C 400/2017, 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. 450, 354, 376(2) (f), (i) and (n), 377 and 305 of IPC and Sec. 7 r/w Sec. 8 and Sec. 5(l), (m) and (n) r/w Sec. 6 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 19 were examined and Exts. P1 to P35 documents were marked. MO1 to MO5 material objects were also identified by the prosecution witnesses. 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 has not committed any offence. In fact, he had helped the family of the victim and even now he is unaware as to why he is implicated in a false case.

7. Subsequently, both sides were heard under Sec. 232 Cr. P.C. Having found the case as unfit for acquittal under Sec. 232 Cr. P.C, the accused was called upon to enter into his defence. No defence evidence was adduced from the side of the accused.

8. Heard both sides.

9. The points for consideration are:-

1. What is the cause of death of victim girl in this case ?
2. Whether prosecution has succeeded in proving that the deceased girl was aged 9 years, at the time of her death ?
3. Whether the accused committed house trespass with an intention to commit an offence punishable with imprisonment for life, as alleged by the prosecution?
4. Whether the accused committed rape on the victim girl, as alleged by the prosecution?

- 5 Whether the accused subjected the victim girl to carnal intercourse against the order of nature, as alleged by the prosecution?
- 6 Whether the accused sexually assaulted the victim girl, as alleged by the prosecution?
- 7 Whether the accused abetted the victim girl to commit suicide, as alleged by the prosecution?
- 8 Whether the accused committed penetrative sexual assault against the victim girl, as alleged by the prosecution?
- 9 Whether the accused outraged the modesty of the victim girl as alleged by the prosecution?
- 10 What offences, if any, committed by the accused?
- 11 The offences, if proved, what should be the punishment?

10. **Point Nos. 1 to 9:-** All these points are considered together, as they are interconnected and also for the purpose of convenience. As said above, prosecution has examined altogether 19 witnesses in this case. PW1 is an inquest witness. PW2 is a neighbour of the victim girl, who gave First Information Statement regarding the death of the girl. PW3 is the father and PW4 is the mother of the victim. PW5 is a neighbour of the accused. PW6 is a scene mahazar witness. PW7 is the Scientific Officer, who visited the scene of crime and collected the material objects as per the requisition of the

investigating officer. PW8 is a Civil Police Officer, who signed as a witness in the seizure mahazar of the videos and C.Ds prepared at the time of inquest of the dead body of the victim. PW9 is yet another Civil Police Officer, who signed as a witness in some of the seizure mahazars. PW10 is the Assistant Surgeon, who conducted potency examination of the accused from District Hospital, Palakkad and collected samples for DNA profiling. PW11 is the Scientific Officer of Regional Forensic Science Laboratory, Thrissur, who inspected the place of occurrence and collected samples. PW12 is the Headmaster of the school, wherein the victim girl was studying. PW13 is a seizure mahazar witness of the school admission register produced by PW12. PW14 is the village officer, who prepared site plan of the place of occurrence and gave certificate showing the income of the mother of the victim and also another certificate showing the relationship between the accused and the victim girl. PW15 is the Forensic Surgeon, who conducted postmortem examination of the dead body of the victim. PW16 is the Panchayat Secretary, who issued ownership certificate of the house of the mother of the victim and that of the mother of the accused. PW17 is the Sub Inspector of Police, Walayar police station, who registered the F.I.R in this case and conducted initial investigation. PW18 is the Dy. Supdt. of Police, Narcotic Cell, Palakkad, who headed the Special Investigation Team constituted for

the purpose of the investigation of this case and filed the final report on completion of investigation. PW19 is the Circle Inspector of Hemambika Nagar, who conducted part of the investigation of this case while holding additional charge of Kasaba Circle.

11. It would be appropriate to briefly narrate the oral evidences of prosecution witnesses, before entering into the merits of the contentions raised by the learned Special Public Prosecutor and the learned defence counsel. PW1 deposed that at the time of conducting inquest of the dead body of the victim in this case, he was present there and signed as a witness in the said report. He identified Ext.P1 as the inquest report signed by him. This witness further deposed that while seizing the bag and other materials of the victim girl, police prepared Ext.P2 seizure mahazar and he put signature in the said document also as a witness.

12. PW2 deposed that he is residing near to the house of the deceased girl at the place called Attapallam. After the death of the victim in this case he went to the police station in the evening and gave Ext. P3 First Information Statement regarding the death of the girl.

13. PW3 deposed that the deceased girl in this case is his daughter. She committed suicide. When the girl died he felt that it was due to sexual abuse the girl committed suicide. He thought that the persons, who have

abused his elder daughter might have abused the younger daughter also. It was after postmortem examination he came to know that his daughters were subjected to sexual abuse. He identified MO1 as the petticoat of his daughter and MO2 as the lungi used by her as ligature. According to this witness, the accused is his wife's relative and the accused used to visit his house. Similarly, his children were also going to the house of their grandmother. The accused has been residing in another house situated in the very same compound of the grandmother of the children. PW3 told the victim not to go to the house of the accused for watching television.

14. PW4, the mother of the deceased girl deposed that the accused in this case is her uncle's son. According to this witness also after the death of her younger daughter she felt that the persons, who have sexually abused her elder child might have abused the younger child also. She knew that her elder daughter was sexually abused by the accused in this case. After postmortem examination, the doctor told that the victim in this case was also subjected to sexual abuse. The accused used to visit the house of PW4. Similarly, her children were also going to the house of the accused. After seeing the accused abusing her elder daughter, PW4 told the accused not to enter her house. But after the death of the victim, PW4 came to know that in the absence of PWs 3 and 4, accused usually came to their house.

15. PW5 deposed that she is residing near to the house of the accused in this case. She knows the victims in this case. The girls used to visit the house of their grandmother Sarojini for playing. Similarly, the victim girl was going to the house of the accused also, for playing. But this witness turned hostile to the prosecution and deposed that she did not state to the police that the accused improperly behaved with the children of PW4 and hence PW4 told the accused not to enter her house. According to this witness she told PW4 that it is not good for the children to visit the house of the accused. But she further deposed that since the children were remaining in the house of the accused for a long time after coming back from the school, she told PW4 not to send the children to the house of the accused.

16. PW6 identified his signature in Ext.P4 scene mahazar.

17. PW7 deposed that while working as Scientific Officer, DCRB Thrissur, as per the requisition of the investigating officer, she examined the scene of crime in this case and collected material objects. They were handed over to the investigating officer in twelve sealed packets. She identified Ext.P5 as the report prepared by her showing the collection of samples.

18. PW8 deposed that while working in Chittur police station, he was appointed as a Member of the Special Investigation Team constituted for the

purpose of this case. On 24.05.2017, he witnessed the production of C.D containing the videographs prepared at the time of inquest of the victim and he signed as a witness in the seizure mahazar prepared at that time. He identified Ext.P6 as the said seizure mahazar, which contains his signature.

19. PW9 deposed that he was a Member of the Special Investigation Team constituted for the purpose of this case. He witnessed the production of material objects by the Police Surgeon on 09.03.2017 at 16.30 hours to the Circle Inspector and signed as a witness in Ext.P7 seizure mahazar of those material objects. On 10.03.2017 he signed as a witness in Ext.P8 seizure mahazar of the samples collected from the accused which were produced before the Dy. Supdt. of Police by A.S.I Jayakumar. On 31.03.2017 at 14.30 hours he signed as a witness in Ext. P9 seizure mahazar of the samples produced by the Police Surgeon to the investigating officer which were received back from Regional Forensic Science Laboratory.

20. PW10 deposed that while he was working as Assistant Surgeon at District Hospital, Palakkad, he examined the accused in this case on 10.03.2017 and issued Ext. P10 potency certificate. He collected the samples for DNA profiling from the accused and handed over them to the investigating officer with Ext.P11 certificate showing the said collection.

21. PW11 deposed that while he was working as Scientific Officer of Regional Forensic Science Laboratory, Thrissur, he examined the scene of occurrence on 09.03.2017 and collected 31 items. He handed over them to the investigating officer after packing and sealing them as per law, with specimen seal.

22. PW12 deposed that while working as Headmaster of G.L.P School, Pampampallam, he produced the school admission register of the victim to the investigating officer. He identified Ext. P12 as the extract of the said school admission register. As per the said document the date of birth of the victim is on 31.08.2007.

23. PW13 identified his signature in Ext.P13 seizure mahazar of the school admission register produced by PW12.

24. PW14 deposed that while working as Village officer of Pudussery East village, he inspected the place of occurrence in this case and prepared Ext.P14 site plan. He issued Ext. P15 income certificate of PW4 showing her annual income as ₹ 24,000/-. He further identified Ext.P16 as the relationship certificate issued by him showing that the accused in this case is the son of elder brother of the father of PW4.

25. PW15 deposed that while he was working as Senior Consultant in Forensic Medicine and Police Surgeon at District Hospital, on 05.03.2017,

he conducted postmortem examination of the victim in this case and issued Ext. P17 certificate. He opined that there was evidence suggestive of unnatural sexual offence on the child in the form of multiple episodes of anal penetration in the past. In view of the age of the child and the length from sole of heel to the tip of right middle finger with right upper limb fully extended upwards, the possibility of homicidal hanging needs to be ruled out by correlating with measurements at scene of crime and through investigation.

26. PW16 deposed that while working as the Secretary of Pudussery Grama Panchayat, he issued Ext.P18 ownership certificate of the house bearing No. XI/666, which stands in the name of Bagyavathy, who is the mother of the deceased girl. Similarly, he issued Ext.P19 ownership certificate of the house bearing No.12/242, which stands in the name of one Valli, S.C Colony, Kallamkadu, Attapallam.

27. PW17 deposed that while working as Sub Inspector of Police in Walayar police station, on 04.03.2017 at 20.30 hours, PW2 appeared in the police station and gave Ext.P3 First Information Statement regarding the death of the victim in this case. Accordingly, he registered Ext.P3(a) F.I.R under Sec. 174 Cr. P.C. On 05.03.2017, he visited the place of occurrence and prepared Ext. P1 inquest report. The properties collected at the time of

inquest were produced before the court. The material objects were collected by the Scientific Assistant and they were seized by preparing Ext.P20 seizure mahazar. He identified Ext.P21 as the property list by which he submitted the samples before the court.

28. PW18 deposed that while working as Deputy Supdt. of Police in Narcotic Cell, Palakkad, as per Ext.P22 order of the Additional Director General of Police, North Zone, he took charge of the investigation of this case on 09.03.2017. On the very same day he visited the place of occurrence with the assistance of Scientific Officer and collected 33 items. He recorded statements of witnesses and on the very same day at 5.00 pm arrested the accused from the Circle Inspector's Office at Kasaba by preparing Ext.P23 arrest memo and Ext.P24 inspection memo. He identified Ext. P25 as the arrest intimation prepared by him, Ext.P26 as the report filed for altering the penal provisions in this case and Ext.P27 as the report prepared for incorporating the full name and address of the accused in this case. It is further deposed by this witness that on 14.03.2017 when the accused was questioned after getting his police custody from the court, he stated that if he is taken he would show the room and produce the clothes. Accordingly on 15.03.2017 at 3.45 pm as lead by the accused PW18 went to the house bearing No. 12/242 of Pudussery Panchayat and prepared a scene mahazar.

The accused produced clothes from that house. Ext.P28 extract of confession of the accused, Ext.P29 report dated 28.03.2017 to alter the penal provisions in the case, Ext. P30 bond prepared at the time of taking back the school admission register of the victim girl, Ext.P31 forwarding note and Exts.P32 to P34 chemical examination reports received in this case are also marked through PW18.

29. PW19, the Circle Inspector of Police, Hemambika Nagar deposed that while holding Addl. charge of Kasaba Circle, he took charge of the investigation of this case on 06.03.2017, as per the order of the Assistant Superintendent of Police, Palakkad. He recorded the statements of the witnesses including the parents of the victim and the Police Surgeon, seized MO3 mobile phone, MO4 instrument box and MO5 school bag produced by PW4. On coming to know that the girl was subjected to sexual abuse, he filed Ext. P35 report to add penal provisions in this case after deleting Sec.174 Cr. P.C. He took steps to transfer the case records from Sub Divisional Magistrate Court to this court.

30. 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. The laches and the contradictions in the prosecution case are highlighted by the learned

counsel. On the other hand, the learned Special Public Prosecutor argued that there are circumstantial evidences which unerringly pointing towards the guilt of the accused and it is due to the passive abettment of the accused, the girl committed suicide. I will come to those arguments in the later parts of this judgment, at the relevant places.

31. There is no dispute that the girl, who died in this case was aged only nine years at the time of her death. More over, there is evidence in the form of Ext. P12, the extract of school admission register issued by PW12 by which it is proved that the date of birth of the girl as per the school records is 31.08.2007. The girl died on 04.03.2017. Therefore it can be concluded that she was of the age of nine years at the time of her death.

32. 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 3 and 4, the parents of the girl, the medical evidence obtained by the postmortem conducted by PW15, the Police Surgeon and Ext. P1 inquest report of the dead body of the girl prepared by PW17, the Sub Inspector of Police, who conducted initial part of the investigation of this case.

33. It is deposed by PWs 3 and 4, the parents of the girl that their daughter has committed suicide by hanging herself on the roof of their one room shed. PW17, the Sub Inspector of Police deposed that he conducted

inquest of the dead body of the girl on 05.03.2017 and prepared Ext.P1 inquest report. In the report it is stated that the girl was found hanging in the house by her parents at the evening when they returned from their work place. PW15, the Police Surgeon, who conducted postmortem examination of the dead body, noted the following.

A. GENERAL : Body of a moderately built and nourished female child of length 129cm and weight 22kg. The length from sole of heel to tip of right middle finger with right upper limb fully extended upwards was 151cm. Eyes right half open and left open, cornea hazy, pupil on left side more dilated than the right and conjunctiva pale on left side and congested on right side.

White fine lathery froth was seen as a bunch at nostrils. Lips and finger nails were blue. Inner aspects of lips and cheeks were normal and devoid of any ante-mortem injuries. Rigor mortis started passing off from jaw and left upper limb and was not present in right upper limb (broken for examination at scene, during visit to the scene of crime). Right mortis was fully established and retained in the lower half of trunk and in lower limbs. A small patch of greenish discoloration was just appearing in right iliac fossa. There were no postmortem bullae or peeling of cuticle anywhere on the body. Marbling of skin was not appeared anywhere on the body. Postmortem staining on right side of face and back of trunk and limbs was fixed. Two postmortem ant bite

marks were seen over an area of 1.5x1cm, one linear and the other curved, on right side of chest, 4cm below top of front armpit fold (described as injuries in KPF 102). Multiple postmortem ant bite marks were also seen over an area of 4x3cm on right side of chest, 3cm below top of back armpit fold. Spot like postmortem ant bite marks were also seen at a few places on the body. Few live red ants were seen crawling on the body. External genitalia were normal except for the postmortem staining on sides and back of vaginal orifice. Hymen was intact and just admitted the tip of finger. There were no ante-mortem injuries in the vagina.

The anal orifice was dilated, admitting two fingers loosely. On lateral traction, the orifice measured 3.3cm and was patulous with the anal canal having a roomy appearance. Healed linear scars were seen along the edges of the anal orifice on all aspects, in a radiating manner. There were no fresh ante-mortem injuries in the anal orifice or anal canal.

B. Neck : A pressure abrasion of size 25x1.5 to 5cm is seen coursing upwards and backwards from at and above thyroid cartilage in midline front of neck, 6cm below chin (breadth 1.2cm) to its right end at 5cm behind right ear lobule (breadth 2.5cm) and to its left end at 3cm behind left ear lobule (breadth 5cm). The base of the mark was dry and parchmented like in appearance on front and right side. There was no evidence of contusions or

blood infiltrations along the base and edges of the mark. The mark was oblique and non-continuous, being absent on back of neck. Postmortem ant bite mark, 0.3x0.2cm was seen on right half of front of neck 2cm above the pressure abrasion and 4.7cm outer to midline.

Flap dissection of neck in a bloodless field showed firm and pale subcutaneous tissues underneath the pressure abrasion. All the midline structures of neck including muscles, thymus and thyroid glands, thyroid and cricoids cartilages, hyoid bone and cervical vertebrae were intact. There was no evidence of any blood infiltrations on front and sides of neck. Dissection of back of neck in layers did not show any blood infiltrations or contusions.

C. Injuries (Ante-mortem):

1. Contused abrasion modified by postmortem ant bite marks, 1.2x0.6cm on left half of lower lip; just inner to left angle of mouth.
2. Healing abrasion covered by reddish brown scab, 0.4x0.2cm, on inner aspect of right leg, 12cm below knee.
3. Partially healed abrasion covered by brownish black scab, 0.3x0.2cm, on inner aspect of left ankle, 2cm below inner malleolus.
4. Partially healed abrasion covered by brownish black scab, 1.5x0.5cm, on upper aspect of left foot 3cm in front of ankle.

D. Other Findings : Scalp was normal and devoid of any contusions. Skull was intact. Brain was intensely congested and showed patchy area of subdural hemorrhage over right cerebral hemisphere. Lungs were congested and edematous. Heart walls were congested and valves and chambers were normal. Liver, spleen and kidneys were congested. Stomach contained undigested chewed bits of ripe mango skin and pulp like particles and other unidentified food particles in a yellowish thick fluid medium without any

unusual smell, mucosa normal. Urinary bladder was empty. Uterus and appendages were seen in a developing stage. Spinal column and cord were intact. All other organs were congested, otherwise normal. Vaginal swabs and anal swabs and saline swabs from inner thigh regions were preserved to look for semen and spermatozoa. Viscera and blood were preserved for chemical analysis.

After the post mortem examination, PW15 gave the finding that the death was due to hanging. He suggested to rule out the possibility of homicidal hanging. However there is no finding or opinion given by PW15 that any injuries noted by him are correlating with the homicidal death. During investigation, no other reason was found by the investigating officer to say that the girl died other than by way of suicide. None of the prosecution witnesses have a case that the death of the girl is a homicide. No suspectable presence of any person at the time of death of the girl was found in the investigation. From the scene mahazar, it can be gathered that a partly broken chair was also found near the place of occurrence. Wooden cot was also found at the place of occurrence. The girl might have used any of these items to access the rafter for fixing the ligature. The failure on the part of the investigating officer to clarify this point is not a ground to disbelieve the other evidences regarding the death of the girl, tendered by the prosecution witnesses. Therefore, from the available evidences it can be concluded that

the victim in this case, who is aged only nine years committed suicide by hanging herself by making use of a lungi as the ligature, in the one room shed wherein she was residing with her family.

34. The definite case of the prosecution is that the girl was subjected to carnal intercourse against the order of nature repeatedly by more than one person 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, some other persons are also 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)**.

35. 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".*

36. 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 involvement of more than one accused has come to the knowledge of investigating officer during the course of investigation on the basis of the first F.I.R. The fresh investigation and fresh registration of F.I.Rs are mandated by the Hon'ble Supreme Court only in the case where a distinct and different offences have been committed during the pendency of the earlier crime or commission of a distinct offence has come to the knowledge of the investigating agency after the filing of final report. Is it necessary to register a fresh F.I.R in a particular case is a matter which depends upon the facts and circumstances of the case. In the case in our hand, the prosecution case is that during an interval of about two years 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 more than one person 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 PW17, the Addl. Sub Inspector from PW2. 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 PW18, 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.

37. When going through the evidence of prosecution witnesses and from the arguments of learned Special Public Prosecutor, it is clear that there

is no direct evidence regarding the involvement of the accused in the commission of the offences alleged. The prosecution is mainly 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.

38. The prosecution is mainly relying on the postmortem findings to say that the girl was subjected to carnal intercourse against the order of nature repeatedly and she suffered intolerable pain. The evidences of PWs 1, 3 and 4 are relied by the prosecution to contend that the girl had been going to the house of the accused and vice versa and that gave opportunity to the accused for commission of the offence. Prosecution is relying on the evidence of PWs 3 and 4 to argue that their elder daughter was subjected to sexual abuse by the accused and hence there is a possibility of commission of such an offence against the victim also by him. Whether these evidences relied by the prosecution sufficiently proves the guilt of the accused is to be analysed now.

39. The accused did not dispute the fact that he is a relative of the victim girl and he had been visiting the house of the girl in that capacity. It is also not disputed that the girl was coming to the house of the mother of PW4 and also to the house of the accused. PW5, a neighbour of the accused though turned hostile to the prosecution deposed that the victim had been going to the house of the accused.

40. The learned defence counsel at this juncture vehemently argued that absolutely there is no evidence to say that the accused has subjected the

girl to sexual abuse or carnal intercourse. None of the witnesses examined from the side of the prosecution deposed that they ever witnessed the accused committing sexual offence against the victim girl. Similarly, none of the witnesses deposed that prior to the death of the girl they had any information regarding the sexual offence committed against her.

41. After taking over the investigation, PW18 collected thirty three items from the scene of death of the girl for chemical analysis. 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. But there is no chemical analysis report to show that any semen or human spermatozoa was found in the items collected by the investigating officer. Though PW15, the doctor, who conducted postmortem examination opined that there was evidence suggestive of unnatural sexual offence on the girl in the form of multiple episodes of anal penetrations in the past, said opinion given by the expert is not a conclusive proof to say that the girl was subjected to anal penetration. An expert evidence can only be used for the purpose of corroboration. In this case there is absence of substantive evidence to be corroborated by the opinion evidence given by PW15. Therefore, absolutely there is absence of scientific evidence to connect the accused with the alleged offence.

42. During cross-examination of PW19, it has come out that he handed over the investigation to PW18 on 08.03.2017. From 06.03.2017 to 08.03.2017, PW19 did not get any piece of evidence against the accused. Admittedly, none of the witnesses stated against the accused, till PW18 took over the investigation. It is admitted by PW18 in his cross-examination that he arrested the accused on 09.03.2017. In none of the statements of witnesses recorded under Sec. 161 Cr. P.C, the time of recording of those statements were noted by the investigating officer. When none of the witnesses stated to the investigating officer that the accused ever abused the victim, what prompted him to arrest the accused is unknown. If the accused was arrested on 09.03.2017 as admitted by him, then there is force in the argument of the learned defence counsel that it is after taking into custody of the accused, the statements of witnesses were manipulated by the investigating officer to suit his case.

43. Some of the clothes of the accused were seized on the basis of confession statement of the accused. According to the investigating officer, the accused confessed that if he is taken, he would show the room and produce the clothes. The relevant portion of the confession statement of the accused is marked as Ext.P28 through PW18. There is absolutely no relevancy for this alleged confession of the accused for the purpose of

completing the chain of circumstance put forward by the prosecution. In order to accept the confession made to a police officer as relevant under Sec. 27 of the Indian Evidence Act, the facts disclosed and thereby discovered should be within the exclusive knowledge of the accused and it should be connected with the crime committed. But in this case, prosecution case itself is that prior to Ext. P28, the investigating officer has come to know from the statements of witnesses about the place of commission of the offence. Hence the disclosure of the place of commission of offence as his house by the accused as claimed by PW18 cannot be taken as a new disclosure which is coming under the purview of Sec. 27 of the Indian Evidence Act. Even though some clothes were claimed as discovered on the basis of the confession of the accused, there is nothing in evidence to show that the clothes were worn by the accused while committing the offence against the victim girl. There is no scientific or other evidence to say that the accused was wearing those dresses at the time of commission of the offence and he concealed them in a place within his exclusive knowledge. Hence the alleged disclosure statement of the accused is also not helpful for the prosecution.

44. 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 is a

relative of the victim girl and the second one is that the accused had an opportunity to commit the offence against the victim girl, either when she had visited his house or when the accused visited the house of the girl. But there is absence of any other circumstance to link the accused with the commission of the alleged offences. 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.

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

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

Disposal of MO1 to MO5 can be considered after ascertaining the status of the case pending against the child in conflict-with-law before the Juvenile Justice Board.

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

Special Judge/ Ist Additional Sessions Judge

APPENDIX

The following witnesses were examined for the Prosecution :

- PW1 : Babu.
- PW2 : Radhakrishnan.
- PW3 : Shaji @ Sheri.
- PW4 : Bhagyavathi.
- PW5 : Kalyani.
- PW6 : Sunil
- PW7 : Rini Thomas, Scientific Officer, DCRB, Thrissur City.
- PW8 : Shaiju, Civil Police Officer.
- PW9 : Dharmarajan, Senior Civil Police Officer.
- PW10 : Dr. Aboobacker, Asst. Surgeon, District Hospital, Palakkad.
- PW11 : Unnikrishnan.K., Scientific Assistant, Regional Forensic Science Laboratory, Thrissur.
- PW12 : Retnamma, Headmistress, G.L.P.S, Pampampallam.
- PW13 : Ajumudheen, Senior Civil Police Officer,
- PW14 : K. Chandrakumar, Village Officer, Pudussery East Village.
- PW15 : Dr. P.B. Gujaral, Senior Consultant in Forensic Medicine and Police Surgeon, District Hospital, Palakkad.
- PW16 : Balachandran, Secretary, Pudussery Grama Panchayat.

PW17 : P.C. Chacko, Sub Inspector of Police.

PW18 : M.J. Sojan, Deputy Superintendent of Police, Narcotic Cell, Palakkad.

PW19 : Premanandakrishnan, Circle Inspector of Police.

For the Defence : Nil

The following Exhibits were marked for the Prosecution :

P1 : 05.03.2017 : Inquest Report.

P2 : 07.03.2017 : Seizure Mahazar.

P3 : 04.03.2017 : F.I.S.

P3(a) : 04.03.2017 : F.I.R.

P4 : 06.03.2017 : Scene Mahazar

P5 : 14.03.2017 : Report on Examination of the Scene of Occurrence.

P6 : 24.05.2017 : Seizure Mahazar.

P7 : 09.03.2017 : Seizure Mahazar.

P8 : 10.03.2017 : Seizure Mahazar.

P9 : 31.03.2017 : Seizure Mahazar.

P10 : 10.03.2017 : Potency Certificate

P11 : 10.03.2017 : Certificate of collection of material objects from the body of a person for chemical examination, DNA profiling, examination at FSL, etc.

P12 : : Copy of Extract of Admission Register.

P13 : 19.05.2017 : Seizure Mahazar.

P14 : 19.04.2017 : Scene Plan.

P15 : 17.05.2017 : Income Certificate.

P16 : 17.05.2017 : Relationship Certificate.

P17 : 05.03.2017 : Postmortem Certificate.

P18 : 17.04.2017 : Ownership Certificate.

P19 : 20.04.2017 : Ownership Certificate.

P20 : 05.03.2017 : Seizure Mahazar.

P21 : 06.03.2017 : Property List.

P22	: 08.03.2017	: Proceedings of the Director General of Police, North Zone, Kozhikkode.
P23	: 09.03.2017	: Copy of Arrest Memo.
P24	: 09.03.2017	: Copy of Inspection Memo.
P25	:	: Copy of Arrest Intimation.
P26	:	: Report for altering section.
P27	:	: Report for adding name and address of accused.
P28	: 14.03.2017	: Certified copy of Confession extract of accused.
P29	: 28.03.2017	: Report for altering section.
P30	: 19.05.2017	: Bond
P31	:	: Copy of Forwarding Note.
P32	: 28.03.2017	: Chemical Analysis Report.
P33	: 31.05.2017	: Forensic Science Laboratory Report.
P34	: 30.06.2017	: Forensic Science Laboratory Report.
P35	: 07.03.2017	: Report for altering section.

For the Defence : Nil.

Material Objects marked:

- MO1 - Petticoat.
- MO2 - Lungi
- MO3 - Mobile Phone
- MO4 - Instrument Box.
- MO5 - School Bag.

Special Judge/ Ist Additional Sessions Judge

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

1. Serial No. :

2. Name of Police Station and Crime No. of the offence : Walayar Police Station
Crime No. 240/2017.
3. Description of the accused : Madhu @ Valiya Madhu,
S/o Vellappan, aged 28 years,
Kallankadu, Attapallam,
Pampampallam P.O., Pudussery
East Village, Palakkad.
4. Date of :
- Occurrence : On several occasions one year
prior to 04.03.2017
- Complaint : 07.06.2017
- Apprehension : 09.03.2017
- Released on Bail : 22.08.2017
- Apprehension : 11.12.2017
- Released on Bail : Till Custody.
- Commitment :
- Commencement of trial : Charge framed on 24.11.2018
and evidence commenced on
15.06.2019
- Close of trial : 17.09.2019
- 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. 400/2017

Dated : 25.10.2019