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**IN THE COURT OF THE SPECIAL JUDGE (SPE/CBI),
THIRUVANANTHAPURAM**

Present: Sri. K.Sanilkumar.

**Additional Sessions Judge / Special Judge (SPE/CBI)
Wednesday the 23rd day of December 2020 / 2nd Pousha 1942.**

SC No. 1114/2011

C.P.No.2/2009 of CJM, Ernakulam

IN

R.C No. 8 (S)/1993/CBI/KER.

Complainant:-

Central Bureau of Investigation,
ACB, Cochin.

Represented by: Sri. M. Navas.
Public Prosecutor, CBI

Accused Persons:-

- A1.** Father Thomas Kottoor,
S/o K.T. Mathew, Kottoor House,
Kidangoor, Kottayam,
Kerala.
- A3.** Sister Sephy,
D/o Joseph,
St. Joseph's Generalate,
S.H. Mount, Kottayam, Kerala.
(Kangrathumoothy House,
Kurumulloor, Kottayam, Kerala)

Advocates Represented for A1:

Adv. Sri. B. Raman Pillai
Adv. Sri. George Philip
Adv. Sri. B.Sivadas
Adv. Smt A.R.Thara Thampi
Adv. Sri. Chacko Simon

Advocates Represented for A3:

Adv. Sri. J. Jose
Adv. Sri. Sajan Micheal
Adv. Sri. Bino Babu
Adv. Sri. Bimal V.S
Adv. Sri. Chacko Simon

Charge : u/s.449, 302, 201 r/w 34 IPC

Plea : Guilty

Finding : 1. A1 is found guilty u/s. 302, 201 r/w 34 IPC
and 449 IPC.

2. A3 is found guilty u/s. 302, 201 r/w 34 IPC
and not found guilty u/s 449 IPC.

Sentence / order:

(1). Accused Nos. 1 and 3 are sentenced to undergo imprisonment for life and a fine of Rs.5,00,000/- (Rupees Five Lakhs only) is imposed on each of them for the offence u/s 302 r/w 34 of the Indian Penal Code, in default of payment of fine, he / she shall undergo simple imprisonment for a period of two years.

(2). They shall undergo rigorous imprisonment for seven years and a fine of Rs.50,000/- (Rupees Fifty Thousand only) is imposed on each of them for the offence u/s 201 r/w 34 of the Indian Penal Code, in default of payment of fine, the convicts shall undergo simple imprisonment for a period of one year.

(3). Accused No.1 is also sentenced to undergo life imprisonment and a fine of Rs.1,00,000/- (Rupees One Lakh only) is imposed on him for the offence u/s 449 of the Indian Penal Code, in default of payment of fine, he shall undergo simple imprisonment for a period of one year.

The sentences of A1 and A3 shall run concurrently.

Trial commenced on : 05/08/2019

Trial closed on : 10/12/2020

No. of days the case stood for trial.

05/08/2019, 26/08/2019, 27/08/2019, 29/08/2019,
30/08/2019, 31/08/2019, 02/09/2019, 03/09/2019,
04/09/2019, 05/09/2019, 06/09/2019, 16/09/2019,
17/09/2019, 01/10/2019, 14/10/2019, 15/10/2019,
18/10/2019, 19/10/2019, 21/10/2019, 22/10/2019,
24/10/2019, 04/11/2019, 05/11/2019, 19/11/2019,
20/11/2019, 21/11/2019, 23/11/2019, 12/12/2019,
21/12/2019, 10/01/2020, 29/01/2020, 17/02/2020,
27/02/2020, 20/10/2020, 21/10/2020, 27/10/2020,
28/10/2020, 30/10/2020, 02/11/2020, 03/11/2020,
04/11/2020, 05/11/2020, 10/11/2020, 13/11/2020,
17/11/2020, 18/11/2020, 19/11/2020, 20/11/2020,
23/11/2020, 24/11/2020, 25/11/2020, 26/11/2020,
02/12/2020, 03/12/2020, 09/12/2020, 10/12/2020.

(56 days)

This Sessions case having been finally heard on
10/12/2020 and having reserved for consideration till

date, this Court on this 22nd day of December 2020 delivered the following:

JUDGMENT

1. Introduction

This attention - grabbing case has been dragging on for more than quarter a century, reminding one of Thomas Babington ,Lord Macaulay's remark, in his essay, " Warren Hastings", which is looked upon as a tour de force. In it, he narrates how the trial of Warren Hastings, which began in 1788, at first thrillingly dramatic, soon became interminably long, cumbersome, and dull. The trial dragged on for years and years, during which the Judges retired innumerable times to their chambers to discuss the points of law that arose again, and again and again, and then marched

back to the Court Hall. Hence, it was wittily remarked, says Lord Macaulay, “the Judges walked and the trial stood still”. The present case has been hanging fire for 28 years, and invites a slight misquotation of the remark quoted by Lord Macaulay in his essay: **the Judges moved and the case stood still.**

2. This case is known as the infamous “Abhaya case”.

3. Institution of the case

By the filing of the final report by the Inspector of Police, Central Bureau of Investigation, Special Crime Branch, Cochin, accused are brought to answer charge of offences punishable u/s. 302, 201 and 449 of Indian Penal Code r/w 34 of the Indian Penal Code, 1860 (for short 'IPC').

4. Prelude

The quintessential of the case is that, on 27/03/1992 morning, Sister Abhaya, a nun, aged 21 years, who was an inmate of St. Pius X Convent Hostel, Kottayam, was found dead and her body was recovered from a well situated on the rear side of the convent, where she was staying with other nuns and students. In the room on the ground floor, near the kitchen, her slippers were found. Her head veil was found tucked in between the outer door.

5. On 27/03/1992, based on the First Information Statement (for short 'FIS'), laid by the then Mother superior of the convent, Crime No. 187/1992 of Kottayam West Police Station was registered u/s 174 CrPC. for unnatural death on 27/03/1992. Thereafter, on 12/04/1992, the investigation was taken over by the

Crime Branch, CBCID, Kottayam, pursuant to the order of DGP dated 07/04/1992 and the crime was re-registered as Crime No. 142/1992. Investigation was conducted by Sri. K. Samuel, DySP of CBCID, and was supervised by the Superintendent of Police, Sri. K.T. Michael, after the investigation, on 30/01/1993, the Crime Branch filed a report before the SDM, Kottayam, stating it to be a case of suicidal death by drowning. In the meanwhile, considering the request made by the father of Sister Abhaya and demand made by the public, the matter was entrusted to CBI for investigation. CBI took over the investigation on 29/03/1993 and proceeded with the same. Varghese P. Thomas, DySP took over the investigation on 29/03/1995. Investigation continued for long time and the then Investigating Officer of CBI filed a final report on 05/12/1996, reporting that the CBI could not confirm

whether the death was suicidal or homicidal. On the basis of the materials they gathered, it was requested that the case may be closed as an untraced one.

6. The Chief Judicial Magistrate, Ernakulam, before whom the report was filed, refused to accept the final report and directed the CBI to investigate the matter further. After further investigation, the 2nd final report was laid on 12/07/1999. CBI took the stand that it was a case of homicidal death, but admitted that the identity of accused could not be established. The Chief Judicial Magistrate, by his order dated 23/06/2000 rejected the report as unsatisfactory and directed the CBI to reopen the investigation. In the light of above, investigation was transferred from CBI at New Delhi to CBI, Cochin Branch. Yet another report was filed after investigation on 25/08/2005, reiterating the request to close the case

untraced one. This was also rejected by the Chief Judicial Magistrate by his order dated 21/08/2006.

7. Thereafter, the investigation was entrusted with Sri. Nandkumar Nair, DySP, CBI, Cochin Unit (PW49), who conducted investigation and laid a final report on 17/07/2009 arraying three persons as accused. 1st accused is Father Thomas Kottoor, who was a lecturer of Psychology at BCM College, Kottayam, 2nd accused was Father Jose Poothrikkayil, who was a lecturer in the same college and also the Manager of the Catholic Mission Press. The 3rd accused is Sister Sephy, who was a nun residing at St. Pius X Convent Hostel. It is alleged by the prosecution that both priests, the 1st accused and Jose Poothrikkayil maintained an illicit relationship with the 3rd accused. On 26/03/1992, during night, the 1st and the 2nd accused committed house trespass into the St.Pius X Convent Hostel by

scaling the boundary wall. They entered the kitchen room with the help of the 3rd accused and spent their night on her room, which was on the ground floor of the St. Pius X Convent Hostel. On 27/03/1992 at about 4.15 AM, Sister Abhaya who had woken up by that time in order to study, came down to the ground floor from her room to fetch water from the kitchen. According to the prosecution, Sister Abhaya saw all three of the accused. To silence her, the accused allegedly hit on the back of the head of the Sister Abhaya with a small axe kept in the kitchen. She fell down unconscious. It was alleged that, the 1st and the 2nd accused in their attempt to dispose of her body, to screen the accused and to cause disappearance of evidence, climbed the emergency staircase on the rear side leading to the terrace as part of their attempt to dispose of the body. Since it was found not feasible, the body was lifted and was flung into the

well situated on the rear side of the convent. V.V. Augustine, the initial Investigating Officer was also arrayed as an accused. But since he died on 25/11/2008, he was not charge sheeted. Father Jose Poothrikkayil was discharged by my learned predecessor as per order dated 07/03/2018 in CMP No. 12/2011.

8. Proceedings:

RC No. 8(S)/1993/CBI/ACB/Cochin was registered by the Inspector of Police, CBI/ACB, based on the direction of the Hon'ble High Court of Kerala. Thereafter, the case was taken to file as CP No. 2/2009 by the learned Chief Judicial Magistrate, Ernakulam, and vide order dated 19/10/2009, the case was committed to Sessions Court, Ernakulam; in turn the Sessions Judge, Ernakulam, assigned SC No. 442/2009 on 01/12/2009 in the matter and made it over to IV Additional Sessions Court / CBI Court, Ernakulam. Received by this court by

transfer from the Special Judge (SPE/CBI), Ernakulam on 15/10/2011 as per Official Memorandum No. D7/61340/09, dated 15/09/2011 of the Hon'ble High Court of Kerala and renumbered as SC No. 1114/2011.

9. Prosecution case in detail:

Sister Abhaya @ Beena Thomas is the daughter of Sri. Thomas A Mathai and Smt. Leelamma Thomas, and was born on 26/02/1971. She took holy orders on 01/05/1990 and got christened as Sister Abhaya, prior to which the patrimony amount of Rs. 3,000/- had been given by her father to the St. Joseph's Congregation on the assurance that the remaining sum of Rs. 2,000/- would be given subsequently. She joined BCM College, Kottayam, for reading for Predegree in 1990, and was residing at St.Pius X Convent Hostel, Kottayam, which is a boarding and lodging place for nuns of Knanaya community (Kottayam diocese); it is located in the heart

of Kottayam town, near Malayala Manorama Daily office.

10. The St. Pius X Convent building has five floors (cellar floor, ground floor, and other three floors above). The cellar floor accommodates the main dining hall, corridor, a single bed room, sister's dining room, store room, kitchen, work area and common wash area. The entry to the cellar is from two place, one is by the stairs connecting cellar to the ground floor. The other is the exit door from the work area, adjacent to the kitchen. At the bottom end of the stairs, there is a small area opened to the corridor and it provides entry to the main dining hall via an inside door. The single bedroom with attached toilet opposite to the bottom of the staircase has a door opening into the corridor. This single bedroom has one window opening to the outside (rear side). By

the side of the corridor, there is a door opening to the sister's dining room with attached toilet. Adjacent to the sister's dining room, there is a store room which has an opening to the kitchen and the passage terminates near the kitchen. There is work area adjacent to the kitchen with an opening to the kitchen and also to outside as mentioned above. There is a common wash area with a few numbers of water taps and wash basins. There are two doors adjacent to the wash area, one opening to the main dining hall and the other opening to the work area. Inside the wash area, near to the door opening towards dining hall from wash area, a refrigerator is kept. The work area door which opens to outside provides way mainly to the well. A portion of the well from the top is covered by the kitchen wall. The well has a pulley provision for lifting water by using buckets. Between the well and the exit door there is an emergency stair case

leading up to the terrace above the fifth floor of the building. At every entry point to the floor from the emergency staircase, there are doors giving approach to the stair.

11. One of the rooms on the ground floor, ie, room No. 4 is the guest room with attached toilet. Room No. 8, during the relevant period, was occupied by Sister Abhaya, Sister Sherly, Sister Chyara, Sister Dhaya and Sister Anand. All the inmates of this room had to use the common toilets and also if they had any requirements of drinking water etc. they had to move down to the cellar by going down the stairs where the refrigerator etc. are kept. Room No. 7 was opposite to room No. 8 and was occupied by Ms. Achamma, Ms. Thressiamma, Ms. Regi and Ms. Saino who were then kitchen maids of the hostel. Room No. 9 which is adjacent to room No. 8 was

occupied by Sister Anupama, Sister Sudeepa, Sister Salomi and Sister Naveena. Room No. 10 was occupied by Sister Suseela, Sister Smitha Jose, Sister Priya and Sister Kochurani.

12. There is a room opposite to the bottom end of the staircase with attached toilet. This room was occupied by Sister Helen and Sister Sephy. Sister Helen was the mess in charge and during the period of occurrence of the crime, she was away to Kallara for 10 days meditation course. Therefore Sister Sephy was the only inmate in the cellar on 26/03/1992 and 27/03/1992 at the cellar floor.

13. The height of the compound wall on the southern side was 1.8 mts. There is a Cocoa tree in the compound of Sri. P.T. Mathew (late) on the eastern side and close to the compound wall of the hostel, whose

branches were then jutting out towards the hostel compound and provided an easy ingress into the hostel premises or even the fire escape stair case, which is situated on the rear south eastern side of the hostel.

14. For going out of the hostel from the cellar floor to the back side, it was necessary to open two door latches from inside the kitchen work area. The well is located at the back side near the exit door of the kitchen work area. The well of the convent was close to the bathroom of Sister Sephy (A3), who was then residing in the basement (cellar floor), and the window doors open to the rear side of the hostel building. During 1992, the well was partially covered with nylon net and at present it has been covered with iron grill. Presently, the compound wall height has also been increased on all the sides of the hostel building, for security reasons. Earlier,

the boundary walls were very low and anybody from outside could have an easy ingress through this rear side compound wall on the eastern side of the convent, adjacent to the compound of Shri. Sanju.P. Mathew, the immediate neighbour.

15. On 26/03/1992, at about 5.45 PM, Sister Abhaya along with Sister Lessieux, Sister Sephy, Sister Sherly, Sister Merlin, Ms. Achamma Thomas and Ms. Thressiamma, kitchen staff, went to Bible Convention at Nagampadam, Kottayam and returned to the hostel by 8.30 PM, Sister Kochurani, Sister Naveena, Sister Sudeepa, Sister Chyara and Sister Smitha Jose did not go to the Bible Convention as they studied for their exams. On this day, Sister Helen and Sister Annet were not available in the hostel, Sister Annet was on night duty at Medical College, Kottayam, and Sister Helen was

away at Kallara for attending ten days prayer meeting since previous Friday. All the hostel inmates had their food before 8.30 PM as usual. On reaching at the hostel, all the sisters had their dinner (Kanjhi) from the hostel mess and went to the Chapel for prayer. Kitchen staff Ms. Thressiamma and Achamma went to their room and after changing their dress and bath, came to the kitchen. While they were having their dinner, Sister Sephy who was the only occupant of cellar floor on that night, came to the kitchen with a pot (kooja) for taking water from the well. On seeing her, Ms. Regi, the kitchen staff accompanied her to outside after switching on the light near the well, fetched water from the well using the bucket and filled the kooja, kept the bucket on the ground near the well and entered inside. Ms. Regi latched the kitchen door from inside in presence of Sister Sephy, Ms. Achamma, the kitchen maid ensured

that the doors were properly closed and secured. Sister Sephy then took the kooja with water to her room. Sister Sephy without closing the door of her room was in her holy dress with the light switched on. Ms. Achamma indicated their departure to Sister Sephy.

16. Sister Sherly, while she was studying on 26/03/1992 along with Sister Kochurani and Sister Abhaya, informed Sister Abhaya who enquired about going for prayer at SH Mount on next day morning, that herself (Sister Sherly) and Sister Sephy had decided to go for prayer at SH Mount in the morning. Before going to bed, Sister Sherly was requested by Sister Sudeepa to wake her up at 2.30 AM on next day. Sister Abhaya also requested Sister Sherly to wake her (Sister Abhaya) up at 4 AM. Sister Sherly set the alarm for 2.30 AM and lied on her bed, which was near to the window towards the

kennel on the ground. On the request of Sister Sherly, Sister Abhaya exchanged her bed with that of Sister Sherly. On hearing the clock alarm, Sister Sherly woke up at 2.30 AM on 27/03/1992 and went to the room of Sister Sudeepa (Room No. 9) and woke her up. Then she came back to her room and reset the clock alarm for 4 AM for waking up Sister Abhaya and slept on her bed.

17. At about 4 AM, Sister Abhaya woke up on hearing the clock alarm and went to the toilet. Sister Sherly pretended to be asleep. Sister Abhaya came back to their room after sometime and told Sister Sherly to wake up and brush her teeth, who replied in the negative and continued to lie on her bed. Sister Sherly also told Sister Abhaya not to go to kitchen for taking cold water as the kitchen staff had not woken up. Sister Abhaya started studying, sitting in the same room, with the available light coming through the half opened / slightly

opened door. After sometime, Sister Abhaya went out of her room to the room of Sister Anupama at about 4 AM and told her to get up and study. She studied up to 4.45 AM and slept again.

18. At about 5 AM on 27/03/1992, Sister Sudeepa rang the wake up bell and on hearing the bell, which is located on the 2nd floor, Ms. Achamma, Ms. Thressiamma, Ms. Regi and Ms. Saino woke up on the 1st floor. Ms. Achamma first went to the kitchen and others followed her. On her way to kitchen, Ms. Achamma found the light switched on in the corridor, which surprised her, as they had switched off all the lights in the cellar floor before going to bed. Then she went to the kitchen wash basin area after switching on the tube light of kitchen, she found the door which opens from kitchen to kitchen work area and kitchen wash basin area in the opened

condition. Ms. Regi pointed out one slipper lying near the fridge.

19. In the meantime, Ms. Thressiamma was trying to open the kitchen door leading to outside and found that it was unlatched from inside and latched from outside. Then they saw another slipper lying near the kitchen door. A white veil (the head gear of religious attire) was found lying under the door which was latched from outside. The condition of veil was half inside and half outside. They also noticed one small hand axe (kaikodali) and one empty fruit basket in an abnormal and disturbed position lying near the door. Ms. Achamma instructed Ms. Regi to inform Sister Sephy, who did so and Sister Sephy visited the kitchen after wearing veil and nightie.

20. Sister Sephy was informed by Ms. Achamma

about disturbances observed by her in the kitchen work area and in the kitchen wash area and slippers of Sister Abhaya, which were identified by Ms. Thressiamma. Sister Sephy asked Thressiamma to go to Sister Abhaya's room and call her. Ms. Thressiamma went upstairs and after searching Sister Abhaya in her room and in the Chapel, came back to kitchen and informed Sister Sephy that she was not present in the room. Sister Sephy then went to the room of Mother Superior for informing her. On her way to Mother's room, Sister Sephy entered the room of Sister Susheela and changed her nightie and worn the dress of Sister Susheela, ie, religious attire. While changing her dress, Sister Sephy intimated the incident to Sister Susheela and Sister Smitha also. Sister Sephy went to Mother Superior Sister Lissieux and appraised her of the facts. Sister Lissieux after changing her dress came down to kitchen.

21. On their way to kitchen, Sister Sephy also informed this matter to Sister Sherly. Sister Merlin also accompanied them to kitchen. After visiting kitchen work area and kitchen wash area and witnessing the disturbed scene, Sister Lissieux along with Sister Merlin and Sister Sephy went out of the building through front door for searching Sister Abhaya using a torch. They then came to the kitchen side and searched there but could not find Sister Abhaya.

22. They found the kitchen door was latched from outside and the veil was found lying under the door. Mother Superior then unlatched the door and went inside the kitchen through the said door. Thereafter, they searched Sister Abhaya in the terrace by climbing through emergency staircase. Afterwards, they searched Sister Abhaya near the well. Sister Sephy indicated the unusual position of the bucket, which was hanging closer to the

pulley as she knew that during the previous night after taking water from the well, the bucket was placed on the ground outside the well. Thereafter, they went back to kitchen through the same door. They further found one plastic bottle lying near the fridge, and water was oozing from it. By this time all Sisters, who were inmates of the hostel came to the kitchen and all of them observed the various disturbances in the kitchen.

23. As per the instruction of the Mother Superior of Kaipuzha Convent, Sister Sephy and Sister Merlin were sent to Bishop House to inform the matter. Sister Sephy and Sister Merlin went to Bishop but as Bishop was not available there, the matter was intimated to Vicar General Father Mathew Pulikkottil. At that time, Bishop Kuriakose Kunnassery was at Oldage home at Karithas. As per the instruction of Vicar General, Sister Sephy and Sister Merlin went to old age home and met Bishop and

intimated the matter. Bishop then informed them to go to the residence of Sister Abhaya and inform the matter. By that time, Sister Josy and Sister Felix of Generalate came there in the Generalate's vehicle. Sister Merlin accompanied the said sisters to the residence of Sister Abhaya, but Sister Sephy returned to St. Pius X Convent Hostel.

24. Complying with the instructions of Bishop, Sister Merlin and two sisters namely Sister Josy and Sister Felix who came from the Generalate went to the residence of Sister Abhaya in Generalate's vehicle. But Sister Sephy not only did not accompany them but returned to the Convent. Sister Jossy, Sister Felix and Sister Merlin reached Areekara at around 7.30 AM where they received the information from Father Jose Chazhikkat that Sister Abhaya's father would be going via

that way to the bus stand and hence, they waited near Areekara Convent. As expected, Abhaya's father Sri. Thomas came via the same way and the sisters stopped him and enquired about Sister Abhaya and asked if he knew the whereabouts of Sister Abhaya. The sisters took him to the Convent.

25. In the mean time, sisters from the Convent met Mathukutty (late) and requested him to accompany them and they informed that Sister Abhaya's religious dress was in her room and her slippers were found one near the fridge and the other near the door and other details and took him down to the kitchen work area and showed him the abnormal position of the slippers of Sister Abhaya, her veil, the axe, the fruit basket, water bottle etc. Sri. Mathukutty had taken the initiative to contact Sri.K.T. Michael on phone and informed about the incident and

subsequently, Sister Berchman and Sister Cyril accompanied Sri. T. Mathew (late) to the residence of Sri. K.T. Michael, then SP, CB, CID, Kottayam. Sri. K.T. Michael after hearing the news asked them to report the matter to the Kottayam West Police Station.

26. Accordingly, a complaint was lodged with the West Police Station, Kottayam by Sister Lissieux at 9.15 hrs on 27/03/1992. Sri. V.V. Augustine, Additional Sub Inspector, who was in charge of the Police Station on that particular day accompanied them to the St.Pius X Convent Hostel along with two three other Constables. At the Convent, they made a search for Sister Abhaya in her room and the adjoining rooms and thereafter, Sister Lissieux took Sri. V.V. Augustine, Additional Sub Inspector and his team to the kitchen work area and appraised him about the disturbances found in the kitchen, like the

positions of Sister Abhaya's slippers, her veil, the axe, water bottle, fruit basket etc, and Sri. P.T. Mathew (late) arranged labourers and searched the compound well for any abnormal object underneath the water and felt something lying at the bottom of the well. The search of the well was taken as per the instructions of Sri. K.T. Michael, SP, CBCID, Kottayam.

27. Thereafter, Sri. V.V. Augustine approached CI, Kottayam West, who was on duty near General Hospital, Kottayam and informed him about the incident. In response to a telephone call received from Sri. V.V. Augustine, Additional Sub Inspector, at 10.20 AM the Fire Force staff with all amenities under the supervision of the FSO and Divisional Fire Officer visited the Convent and traced the dead body of Sister Abhaya in it and they fished out the same from the well with the aid of a chair knot. The dead body was then laid besides the well.

Thereafter, the Fire Force handed over the dead body to Sri. V. V. Augustine on request and they returned to the Fire Station. The Fire Force was informed by the complainant, Sister Lessieux that Sister Abhaya fell into the well when she went for switching on the pump, which reveals that as early as on 27/03/1992, the convent authorities were not forthcoming and wanted to hush up the case and prevent the Investigating Agencies from arriving at the truth, as revealed from the General Diary of the Fire Station and spoken by Sri. Gopinathan Pillai and Sri. Vamadevan, the Fire Force staff. The dead body of Sister Abhaya was handed over to Sri. V.V. Augustine, Additional Sub Inspector by the Fire Force staff. Sri. V.V. Augustine recorded the First Information Statement and registered the FIR as Crime No. 187/92 u/s 174 CrPC and took up investigation. The FIR in this case was registered at 9.15 hours on 27/03/1992.

28. Prosecution evidence:

From the side of prosecution, PWs 1 to 49 were examined and Exts. P1 to P108 were marked.

29. On closure of the prosecution evidence, the accused were afforded a fair and proper opportunity of explaining the circumstances which appear against them, u/s 313 1(b) of the Code of Criminal Procedure, (For short "CrPC"). They denied all the incriminating circumstances against them.

30. A1 filed a written statement u/s 313 (5) CrPC running into seven pages, expatiating, among other things, that he was arrested on 18/11/2008 by PW49, without any evidence, and that he never ever had visited the St.Pius X Convent Hostel, Kottayam. PW6 and PW3 are witnesses planted by the CBI at the instance of PW24 (Jomon Puthenpurackal) for fabricating false evidence,

and to be used as a red herring to transform the direction of the case.

31. The present charge has been levelled against him by PW49 solely with the intention of saving the prestige of the CBI and the charges in the final report are nothing but the reproduction of the baseless allegations levelled against him by PW24 and hollow rumours spread by PW24 who had been reprimanded by A1 when PW24 had started working against the official youth group of the diocese. At that point of time, A1 claimed to be the youth chaplain in the Diocese of Kottayam. These circumstances created a grave enmity towards him in the mind of PW24 and PW24 used the death of Sister Abhaya as an opportunity to hound him and settle scores with him. His contentions and allegations will be met at the appropriate stages of this judgment.

32. A3 filed a written statement spread over eight pages, stating that Sister Abhaya was a junior sister in 1992 in their religious congregation. As her mother was suffering from mental illness Sister Abhaya was under pressure and suffering from psychological depression. She came from an economically weak family and she was not good enough in her studies and these could be the reasons for her suicide. She further claimed that at any point of time in the night, any inmate of the hostel could to come down to the dining hall on the ground floor without any obstruction and without any permission from her. She stated that she had been subjected to a medical examination without her consent. She alleged that the statement claimed to have been given by her to the doctors before her examination was not given by her. She was arrested by the CBI without any evidence.

33. Heard the learned Public Prosecutor and the learned counsel for the accused persons.

34. Finding no scope for acquittal u/s 232 CrPC, the accused were called upon to enter on their defence evidence. As per the request of accused No. 3 summons was sent to SHO, Piravam, and he presented himself in court on 16/11/2020. However, learned counsel for A3 filed a memo stating that he does not intent to examine this defence witness. Hence, the defence evidence was closed on 16/11/2020. Exts. D1 to D31 were marked. Exts.C1 to C6 were also marked. As per the order in CMP Nos 114/2020 and 118/2020, Ext D32 and Ext.33 series were marked on 10/12/2020.

35. Thereafter, both sides were heard and the case was reserved for judgment.

36. Points for consideration:-

- 1.1 Are there injuries on the body of the deceased sister Abhaya ?
- 1.2. If so, were they present before the body was submerged?, or are the injuries due to falling in the water and striking against some hard object under water or enroute ?
- 1.3. Are there any fractures, or dislocation of bones, or foreign matters in the body?
- 1.4. Whether it is a case of death by haemorrhage?, or death by drowning or death by a combination of subarachnoid hemorrhage and drowning?
- 1.5. Was the deceased of sound mind at the point of her death? Did she have a suicidal tendency?
- 1.6. Was the death of Sister Abhaya accidental, suicidal, or homicidal?

- (2). Whether A1 committed house trespassing with the assistance of A3 on 26/03/1992 by entering into St. Pius X Convent Hostel, Kottayam, used as a human dwelling, and remained in the cellar floor, in order to commit the murder of Sister Abhaya, who had seen A1 and A3 under suspicious circumstances in the said cellar floor?
- (3). In furtherance of the common intention to kill Sister Abhaya, in the early hours of 27/03/1992, did A1 and A3 inflict injuries on the rear side and the middle of the head of the deceased Sister Abhaya with a blunt weapon (കൈക്കോടലി) with an intention to kill her?
- (4). Did the accused in furtherance of their common intention, cause the death of Sister

Abhaya, in St. Pius X Convent Hostel, Kottayam, in the early hours of 27/3/1992 ?

- (5). Did the accused in furtherance of their common intention, knowing that the offence of murder has been committed, cause evidence of the said offence to disappear, in order to screen the offenders from legal punishment?
- (6). What, if any, are the offences committed by the accused?
- (7). If yes ,what shall be the sentence ?

37. Point No. 1.1:-

At about 1.05 PM on 27/03/1992, the body of Sister Abhaya was examined by Dr. C. Radhakrishnan, PW33, for the purpose of autopsy. He recorded the following antemortem injuries:-

1. Lacerated wound 1.8 x 0.5 x 0.2 cm, oblique, on the right side of the back of head, the upper

end being 3 cm above and 3 cm behind the top of ear.

2. Lacerated wound 1.5 x 0.5 x 0.3 cm, oblique, on the head 2.5 cm behind injury No.1.
3. Graze abrasion 4 x 3 cm, oblique on the right side of the back of trunk, 9 cm below the lower end of shoulder blade with an upward and inward direction.
4. Abrasion 1.5 x 1 cm, 2 cm below injury No.3.
5. Multiple graze abrasions over an area 12 x 6 cm on the outer aspect of right buttock, the upper boarder being 4 cm below iliac crest. The direction of the grazes were upwards and inwards.
6. On dissection the scalp tissues over an area 2 x 2 cm on the middle of the top of head were found contused. The scalp tissues over an

area 7 x 5 cm around injuries Nos. 1 and 2 were also found contused. The skull was intact. Brain showed localised subarachnoid haemorrhage underneath these contused regions. No sign of increased intracranial tension.

38. In addition to that, PW7, Varghese Chacko, was a photographer during 1992, in Kottayam Venus Studio. He took photographs of the dead body of Sister Abhaya as per the instruction of Kottayam West Police. Mr. Varghese Chacko while taking the photographs, noticed nail mark injuries on either side of the neck of the dead body of Sister Abhaya. Those injuries were easily visible in the photographs which were captured using his Minolta 3570 Zoom Lens Camera.

39. Though PW7 was cross examined at length, but defence could not fish out any material to discredit his evidence in this regard, and he testified that he took the photographs of nail mark injuries on both sides of the neck. He was able to clarify the situation in which he gave a statement to the police to the effect that he did not photograph the injuries. Photographs of the injuries on the back of the head of the dead body were not captured by him. As per the deposition of PW7, it is luculent that there were injuries on either side of the neck of the deceased Sister Abhaya.

40. The credibility and the truthfulness of the statement of PW7 were fiercely challenged by the learned defence counsel, **Sri. J. Jose**. He attacked the deposition of PW7 on the ground of absence of the negatives of the photographs. It has to be conceded that the negative of a photograph has over the decades of

jurisprudence been considered of paramount significance while accepting the probative value of a photograph. It has been axiomatic that a photograph unsupported by its negative has to be discarded as evidence. This has been the traditional position taken by Indian courts down the decades, and even down the centuries. However, the spectacular rise of the modern technology resulting the production of photographs in cutting edge modes has seriously eroded the significance of the negative while evaluating the probative value of the photograph. Hence the hullabaloo created by the defence over the absence of the negatives need not be taken too seriously. This is particularly so when the prosecution has a specific case that the accused in cahoots with the powers that be systematically destroyed incriminating evidence as part of their efforts to annihilate “ the Abhaya case”.

41. PW7, vividly narrated the sequence of taking the photographs of the late Sister Abhaya on 27/03/1992 at St. Pius X Convent Hostel, Kottayam. As this case originated and developed over the decades and was investigated by the various wings of different Investigating Agencies, PW7 had to subject himself to prolonged questioning on numerous occasions. On all those occasions, he was consistent in his stand and stood his ground despite the pressure of intense and repeated questioning. Due to the efflux of time and the unfortunate intervention of some of the officers in the realm of investigation who turned rogue, vital evidence in this case, appears to have disappeared.

42. PW7's language is plain and explicit and it admits of no doubt as to its semantic import. Therefore, the deposition of the photographer who is able to

identify Ext. P27 series photographs, his evidence in this regard is reliable and trustworthy.

43. In this context, it is apt to address a contention put forward by the learned counsel for A3 **Sri. J. Jose** that PW33, Dr Radhakrishnan, while examining the dead body of Sister Abhaya did not notice the nail mark injuries on either side of the neck of the dead body of Sister Abhaya and thus the evidence of PW7 has to be eschewed on the basis of conflict of evidence of ocular witness and the evidence of medical expert. He cited a decision of the **Hon'ble Supreme Court of India** in **Lakshmi Singh and Ors v State of Bihar :1976(4) SCC 394**, where in the Hon'ble Court disbelieved the prosecution narratives regarding the gravity and magnitude of the injuries as the eye witness claimed that the victim suffered 4-5 lathy blows ,however ,the doctor's evidence shows that the deceased had only one

lacerated wound on the scalp. I am unable to concur with **Sri. J. Jose** because of two reasons :

44. Firstly, there is no conflict between the depositions of PW7 and PW33 regarding this aspect. PW7 categorically and unmistakably deposed about the nail mark injuries on either side of the neck of the dead body of Sister Abhaya, whereas PW33 testified that he did not see any nail mark injuries, that does not mean that there were no nail mark injuries on either side of the neck of the dead body of Sister Abhaya. PW33 might have failed to notice such injuries. The evidence of PW7 will prevail over the evidence of PW33 as PW7 was specifically deputed for capturing the close-up photographs of Sister Abhaya and his chance of noticing such injuries is more than that of PW33.

45. Secondly, there is bound to be much difference

between the perception of a photographer who captures the close – up photographs of the dead body and the perception of a doctor who conducts autopsy in a mortuary surrounded by medical students. This is not a situation in which the eye witnesses say that the accused armed with deadly weapon inflicted fatal injuries to the deceased and that the doctor who conducted the postmortem examination does not notice any such fatal injuries on the dead body of the deceased; he rules out the possibility of the ocular evidence being true, then such ocular evidence may be disbelieved.

46. Here, the situation is extremely different. PW33 was not able to rule out the possibility of such nail mark injuries on either side of the neck of the dead body of Sister Abhaya. Thus, the decision cited in support of the contention of the defence in this regard is not

applicable to this case. The extant law has been declared by the Hon'ble Supreme Court of India in **Abdul Sayeed v. State of M.P, 2010 (10) SCC 259** as follows :

The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis - à - vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

47. The destruction of documents and the causation of the disappearance of the evidence by vested interests is a shockingly grave allegation raised by the

present Investigating Team; the same would receive my considered attention at the appropriate stage. Evaluating the depositions of PW33 and PW7 in conjunction with Ext. P62 postmortem report, it is pellucid that Sister Abhaya suffered six ante-mortem injuries as noted in Ext.P62 and the nail mark injuries on either side of her neck as pointed in the deposition of PW7.

48. Point No 1.2:-

Nail mark injuries as stated by PW7 are injuries which cannot be inflicted while the body is submerged in the water or is enroute towards water.

49. According to PW33, Dr. Radhakrishnan, injury Nos. 1, 2 and 6 could have been caused by the impact on the body by a hard and blunt object. He described the shape of injury Nos. 1 and 2 as oblique. Those injuries may not have been caused while the body was moving

in water. He stated that he cannot rule out the possibility of an assault on the body of Sister Abhaya, prior to its fall into the water and he conceded that any hard and blunt object could have caused injury Nos. 1 and 2. He was displayed a weapon by the Investigating Officer and he opined that injury Nos.1 and 2 could have been caused by a similar weapon. However, PW33 answered in the affirmative to the following question put forward by the learned senior counsel for A1, whether injury Nos. 1 and 2 can be sustained during a fall into the well either accidental or suicidal or by pushing by somebody else by those parts of the body hitting on the sides of the wall of the well while falling into the well? He also opined that injury Nos. 1, 2 and 6 could be caused due to the natural buoyancy of the body.

50. However, this theorizing of PW33 can be taken

only with a pinch of salt because if the body had travelled to a certain depth through the water it means that there is no object to block this movement of the body through the water, and consequently there would be no object for the body to strike against while moving towards the surface of the water due to natural buoyancy, if any. It is not clear what kind of buoyancy the witness has in mind when he speaks of natural buoyancy.

51. The Greek mathematician and physicist, Archimedes was the one who discovered the principle of buoyancy. This took place when Archimedes was comparing the king's gold crown with other substances.

52. During this experiment, Archimedes dropped the crown into the water. The result of this was that a few gold coins sank faster to the bathtub's bottom.

53. Archimedes's Principle remains a fundamental law of physics even today, and is of fundamental importance in fluid mechanics.

54. Most noteworthy, Archimedes's Principle shows the relation between the buoyant force and the displacement of fluid.

55. Archimedes's principle states that when an object gets immersed in a fluid, it experiences apparent weight loss. This apparent loss in weight is equal to the weight of the fluid displaced by it. There are three types of buoyancy :

1. Positive Buoyancy.

This takes place when an object happens to be lighter than the fluid it displaces. Therefore, the object will float. This is because the buoyant force is greater

than the weight of the object. It has to be noted that swimmers always experience a tremendous amount of buoyant force.

2. Negative Buoyancy.

This takes place when an object happens to be denser than the fluid displaced by it. Here the object will sink because its weight happens to be greater than the buoyant force.

3. Neutral Buoyancy.

This takes place when the weight of an object is equal to the fluid it displaces. It may be stated that there is no such thing as “**natural**” buoyancy as deposed by PW33 .

56. It is significant that, he categorically stated in his examination by the 3rd accused that the injuries appearing on the body could not be possible if Sister Abhaya had jumped into the well on her own. He further

added that those injuries are possible if she jumped in to the well or she was dropped in to the well by somebody. The doctor might not have bestowed sufficient care while performing examination or preparing records and his opinion may be based on inadequate, incomplete, or defective examination or lack of complete knowledge. The doctor is a witness of both fact and opinion. However, the inconsistency in the deposition of PW33 in this aspect is glaring.

57. In State of H.P. v. Jai Lal, 2000 KHC 491 : 2000 (2) KLT SN 17 : 1999 (7) SCC 280 the Hon'ble Supreme court of India held :

“The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions

and the data and material furnished which form the basis of his conclusions".

58. The statement of PW33 in this aspect suffers from lack of scientific support and his evidence in this regard was merely an opinion unsupported by any reasons.

59. It is in the light of the evidence provide by PW33 that the statements of PW31 have to be analyzed, evaluated and comprehended.

60. PW31, Dr. V. Kanthaswami, has MBBS, MD, and LLB. He conducted autopsy cases in Ms.Kumari case, Punalur drowning case. He gave expert opinion in Marad case, Koothuparamba firing case, Rajan case etc. In Rajan case, he was cited as a prosecution witness. He was an expert witness before the High Court of Kerala. He visited St. Pius X Convent Hostel, Kottayam. He saw

kitchen and well there. He examined the postmortem report given by Dr. C. Radhakrishnan including detailed notes given by Dr. C. Radhakrishnan.

61. PW31 put forward a dramatically different version and he stated that since injury Nos. 1 and 2 are oblique, they could not have been caused by the impact of the pipes in the well. He opined that there is no chance of sustaining injury Nos. 1, and 2 during the terminal struggle in the water medium. Injury Nos. 1 and 2 are side by side, and they are unlikely to be caused by the process of drowning. He unambiguously stated during in his examination by A3 that injury Nos. 1 and 2 were caused by two strikes. In standing posture head and neck would be straight, but when the body falls into the well the head would take a bend; thus, there is the possibility of injury being caused on the forehead but there is no possibility of injury being caused on the back

of the head. He opined in his examination by A3 that injury Nos. 3 to 5 could have been sustained during the fall by the rubbing of the back of the body against the wall.

62. PW33 fielded a question of the learned Public Prosecutor to the effect whether injury No. 6 can be caused by drowning and he gave a negative answer to that. With respect to injury Nos. 3 to 5, PW33 opined that those injuries could have been caused if the person had herself jumped into the well, or she had been pushed into the well by someone else or she had accidentally fallen in to the well.

63. Though Dr. Radhakrishnan, PW33, occasionally displayed a straddling tendency, his observations which could be interpreted as supportive of the defence often lacked scientific buttress, and it has no

significant bearing on the totality of the evidence and the defence is unable to garner any tangible benefit from it.

64. After analyzing the depositions of PW33 and PW31, and evaluating them in the light of the ante mortem injuries as noted in Ext. P62 postmortem report, it is lucid that injury Nos. 1, 2 and 6 possess a definite characteristic of being caused to the person of Sister Abhaya before her body was submerged .

65. **Point No. 1.3:-**

PW33 stated that he found a fracture on the skull. But he did not notice any foreign matter in the body of Sister Abhaya. His version is commensurate with Ext. P62 postmortem report in this aspect.

66. **Point No. 1.4:-**

Doctors usually find out the cause of death based on medical and postmortem evidence. However,

in some cases, they may require inputs from the investigating officer to clarify their perspectives. In the present case additional information from the investigating officer would have been extremely helpful to the doctors in narrowing down to the exact cause of death, especially when the findings regarding pulmonary edema are equivocal. When there is dysfunction affecting the respiratory centers in the brain oxygen exchange may be compromised or may not take place. In such a situation, there can be extravasation of fluid into the air sacs of the lung (alveoli) from the circulating blood which is neurologically induced.

67. The dysfunction of brain caused by head trauma may not display visible changes as is evident from the testimony of PW31 during his examination of A3 :

Injury Nos. 1, 2 and 6 taken together endanger life എന്നുപറയാനുള്ള കാരണമെന്ത്?

Visible ആയിട്ടുള്ള change അല്ല functional ആയിട്ടുള്ള effect ആണ്, സൂര്യന്റെ ചൂട് ഏൽക്കുമ്പോൾ വിയർക്കും പക്ഷേ സൂര്യരശ്മികൾ നമുക്ക് കാണാൻ കഴിയില്ല. (A). Diffused axonal injury ക്കും post-mortem ൽ നഗ്നനേത്രങ്ങൾ കൊണ്ട് കാണാൻ കഴിയുന്ന signs ഇല്ല.

68. Brain dysfunction produces onset of neurogenic lung edema. Difference axonal injury caused by acceleration or deceleration forces as when put into a well may not always be grossly visible. Under such circumstances, when an unconscious person falls into water, the death can be precipitated or accelerated by drowning. The experts (PW31 and PW33) do not have a difference of opinion on the combination factors

(injury and drowning) that led to the death of Sister Abhaya.

69. A person suffering from such a condition, if dropped into a well can be breathing with entry of some water into the body. But the appearance of froth by entry of water into the lungs of a conscious person can be different from that found when an unconscious person drowns and the characteristic fine white lathery froth was typically absent in the present case . Both the medical experts have opined that the injuries on the head could be caused by the weapon. They have also opined that subarachnoid haemorrhage can cause unconsciousness. There need not be severe dysfunction of brain to cause unconsciousness or pulmonary edema and these dysfunctions are not visible as any function or dysfunction stops with death of the person.

70. PW33, Dr. Radhakrishnan, stated during his examination in court that the cause of death was due to the combined effect of subarachnoid haemorrhage and asphyxia in drowning. Both PW31 and PW33 have stated that the possibility of an assault prior to drowning cannot be excluded and that a hard and blunt object can produce injuries to the head which can affect the brain. They have also stated that the injury Nos. 1, 2 and 6 could have resulted from three independent acts.

71. PW31, Dr. Kanthaswamy, the illustrious Medical Expert, stated that injury Nos. 1 and 2 require two separate acts. Injury Nos. 3 to 5 can be caused when the body slides down the inner edge of the ring of the wall with the feet down. It can also be caused while the person is in an unconscious state, whatever be the manner or circumstances of such an act.

72. PW31 was also of the opinion that cause of death was due to the combined effect of drowning and head injury as the typical signs of drowning were absent. Since pulmonary edema can be seen in case of head injury and also in a case of drowning; two cannot be differentiated each other .

73. PW31 also stated that the injury Nos. 1, 2 and 6 cannot occur in a fall as the injuries are oblique in dispensation. Impact on the concentric rings in the well should cause horizontal injuries and that there were not protruding parts in the well to account for causation of injury Nos. 1 and 2 and that there were no chance for the impact of this part of body with the plastic pipes running down the well.

74. PW31, Dr. Kanthaswamy, further deposed that these injuries are not likely to occur during the terminal

struggle in the water medium and that the possibility of a terminal struggle which is a voluntary response is unlikely in an unconscious person whose volitional activities can be partly affected.

75. PW31, Dr. Kanthaswamy, was of opinion that though it was difficult to clarify independently the injury Nos. 1, 2 and 6 as grievous or simple, in combination they are grievous and sufficient in the ordinary course of nature to cause death.

76. Regarding the manner of death, Dr. Radhakrishnan, PW33, is of opinion that it is unlikely for the injuries to be sustained solely by Sister Abhaya jumping into the well and that it could as well have been caused when her body was put into the well. PW33 opined that death was due to asphyxia, and drowning is a form of asphyxial death, and subarachnoid

haemorrhage, ie bleeding seen on the surface of brain in physical trauma. PW31, Dr. Kanthaswamy, stated that death was due to combination of head injury and drowning.

77. In the light of the above discussion, it can be seen from the evidence of PW31 and PW33, the death of Sister Abhaya was due to the combination of head injury and drowning.

78. **Point No.1.5.** :

To prove this point evidence is forth coming from the depositions of PW1, PW9, PW11, PW14, PW25 and PW32.

79. PW9 deposed that Sister Abhaya was of a very calm temperament .

80. PW14, Prof.Thressiamma, who spent a life

time teaching generations of students at BCM College, Kottayam, were Sister Abhaya read for Pree degree, deposed that sister Abhaya was her student, and thus personally known to her, and that Sister Abhaya was a simple girl, well behaved in all respect.

81. PW11, Achamma, though she turned hostile to the prosecution, admitted that Sister Abhaya was very happy in the days preceding her death . Two weeks before her death, when her parents came to the mess hall of the St.Pius X Convent Hostel, PW11 served grub to them, and at that time, Sister Abhaya presented a Christian devotional song book to PW11. The very crucial and significant statement of PW11 is that on the eve of her death, Sister Abhaya attended a Bible convention at Nagampadam and Sister Abhaya returned at about 8.30 PM along with PW11. At that point of

time, PW11 was not able to find any change in her attitude reflected in her face.

82. PW25, Sister Elisita, corroborated the evidence of PW9 and PW11 and she stated that Sister Abhaya was very smart in all activities and she used to interact with PW25 in a very normal manner. The above said three witnesses were onerous to the prosecution and hence their depositions with respect to the conduct and character of the deceased Sister Abhaya has prime importance; they establish beyond even a shadow of doubt that Sister Abhaya was a pious, smart, calm-natured girl leading a happy and contented life in the Convent, as clearly testified by all the above witnesses who were convent-mates of Sister Abhaya who interacted with her on a daily basis in close manner. .

83. Even more crucial than all of the above, and

daming for the defence, are the depositions of PW32 and PW1 who endeavoured to give all support to the accused and who presented themselves as staunch upholders of the suicide theory.

84. PW32, Sister Sherly's deposition is that Sister Abhaya asked PW32 to wake her up at 4 AM on 27/03/1992 and accordingly, Sister Abhaya was woken up by PW32 and they carried out combine study for 15 minutes. PW1 deposed: "ഏകദേശം 4 മണിക്കു ശേഷം സിസ്റ്റർ അഭയ എന്നെ വിളിച്ചു പഠിക്കാൻ പറഞ്ഞു".

85. A person bent on ending her life, and ending it in the immediate future at that, would not worry about her academic prospects, would not deny herself sleep for the sake of improving her examination performance, and would not devote herself passionately to study, much less engage herself in combined study

with her fellow students. This single fact is sufficient to blow the suicide theory sky high.

86. The upshot of the above discussion is that deceased Sister Abhaya was a very smart, pious, honest, simple, perseverant and punctilious girl, meticulous in all aspects, leading an altruistic life and that it was simply impossible for her to have ended her life on her own as portrayed by the defence.

87. Taking note of the above, it is inevitable to find that this point is proved by the prosecution in favour of them.

88. In view of the considered medical opinion of PW31 and PW33 as stated in point No. 1.4, I find that the cause of death of Sister Abhaya is combination of head injury and drowning.

88 A. Point No.1.6:

Was the death of Sister Abhaya accidental, suicidal, or homicidal?

In view of the findings arrived at in point Nos. 1.1 to 1.5, the death of Sister Abhaya was homicidal.

89. Point Nos. 2 to 5:

These points interpenetrates one another and operates in a swirling combination and hence, I have decided to consider them in a dovetailed manner. The prosecution depends on circumstantial evidence to prove the guilt against the accused. The following are the circumstances relied on by the prosecution:

Circumstance (i) :

Strange and abnormal disturbance in the kitchen work area and in the kitchen wash area of the

St.Pius X Convent Hostel on the morning of 27/3/1992.

Circumstance (ii) :

Solitary presence of A3 in the cellar of the convent on the night of 26/3/1992.

Circumstance (iii) :

The presence of A1 in the St.Pius X Convent Hostel in the night of 26/3/1992.

Circumstance (iv) :

Admission of Accused No 1 .

Circumstance (v) :

Admission of accused No.3.

Circumstance (vi) :

Subsequent conduct of Accused No 1.

Circumstance (vii) :

Subsequent conduct of accused No 3 who utilised medical intervention to shape artificially her body as that of a virgin.

Circumstance (viii) :

Failure of the accused to explain the incriminating circumstances facilitating the use of denials of established facts as incriminating evidence against them.

Circumstance (ix) :

Bizarre versions put forward by the accused with respect to the cause of death of the deceased vis-a-vis whether in the theorizing of the death of Abhaya, suicide is correct?

Circumstance (x) :

Destruction of vital material objects and records.

90. Circumstance (i) :

Let me begin by addressing a proposition of law poised by the learned counsel for A3, **Sri. J. Jose** that the court needs to apply the principle of benefit of doubt in the appreciation of evidence in respect of basic or primary facts. I am unable to accept such a proposition as

the authoritative pronouncement of the **Constitution Bench** of the Hon'ble Supreme Court of India, in **M.G.Agarwal v. State of Maharashtra (AIR 1963 SC 200)** is otherwise.

91. In the appreciation of evidence in respect of basic or primary facts, there is no scope for the application of the doctrine of benefits of doubt, as the Court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to an inference of the guilt of the accused persons or not, and in dealing with this aspect of the problem the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.

92. It is in the light of this cardinal principle of criminal jurisprudence that the evidence in this case has to be appreciated.

93. To establish that there was strange and abnormal disturbances in the kitchen work area and in the kitchen wash area of the St. Pius X Convent Hostel on the morning of 27/03/1992, the prosecution cited as many as nine witnesses from the convent as well as a slew of witnesses other than the inmates of the St. Pius X Convent Hostel. However, none of the witnesses from the convent who were examined supported the prosecution in this regard. Though the prosecution cited 23 witnesses, prosecution did not opt to examine all of them owing to the reason that all the inmates of the St.Pius X Convent Hostel cited as witnesses had turned against the prosecution.

94. Nevertheless, PW11, Achamma, though declared hostile to the prosecution, deposed that some disturbances were noticed by her in the kitchen of the St. Pius X Convent Hostel on the morning of 27/03/1992. She pointed out that there was an electric light burning near the work area and the door which had been closed by her from inside the previous night, was in a shut position, latched from outside. In between the two leaves of the door, a nun's veil was seen caught; an axe was found lying on the kitchen floor.

95. Further, she admitted in her examination by the learned Public Prosecutor that she gave a statement to the police to the effect that when she saw a slipper near the fridge, she enquired whether it was owned by sisters with Reji (CW33), and when PW11 rushed to the work area Achamma saw the door was being pulled by Thressiamma; when Thressiamma informed that it was

difficult to open the door, PW11 directed Thressiamma to try once more; at once they informed that a nun's veil was there hanging there and she found that near the veil a slipper was lying. Further, she testified that she gave a true statement before the police. She was cross-examined by the defence counsel thoroughly but nothing was brought out through her cross-examination to the effect that she did not give a statement before the police.

96. I am not unmindful of the taboo provided u/s 162 CrPC. Whatever statement is given by a witness to the police can only be used for contradicting his version. Hence, but for this exception, such statement has no value at all. To that extent, I fully concur with the argument put forward by the learned counsel appearing on behalf of **A3, Sri. J. Jose**. However, in this case there is a paradigm shift.

97. Here, the witness not only conceded that she had given such statement to the police but also subsequently she categorically made it clear that what she had stated to the police is the truth. In such a situation, whatever things are now brought out through her examination before the court and which are subsequently made clear by the same witness as truthful cease to lie within the ambit of the case diary of the police. The same is a statement given in Court and hence its very nature undergoes an extremely significant transformation and it is no longer hit by section 162 CrPC. When this witness who is on oath deposes before the Court that she had given a particular statement to the police and later she affirms such a statement is completely true, that makes a sea of difference.

98. Here, she affirms in box that what she had stated to the police as she narrated just now is the truth

that means, she vouch safe as her statement as true and it is a substantive version of that witness. Hence, I cannot subscribe to the contention of the defence side that the statement of PW11 is hit by Sec.162 CrPC.

99. Though PW11 was declared hostile, the evidence of the hostile witness cannot be discarded, as the relevant part of the statement is admissible; corroborated part of evidence of hostile witness regarding the commission of offence is admissible.

100. In **State of U. P. v. Ramesh Prasad Misra & Anr;** AIR 1996 SC 2766, the Hon'ble Supreme Court of India held that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is

consistent with the case of the prosecution or defence can be relied upon.

101. In *Sukhdev Yadav and Others v. State of Bihar*; AIR 2001 SC 3678, the Hon'ble Supreme Court of India held as under:

"It is indeed necessary however to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment, sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness box details out an exaggerated account."

102. A similar view has been reiterated in *Appabhai and Another v. State of Gujarat*; AIR 1988 SC

696, wherein the Hon'ble Supreme Court of India has cautioned the Courts below not to give undue importance to minor discrepancies which do not shake the basic version of the prosecution case. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness for the reason that witnesses now a days go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. However, the Courts should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

103. In **Sucha Singh v. State of Punjab**; AIR 2003 SC 3617, the Hon'ble Supreme Court of India, had taken note of its various earlier judgments and held that even if major portion of the evidence is

found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the Court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. **The maxim falsus in uno falsus in omnibus**(false in one thing, false in everything) has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, truth is the main.

104. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the Court considers the same to be insufficient or unworthy of reliance it does not necessarily follow as a matter of

law that it must be disregarded in all respects as well. There is no justification to reject the evidence of PW11 when she says to the effect that there was a water bottle lying near the fridge and the same was noticed by her only after the same was pointed to by Sister Sherly. In addition to that, PW11 categorically stated that the position of the refrigerator, the slippers, and other articles found near the kitchen wash area were protected in the same state until the police had reached the St. Pius X Convent Hostel.

105. PW4, M.M. Thomas, reached the St. Pius X Convent Hostel at about 8.30 AM along with V.V. Augustin and Skaria and based on the information that some important matters were there in the kitchen, he went to the kitchen and found a hand axe lying near a corner of the kitchen. He found that the door of the refrigerator was open. A bottle of water was lying on the

floor near the refrigerator; a nun's veil was there in between the two leaves of the back door of the kitchen. A pair of slippers was there, one of the pair was located in one place and the other was located in another place.

106. PW9, Nisha Rani, was a PDC student and an inmate of the hostel at that time; she stated that PW26 told her that Abhaya was missing, her veil and her foot wear were scattered in the kitchen.

107. PW26 did not support the prosecution very much like the other inmates of the convent. However, PW26 deposed that she saw a nun's veil in the work area and the kitchen door was in a shut position, and latched from outside. The previous statement of PW26 in this regard is by and large corroborated by the deposition of PW9.

108. PW24, Jomon Puthenpurackal, claims to be a social worker; according to him, he visited the St.Pius X Convent Hostel on 27/03/1992, after getting the information of the death of a nun under mysterious circumstances in the St.Pius X Convent Hostel. According to him, while he visited the Convent, he was taken to the kitchen by the Mother Superior Sister Lessieux. She told him that at about 4 AM, Sister Abhaya went to the kitchen for drinking water. Thereafter, no one saw her alive.

109. PW24 further claimed that the mother superior had stated that in the kitchen one of a pair of slippers was there near the fridge, and the other of the pair was there near the entrance of the kitchen, a water bottle was lying on the kitchen floor, a veil was hanging stuck between the two leaves of the kitchen door; a fruit basket was lying upside down on the floor and an axe

was also there. But the above said depositions of PW24 were objected to by the learned counsel for the defence on the ground that those statements of PW24 are based on hearsay evidence. The above statements were deposed by PW24 claiming that he got the information from the Mother Superior Sister Lessieux.

110. Taking into account Section 60 of the Evidence Act read with the definition of 'fact' u/s 3 of the Evidence Act, the oral evidence must be direct. Hence, the repetitions of the statement of the Mother Superior by PW24 in court was made by PW24 without direct knowledge of that fact. Hence, this is hearsay, and the same has to be rejected because of its inherent untrustworthiness, on account of absence of oath and cross-examination.

111. However, in his examination by A1, PW24 emphatically stated that on 27/03/1992, he found a fridge, a basket and an axe, the last two of these in upside down position in the kitchen. Defence disputed his credibility and stated that he did not give such a statement before the CBI.

112. In the light of the above evidence of PW4, PW9, PW11, and PW24, the prosecution is seen to have proved this circumstance.

113. Circumstance(ii):

To prove that A3 was alone in the cellar portion of the St.Pius X Convent Hostel in the night of 26/03/1992, prosecution cited CW21 and CW32. However, positive evidence is forthcoming only from PW9 and PW11.

114. PW9 stated that A3 was alone in the ground floor and she noticed the same while PW9 was going to the kitchen for dining purpose.

115. PW11 deposed in her examination by the learned Public Prosecutor after getting permission from the court as she was declared hostile, that at around 9.30 - 10 PM on 26/03/1992, she closed all the doors and switched off all the lights in the kitchen area and in the passages. However, she noticed A3 was sitting alone in her room and was reading. From the evidence of PW9 and PW11, though they were cross-examined by the defence, they could not elicit anything contrary to the evidence given by PW9 and PW11 to the effect that A3 was alone in the night of 26/03/1992 in the cellar portion of the St. Pius X Convent Hostel.

116. Circumstance (iii):

To prove this crucial circumstance against accused No. 1, the prosecution cited an unusual eyewitness, PW3, Raju @ Adacka Raju, who was a thief by profession. He testified that he entered into the campus of the St. Pius X Convent Hostel and climbed on to the terrace of the convent building as part of his successful attempt to commit theft in the convent where Sister Abhaya died. He went there on three occasions for stealing the copper plates positioned on the lightening arrester on the terrace. His modes operandi was that he would arrive at the rear side of the St. Pius X Convent Hostel, climb the coco tree behind the compound wall of the convent, and scale down the compound wall and thus enter the campus of the convent, and then climb up the flight of steps to the terrace of the building, remove the copper plate from the lightening arrester by

breaking the plate by folding it 2 - 3 times and thereafter, he would manage to come down with the copper weighing approximate 6 kg and he would hide the stolen property in a drainage channel, about 1 - 1.5 km away (page No. 26 of the deposition of PW3). Thereafter, in order to kill time he would lie on the veranda of Govt. Hospital, Kottayam, and after whiling away the time until it was between 6 and 7 am, he would go to the *Akri* shop and sell the stolen property.

117. On the third occasion, when he went to the St. Pius X Convent Hostel for stealing the copper plate, he found that two men were approaching the staircase, with the aid of a torch light; according to PW3 one of them was A1 and PW3 was able to identify A1 in the accused dock. PW3 stated 'കോട്ടൂരച്ചനെ എനിക്കറിയാം'. (page No. 4 of the deposition). PW3 may have been a thief, but he was and is an honest man, a simple person

without the need to dissemble, a human being who became a professional thief by the force of circumstances, but a speaker of truth nonetheless

118. A high octane challenge was mounted by the defence on the evidentiary value of the deposition of PW3 alleging that PW3 is not a trustworthy witness as he is a man of no integrity, being a thief by profession, and his version cannot be believable and his revelations show his tainted character and to top it off, he is a planted witness.

119. The defence version appears to be genuine and acceptable at first sight. However, on a close scrutiny of the deposition of PW3 as fore grounded against the totality of the evidence adduced by the prosecution, this court is driven to the conclusion that the deposition of PW3 demands to be carefully analysed, evaluated, and

comprehended, especially in the light of the evidence given by PW8, whose testimony will be discussed in detail while appreciating the evidence, at the appropriate places.

120. It is highly significant that the **Hon'ble Supreme Court of India in State of Uttar Pradesh v. Farith Khan;2005 (9) SCC 103** held thus:

The evidence of a witness who had got a criminal background is to be viewed with caution. But if such evidence gets sufficient corroboration with the evidence of other witnesses, there is nothing wrong in accepting such evidence. Whether this witness was really an eye witness or not is the crucial question. If his presence could not be doubted and if he deposed that he had seen the incident, the court shall not feel shy in accepting his evidence.

121. In this context it is relevant that PW11, Achamma, the convent cook, deposed that Fathers were in the habit of visiting the St. Pius X Convent Hostel and that PW11 would on such occasions be asked to cook sumptuous dishes to be served to the priests. The deposition of PW3 is that he found A1 in the St.Pius X Convent Hostel on the night of 26/27-03-1992. The deposition of PW11 is that St.Pius X Convent Hostel was guarded by dogs but the baffling question why the dogs did not bark on the night of 26/27-3-1992 finds the answer in the explanation of PW11 that the dogs do not bark on seeing the regular visitors to the St.Pius X Convent Hostel.

122. The defence highlighted certain contradictions in the evidence of PW3, they were marked as Exts.D1 to D5. The effort of the defence was to use these contradictions as a ladder to reach the conclusion that

PW3 is a witness planted by the CBI. Demeanour of PW3 in the box while giving evidence is highly relevant in this context.

123. It is noteworthy that PW3 was subjected to continuous, severe and grueling cross-examination by two lawyers for two long days, but he, uneducated and untrained though he was, stood his ground.

124. The learned senior counsel for the defence **Sri. B. Raman Pillai** contended that in the light of Exts.D1 to D5 contradictions, it can be seen that PW3 was planted by the prosecution to malign the accused persons.

125. Ext.D1 is his previous statement recorded by CBI and is as follows :

“I committed theft on the terrace of that building for two days continuously and on the third day, I found two

persons standing on terrace and watching the nearby areas with the help of torches”.

126. The above said statement was recorded by R.K.Agarwal, DySP, CBI/SER.II/New Delhi. PW3's substantive statement before this court is that he committed theft at the convent on three days; but he explained through his deposition that his plan of action for theft was that he would usually ensure that there were intervals between the days on which he committed theft. PW3 did not deviate from his previous statement that he committed theft on the terrace of that building and on the third occasion, he found two persons standing on the terrace and observing the nearby areas with the help of torch light.

127. PW3 does not have even elementary education and his previous statement was recorded in English.

Considering his background, it is possible to see that he had narrated his modus vivendi to the Investigating Officer while recording his statement to the effect that he went to the Convent for three days for the purpose of stealing. The true account of the substantive statement can be seen from the previous statement as well. A minor deviation is that in his previous statement the word “continuously” was used. It might be an innocuous mistake that crept into the statement of PW3 while his statement in Malayalam was translated and recorded in English. From this, it is discernible that his version and his previous statement with respect to Ext.D1 is substantially one and the same.

128. Exts.D2 and D3 are the portions of the statement of PW3 recorded u/s 164(5) CrPC by the learned Magistrate. His usual timings of theft have been recorded in Ext.D2, as 2 - 2.30 AM and in Ext.D3 as 1

AM - 1.30 AM. There is a subtle but significant difference between the timing of theft and the time of arrival at the site of theft. The latter was 2 AM – 2.30 AM while the former was 3 AM - 3.30 AM. Defence appears to have confused the former and the later and thus highlighted before this court the contradiction marked as Ext D2, which on close scrutiny, analysis and evaluation is not a contradiction at all.

129. From his deposition, it is clear that his modes operandi of theft was that after watching the second show, he would have coffee from a petty shop and while everyone was past asleep, he would set out on his thieving mission. In the light of this explanation of PW3, I am unable to consider Exts.D2 and D3 as significant contradictions capable of shaking the credibility of the deposition of PW3.

130. Ext.D4 is the previous statement of PW3, recorded by Sri. R.K.Agarwal, DySP, CBI wherein it is stated that PW3 entered in the campus of St. Pius Convent Hostel around 1.30 in the night by leaping over the compound wall of the convent on the rear side, and remained in the convent compound for almost one hour. His substantive statement before this Court is that he would enter into the convent compound around 3.30 AM; he believed that at that time the inmates would be in sound sleep. His explanation was that he had stated before R.K.Agarwal, DySP, the time of his theft attempt as 3 AM – 3.30 AM. This statement is also recorded in English. So, there is a possibility of a minor slip creeping into the statement.

131. Therefore, this contradiction is not at all material to consider disbelieving the truthfulness of the statement given by PW3, who is especially an illiterate

witness deposing before the Court after 27 years of the occurrence. Ext.D5 is a contradiction marked on behalf of A1.

132. The gist of the previous statement is that while he was trying to enter into the coco tree for climbing to the compound wall of the Convent, he saw two persons near the staircase with torch light, whereas, the substantive statement of PW3 before this court is exactly the same, there is no deviation from the previous statement. He stated before this Court that he did not get any chance to climb on to the coco tree. There is no contradiction between the previous statement marked as Ext.D5, and the substantive statement of PW3 as in the first he stated that he was **attempting to climb the coco tree**; that does not mean that he actually had climbed on the tree. He made an attempt to climb on the tree but he did not complete the process of climbing on the tree.

Absolutely, there is no contradiction in the contradiction marked as Ext D5.

133. The entire evidence of PW3 can be divided into three distinct but inter related stages :

- (i) his previous conduct before theft,
- (ii) subsequent conduct after the theft, and
- (iii) consequence of theft, particularly committed in the St. Pius X Convent Hostel.

134. For an effective evaluation of his evidence, let me atomise his version with respect to the steps that he took as part of the preparation for theft.

135. As I have already explained, stage one consisted of watching the movie in Abhilash theatre, Kottayam, having coffee in way side shop, whiling away

the time if necessary, arriving at the site of the theft, and committing the theft.

136. Stage two consisted of taking the stolen property to place approximately 1-1.5 km away and hiding the same, in a drainage channel spending time on the veranda of the General Hospital, Kottayam, retrieving the stolen property and selling it to PW8.

137. Stage three comprised being taken into custody by the police, being kept in custody for 58 days, withstanding the pressure to make a confession, resisting the offers, and facing more than 40 false criminal cases.

138. On morning at about 8 AM, he would dispose of the stolen property at the shop of PW8. PW8, Shameer, corroborated the version of PW3 that PW8 received the items from PW3. The evidence of PW3 is supported by PW20, P.T. Jacob, retired DySP, who

deposed before this Court that he went along with Inspector Sasidharan for enquiring about PW3 who was accused in the theft of the copper plate positioned on lightening arrester at the St. Pius X Convent Hostel. Most interestingly, PW20 was not cross-examined by the defence. His evidence corroborates the evidence of PW3 that PW3 carried out theft at the St. Pius X Convent Hostel on the night of 26/27-3-1992.

139. The evidence of PW8 corroborates the version of PW3 that PW3 used to sell water meters and copper plate to PW8's shop. PW8 testified that the last transaction of PW3 with him was on the day of the death of Sister Abhaya. Usually, the father of PW8 and his brother would receive articles from the sellers including PW3. One day, police came to the shop of PW8 along with one Babu, an accused from Mavelikkara, and took a calculator and a torch light from the roof of the shop of

PW8 and made it appear that the recovery has been effected as per the information provided by the accused, Babu. Thereafter, his shop was raided by the Crime Branch, Kottayam, and the team recovered lightening arresters made of copper which bearing the representations of the sun.

140. In that incident, PW8 was taken into custody and asked about the person who had given the copper to PW8. When he disclosed the name of Adacka Raju, PW8 was taken into Police Station and retained there. He categorically stated that on three occasions PW3 had sold copper to him, and that the transactions were on the last days of March, 1992. He also admitted that PW3 had sold him copper on three occasions, and that between two successive occasions there would be usually a gap of two days. PW8 was tortured by the police for two days and his brother was tortured by the police for six days in

custody. The then DySP Crime Branch, I.C. Thampan, repeatedly hit his brother stating that his brother should say that Adacka Raju committed the murder of Sister Abhaya.

141. At that time, his brother fell unconscious and he was taken by the police to General hospital, Kottayam, where medical aid was given in the name of another person. These activities were carried out by the police at the instance of Superintendent of Police, Sri. K.T. Michael and as per the demand of Sri. K.T. Michael, the father of PW8 handed over 20 water meters and 20 Kg of copper. Those articles were purchased by his father from Shennay Company and handed over to Sub Inspector of Police, P.S. John. That was for arranging a supposed recovery by Adacka Raju and 40 criminal cases were registered against Adacka Raju (PW3).

142. PW3 was convicted in two cases on the strength of the deposition of PW8 that the recovery of stolen property was affected from his shop. However, PW8 did not identify the material objects before the court in all other cases; hence PW3 was acquitted. In this regard, Ext.P106 series judgments are crucial, wherein, it is stated that PW3 is acquitted in all other cases by the learned Judicial First Class Magistrate-I, Kottayam, in 1992 wherein, it is also stated that PW8 was examined as PW4 and in all the cases, DySP, Sri. K. Samuel was the Investigating Officer.

143. From these judgments, it is clear that there was the presence of strange interest and the mysterious influence of Sri. K. Samuel, DySP in the matter. There is vital evidence in the case at hand to demonstrate beyond all reasonable doubt the hyperactive role of DySP Sri. K. Samuel in the fabricating of documents, in the

destroying of documents, in the concocting of evidence, in the influencing of witnesses with a view to transform completely the direction of the case and falsely culminate the case in the artificial conclusion of the “unnatural death” of the unfortunate victim, and a comprehensive evaluation of the same will be carried out later at the appropriate stage of this judgment.

144. The main take away of the present discussion with respect to the evidence of PW3, PW8 and PW20, is that I find that the contradictions marked as Exts.D1 to D5 and supposed omissions in the evidence of PW3 completely fail to affect detrimentally the credibility of PW3 as a witness in this case. This conclusion is buttressed by the land mark judgment of the **Hon’ble Supreme Court of India. in Tahasildar Singh v. State of U.P; AIR 1959 SC 1012.**

145. The learned Public Prosecutor Sri. Navas marshalled to his aid a decision of **the Hon'ble Supreme Court of India in State of Karnataka v. Suvarnama and another; 2015 KHC 1194**. In that case the Hon'ble Court held that much weight cannot be given to minor discrepancies which are bound to occur on account of difference in perception, loss of memory and other invariable factors. The date of occurrence in this case is 27/03/1992; the first statement given by PW3 is on 11/07/2007 before R.K. Agarwal DySP, CBI; second statement is on 20/11/2008 before Abdul Azeez, CBI Inspector; and his 164 CrPC statement was recorded by the learned Magistrate on 01/12/2008 and PW3 adduced evidence before this Court on 29/08/2019.

146. Considering the long delay between the occurrence, recording of statements and giving of

evidence before the Court, minor discrepancies deserve to be ignored.

147. His demeanor during his examination by the defence, of showing a sign by rotating his right hand near his right ear is significant and speaks volumes; from this gesture, I comprehend his inability to recollect the statement given by him to the Magistrate. He was examined before this court on 29th August 2019, and the alleged incident took place on 27/03/1992, 27 long years have elapsed since then. So, mathematical precision and exact replication cannot be expected in the deposition of a rustic witness who did not complete even elementary education,

148. The evidence given by PW3 corroborates excellently with the evidence given by PW8. Considering the circumstances of this case, I believe that the

deposition given by PW3 is true and his presence at the relevant time cannot be doubted. So, the prosecution is able to prove the presence of A1 in the St. Pius X Convent on the night of 26/27-03-1992, especially between 4 AM and 5 AM on 27/03/1992.

149. The learned counsel for accused No 3, **Sri. J. Jose** relied on the decision of **the Hon'ble Supreme Court of India** reported in **Sunil Kumar Sambhudayal Gupta and Ors Vs State of Maharashtra ; 2010 (13) SCC 657** and submitted that while appreciating the evidence, the court has to take into consideration whether the contradictions / omissions had been of such magnitude that they may materially affect the trial.

150. It has to be conceded that the learned counsel has indeed brought to the attention of this court a dictum

which is very much applicable to the case at hand as to any criminal case. Certainly if contradictions / omissions are present in a deposition, and the contradictions / omissions are significant and substantial, they are bound to have a debilitating effect on the deposition as a whole. The matter to be decided is whether the marked contradictions and omissions possess the necessary magnitude to impact seriously in a negative manner the worth of the deposition of PW3. This court has carefully considered the matter and meticulously evaluated the said magnitude and arrives at the firm conclusion that the said magnitude is not sufficient to reduce significantly the value of the deposition of PW3.

151. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier

as held by the Hon'ble Supreme Court of India in **Sunil Kumar's case** .

152. Placing reliance on the decision in **Rai Sandeep v. State of NCT of Delhi (AIR 2012 SC 3157)**, **Shri. J. Jose**, the learned counsel for A3 contended that if the standards prescribed in the decision is followed, the court can act upon the evidence of a solitary witness to enter into a verdict of guilt only when the court feels that the witness is of a sterling quality. In this case, PW3 has prevaricated from various previous statements made by him, while giving evidence in the court, is a thief by profession and certainly does not possess high moral fibre, the learned counsel submitted.

153. In **Rai Sandeep case**, the Hon'ble Supreme Court of India held that a person can be said to be a witness of sterling quality only if there is consistency of

statement right from the starting point till end, and that he should be in a position to withstand the cross-examination of any length and strain and that his evidence should not give room for any doubt as to the factum of occurrence, the person involved and the sequence of events. The court further held that the standard of evidence to be tested is as in the case of circumstantial evidence as to missing link etc. In that case, **the Hon'ble Supreme Court of India** was considering the evidence of a prosecutrix in a gang rape case where her version was not supported by other oral as well as forensic evidence. When the witness deposed in court that she and the assailants wiped of their private parts with a particular cloth after the commission of the offence of rape, the chemical examination revealed no semblance of semen in the cloth.

154. As has already been observed in this judgment, the evidence given by PW3 displays a high degree of internal consistency and an equally high degree of external correlation, and this court is driven to the conclusion that whether or not the witness possesses sterling quality, it is beyond debate that the evidence given by him possesses sterling quality.

155. The evidence of PW3 as a whole has consistency in material particulars, and is capable of inspiring confidence as his substantive statement before this Court is that on all the three occasions when he carried out his thieving operation, he entered into the St. Pius X Convent Hostel compound between 3 AM and 3.30 AM but on the last occasion, he was compelled to wait outside the compound, watching the movement of the two men which made him be there till the sounding of the siren at 5 AM.

156. PW3 was taken by the Crime branch, Kottayam, into custody from Ramakkalmedu, Idukki District, and he was kept in Crime Branch Station of Eerayilkadavu, Kottayam for 58 days. He was subjected to inhuman torture to extract a confession from him to the effect that PW3 had committed the murder of Sister Abhaya. PW3 stood his ground and did not budge even an inch, where upon he was offered a substantial monetary reward and a job for his wife and the meeting of the educational expenses of his children and a house to live in, but he did not succumb to these blandishments.

157. I can think of no better way of wrapping up this discussion than by quoting from the judgment of Hon'ble the Apex Court **in State of U.P. Vs. M. K. Anthony (AIR 1985 SC 48):**

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance

to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. It is the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate Court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless there are reasons weighty and formidable it would not be proof to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and

reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the Trial Court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible” (emphasis added).

158. From the evidence of PW3, it can be established beyond all doubt that there was the presence of A1 in St. Pius X Convent Hostel, on the night of 26/27-3-1992 and no further proof is required in this matter and this conduct of A1 is sufficient to destroy completely the presumption of innocence of A1.

159. Circumstance(iv):

To prove this circumstance against A1, prosecution heavily relied on the deposition of PW6. Before I come to that I have to address the contention raised by the learned senior counsel appearing on behalf of A1, **Sri. B. Raman Pillai**. He vehemently contended that PW6 is a planted witness and that he is not a qualified person as may justify the inference that accused No.1 could repose confidence in him and that A1 never had any relation with him at any point of time in his life;

that A1 and PW6 are absolute strangers. Hence, there is no chance or opportunity for A1 to divulge an extra-judicial confession to PW6. In such a situation, the authoritative pronouncement is against the prosecution, so contended he .

160. To buttress his contention, he relied on the following decisions of **the Hon'ble Supreme Court of India:**

Mulak Raj and Others v. State of Haryana; (1996) 7 SCC 308, Pancho v. State of Haryana; (2011) 10 SCC 165, Rahim Beg v. State of U.P.;1972 (3) SCC 759 and Surendra kumar v. State of Punjab; AIR 1999 SC 215.

161. **Sri. B.Raman Pillai** contended that the alleged crime occurred in the year 1992 and the alleged extra judicial confession was made before PW6 by A1 in the

year 2008, and the long delayed confession cannot be believed in and accepted. **In Mulak Raj, the Hon'ble Supreme Court of India** found that the alleged confession was made by the accused to the witness but the witness did not report it to the police, even though the investigation was in progress. Apart from that, the witness was not in a position to identify the person who made the confession to him. Therefore, I am inclined to find a significant difference in the factual scenario of the present case and the factual situation narrated in the cited decision in **Mulak Raj**.

162. In **Pancho's case, the Hon'ble Supreme Court of India** did not accept the extra-judicial confession on the reason that PW4 in that case claimed that A1 (Pratham) in that case is stated to have confessed that A2(Pancho) had shot dead deceased Kartar Singh with country made pistol. However, PW24, Inspector

Raghubir Singh stated before the Court that A1 confessed that they had shot dead deceased Kartar Singh. **The Hon'ble Supreme Court of India** found that A1 retracted the alleged extra-judicial confession. On the above reasons, **the Hon'ble Court** declined the alleged extra-judicial confession. The factual circumstances in the present case and the factual circumstances in the above case are like chalk and cheese. Hence, the dictum in **Pancho's case** is not applicable to the case at hand.

163. In **Rahim Beg's case**, the **Hon'ble Supreme Court of India** disowned the extra-judicial confession on the ground that both the accused confessed in chorus to PW4 (Mohammed Nazim Khan) in that case, who belonged to another village. Confession by two accused together to a person is significantly different from the factual scenario of the present case. So, the dictum

relied on by the defence in the cited case is not applicable to the case at hand.

164. In **Surendra Kumar's** case, the **Hon'ble Supreme Court of India** found that it is improper to accept extra-judicial confession allegedly made by all the four accused to PW6 in that case. The above said dictum has no applicability to the present case.

165. The learned senior counsel for A1, **Sri. B. Raman Pillai** contended that the extra-judicial confession was not mentioned in the remand application by PW49, the Investigating Officer, as such it is a vitiating circumstance to reject the extra-judicial confession. To substantiate his contention he relied on the decision in **Surendra Kumar's** case. The definite case of the Prosecution is that accused No. 1 made a statement to PW6 and the same is only an admission

and the Prosecution does not claim the same as an extra-judicial confession as the statement does not acknowledge guilt by A1. So, it falls short of a confession. In that aspect, the dictum cited by the defence in **Surendrakumar's** case will not come to the rescue of A1.

166. Be that as it may, in the case under consideration the prosecution does not claim that A1 made an extra-judicial confession to PW6, instead prosecution claims that A1 made an admission to PW6 which suggests an inference as to the fact in issue or relevant fact in this case.

167. It is in such a context that I have to analyse, evaluate and comprehend the evidence of PW6. PW6 claimed to be a public-spirited person who has a history of filling a slew of public interest litigations before the

Hon'ble High Court of Kerala. He deposed that he happened to read an article about narco-analysis by Dr. James Vadakkancheri in Mangalam weekly.

168. From the contents of that report, he realized that the alleged accused in the Sister Abhaya case would be subjected to narco-analysis test. So he was intimately interested to know more details and accordingly, he contacted the Mangalam Bureau, Kottayam, as the above said article were published in the Mangalam weekly. After getting the telephone number of Kottayam Bishop's house from Mangalam, he contacted Father Thomas Kottoor and accordingly, he arranged an appointment with Father Thomas Kottoor, A1 at Bishop's house ,Kottayam.

169. During the meeting with A1, A1 is alleged to have stated that the narco-analysis test was only to

engineer his arrest. PW6 deposed that at that time, A1 was in a highly disturbed state of mind, intensely fearful that something adverse would happen to him. PW6 tried to pacify and console him. During the meeting A1 after holding his cassock with his hand shook it and declared “ഞാനൊരു പച്ചമനുഷ്യനാണ് എന്നെ കല്ലും ഇരമ്പും കൊണ്ട് ഉണ്ടാക്കിയതല്ല, എനിക്ക് തെറ്റുപറ്റിപ്പോയി, ഞാനും സെഫിയും ഭാര്യഭർത്താക്കന്മാരെപ്പോലെ ജീവിച്ചിട്ടുണ്ട്. ഇവിടെ എല്ലാവരും ഇതൊക്കെ ചെയ്യാറില്ലേ. എന്നെ മാത്രം എന്തിന് ക്രൂശിക്കണം”.

170. The learned senior counsel attacked the deposition of PW6 and submitted that PW6 did not mention the name of Sister Sephy before the CBI. When this was put to PW6, PW6 gave the explanation before this Court that it happened while he attempted to summarise the matter before the CBI; he wanted to give

only the gist and accordingly he omitted the name of A3. However, the substantive statement of PW6 before this Court is corroborates with his version before the learned Magistrate u/s 164 CrPC statement, where he clearly mentioned the name of Sister Sephy. From this discussion, it is evident that the alleged admission made by A1 before PW6 is unambiguous and it is incapable of admitting more than one interpretation.

171. The learned counsel for A1 relied on a document, Ext.D29, certified copy of the proceedings of **the Hon'ble Supreme Court of India** wherein it is stated that judgments are reserved in Criminal Appeal No 1267/2004 and Criminal Appeal Nos 54 to 59 of 2005 by **the Hon'ble Supreme Court of India**.

172. According to the learned counsel, **the Hon'ble**

Supreme Court of India reserved the case for the judgment with respect to the constitutionality challenge to the narco-analysis tests and the fact experienced wide public dissemination and as such A1 was aware of that fact as he was a Chancellor of the diocese and a Professor of Psychology to boot. As at that point of time the case in the Apex court itself had been reserved for judgment, and so there was no probability of AI approaching PW6 with the request of moving the High court with a PIL against narco-analysis examination.

173. It is a fact that the constitutionality of the narco-analysis examination was challenged by somebody before **the Hon'ble Supreme Court of India** and from Ext.D29 document, it is clear that the matter was reserved for judgment. Since A1 was not a party to the proceedings one cannot expect of A1 that he would follow the above said case. It would not be

reasonable to suppose that a layman like A1 would closely monitor the developments in the litigations pending before the Apex Court.

174. From the records, it is luculent that the cases shown in Ext D29 were filed in 2004. However, the judgment in those cases was delivered only on 05/05/2010, along with the Criminal Appeals filed in the year 2010; that means, two years and 4 months after Ext D29, the judgment was delivered by **the Hon'ble Supreme Court of India**. Ext.D29 will not serve any purpose in favour of the argument of A1 as the judgment of the constitutionality of the Narco analysis text was delivered by the Apex court in two Criminal appeals filed in the year 2010. Besides, the fact that the criminal appeals were reserved for judgment did not mean that a favorable order would arise on them.

175. Therefore, the contention of the learned counsel for A1 that since **the Hon'ble Supreme Court of India** reserved the narco-analysis matter for judgment, A1 had no occasion to make any confession statement with respect to narco-analysis and that he had no occasion to fear narco-analysis is not acceptable.

176. It is highly significant that the defence compelled PW6 to run the gauntlet of vigorous and gruelling cross examination for one full day, but PW6 emerged from the intimidating experience unscathed, and the defence failed to extract anything from him which could undermine the prosecution narrative.

177. During cross-examination the defence left no stone unturned in its attempt to establish that PW1 had some ulterior motive and interest against A1 or the Kottayam diocese but the attempt ended in fiasco. In his

comprehensive argument note, learned senior counsel for A1, Sri. B. Raman Pillai stated that the alleged statement made by A1 to PW6 will not fall u/s 17 of Evidence Act, 1872, as an admission because it does not suggest any inference as to any fact in issue or relevant fact in this case. It is contended that the said statement allegedly made by A1 to PW6 cannot be interpreted to mean any of the following:

- (a) That A1 and Sister Sephy who is the 3rd accused in this case have lived as husband and wife.
- (b) That A1 and A3 have lived as husband and wife during the relevant period as far as this case is concerned (the incident had taken place on 27th March 1992).

- (c) That as part of living as husband and wife, A1 used to visit A3 at St.Pius X Convent Hostel during night hours.
- (d) That A1 visited A3 at the St.Pius X Convent Hostel on the intervening night of 26th / 27th March 1992.

178. The contention raised by the defence is that the alleged statement of A1 does not suggest any inference to the fact in issue is true but whether the statement suggests any inference to any relevant fact can only be arrived at by evaluating the following :

- (a) Facts which are the occasion, cause or effect of facts in issue (Section 7 of the Evidence Act).
- (b) Conduct influences or is influenced by relevant fact Sec. 8 of the Evidence Act).
- (c) Fact shows the relation of parties (Sec.9 of the Evidence Act).

179. If any inference is possible for the above said matters from the statement said to have made by the accused, then the statement of A1 is relevant u/sections 7, 8 and 9 of the Evidence Act and hence certainly admissible u/s 17 of the Evidence Act.

180. A criminal trial, of course, is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. Here, the copper bottomed allegation of the prosecution is that this is a case of sex and murder. While A1 and A3 were carrying out the sexual act, the deceased Sister Abhaya happened to witness the same and the fact that the accused persons were caught in flagrante delicto provoked the accused persons to do away with the deceased. Hence, as I have already stated above, the alleged sexual act of A3 and A1 was the cause of the murder and the murder was the effect

of the sexual act.

181. It is in the light of this analysis that I have to appreciate the evidence of PW6. Taking note of the main take away of the above said discussions, it is obvious that A1 suggested an inference unambiguously to PW6 that A1 had a relationship with Sister Sephy and that they were like husband and wife. There is absolutely no ambiguity in the statement of A1. It is a relevant fact suggesting an inference to the fact in issue. So, the contention of A1 is not sustainable.

182. The defence was able to point out certain minor contradictions in the deposition of PW6. On the first day of his examination, 02/09/2019, PW6 deposed before the court in his chief-examination that he met A1 at the Bishop's House **before** A1 was subjected to narco-analysis test. However, on the very next day, right after

taking oath, PW6 stated that he had met A1 at the Bishop's House, Kottayam, **after** A1 was subjected to narco-analysis test.

183. The learned counsel for A1 contended that this correction itself shatters his credibility as a witness and generates serious suspicion regarding the veracity of the narration of his alleged meeting with A1. It is significant that PW6 voluntarily deposed before this court on the second day when he realized that an error had crept in to his previous day's deposition, and he decided to seek an opportunity to correct the same. When the suggestion that PW6 was operating under the influence of PW24 was put by the defence to PW6, PW6 hotly denied it . No one can expect a tape recorder memory from a witness. Minor discrepancies will always be there in the evidence of witnesses, especially when the matter has a checkered history of long delay.

184. The statement of PW6 was recorded u/s 164 CrPC by the CJM, Ernakulam on 18/12 / 2008 and 11 years after that he deposed before this court. In such a situation there is possibility for minor contradictions and omissions in the evidence and those will not affect adversely the overall credibility of the prosecution case.

185. The truthfulness, reliability and admissibility of evidence given by PW6 has been scrutinized by me – by evaluating his evidence meticulously wherein it is gleanable that he unequivocally narrated how he reached A1 and how A1 interacted with him, what are the matters / circumstances PW6 perceived there, from where A1 made a statement to PW6. The demeanor of the witness speaks volumes in the matter which generates further trustworthiness of the deposition of PW6. A1 had held his cassock and had shaken the

same; PW6 held his shirt with his left hand and shook the same while deposing in this court .

186. The evidence of PW6 that he was requested by A1 to file PIL in the Hon'ble High Court of Kerala by A1 and that a handwritten article on the letter pad of James Vadakkancheri along with a copy of the annual publication Apna Desh, were handed over by A1 to PW6 and the evidence that A1 stated that content for the petition against the narco-analysis test was available in the article will probabalise the overall evidence of PW6.

187. At that time, PW6 was entrusted with Rs.5000/- by A1 to cover the initial expenses. Thereafter, A1 repeatedly contacted PW6, but PW6 did not file any petition as desired by A1 because PW6 felt that such step would go against his conscience,

especially as PW6 was able to obtain the legal advice of Sri. Janardhana Kurup, senior counsel, **the Hon'ble High Court of Kerala.**

188. During the cross-examination of PW6, the defence tried to highlight the antecedents of PW6 with respect to filing of public interest litigations by him. Besides, the cross-examination of PW6 by the defence with respect to his educational qualification and profession failed to elicit anything touching his credibility. Defence was not able to elicit anything to disbelieve his testimony that A1 had made statement to him at Bishop's House, Kottayam.

189. The upshot of the above discussion is that there is a ring of truth in the evidence of PW6 which suggests an inference to the relevant fact of this case. Therefore, the presumption of innocence in favour of

A1 stands rebutted due to this conduct brought out in evidence as discussed above .

190. Circumstance (v):

The medical examination on A3 by PW19 and PW29 was based on the request of PW43, N. Surendran, DySP, CBI, SCB, Chennai, through Ext.P94. A3 was examined on 25th/ 26th November, 2008 at T.D. Medical College, Alappuzha. Before the examination, A3 gave her written informed consent and stated as follows:

“എന്റെ ദേഹപരിശോധനയും മറ്റും വേണ്ടി വരുന്ന പരിശോധനകളും നടത്തി ലൈംഗികവേഷ്യയിൽ ഏർപ്പെട്ടിട്ടുണ്ട് ഉണ്ടോ ഇല്ലയോ എന്നറിയുന്നതിനു വേണ്ടി അതിന്റെ അനന്തര ഫലങ്ങൾ പൂർണ്ണമായി അറിഞ്ഞുകൊണ്ട് സ്വമനസ്സാലെ സമ്മതിച്ചിരിക്കുന്നു”.

191. Over and above that A3 gave a history to the doctors (PW19 and PW29) which was reduced to writing by them as follows:

“She gives history of gynaecology examination including per vaginal examination with gloved fingers in 1992 for temporary cessation of periods and in 2007 for hot flushes and vaginal discharge. She also gives history of sharing bed with a male, a relative who rubbed his penis on her private parts without penetrating one year back. In 2004 also, she gives history of gynaecologic consultation”.

192. It is true that the above said two statements she had given as above do not suggest any inference directly as to any fact in issue.

193. However, relevancy is a matter of specific interconnection between a fact in issue and a fact claimed to be relevant. A fact is relevant to a fact in issue when the former is connected with the latter in a particular manner, referred to in the provisions in

sections 5 to 55 of the Indian Evidence Act. The basic test of relevancy is the logical probativeness of one to the other.

194. Taking note of the prosecution assertion that the murder of Sister Abhaya was necessitated because she found the accused in flagrante delicto and the prosecution affirms that this is a case of sex and murder wherein, the sexual escapades of A3 with A1 is a relevant fact as the same was the cause of which the effect was the murder of the eye witness, Sister Abhaya.

195. In such a situation, the statement given by A3 to the doctors is obviously suggestive of an inference as regards the relevant fact in this case as A3 admitting her past sexual activities. Though she does not admit the sexual adventures with A1, it is

luculent that her sexual activities are writ large from her statements itself.

196. The learned counsel for A3 **Sri. J. Jose** contended that while she was examined by the doctors she was under the custody of the police and that whatever statements are attributed to her cannot be considered as voluntary statements made by her and as such statements cannot be viewed to be admissions made by her.

197. In this context, the judgment of the **Hon'ble Supreme Court of India in Kandapadachi v. state of Tamil Nadu; AIR 1972 SC 66**, is extremely relevant, wherein the Hon'ble Court unmistakably held that even though the statement is of some incriminating fact which, taken along with other

evidence, tends to prove the guilt of the accused. Such statement is only an admission and not a confession.

198. In **Kandapadachi**, the accused while he was in the police custody examined by the doctor and the accused gave a statement that he suffered injuries at the hand of the deceased while the accused was there.

199. The Hon'ble Supreme Court of India considered two crucial aspects in that case — (1) Though the accused was in police custody the statement given by the accused to the doctors is admissible as the doctors have no interest or ulterior motive against the accused person. (2) If the statement fall short of a plenary acknowledgment of guilt it would not be a confession even though the statement is of some incriminating fact which taken along with other evidence tends to prove the guilt.

200. Therefore, the contention raised by the learned counsel for A3 is unsustainable in the light of the above said decision of the Hon'ble Supreme Court of India in **Kandapadachi**.

201. Therefore, the main takeaway of the above said discussion is that A3 suggested an inference in her statements before PW19 and PW29 and are proved through Exts.P79, P80 and P48 and through the evidence of PW19 and PW29. These proved circumstances once again ruled out the presumption of innocence of A3.

202. Circumstance (vi):

PW24, Jomon Puthenpurackal, Convener, Action Council deposed that he was threatened by A1 near Kumarakam Hotel, when PW24 was returning after taking part in a protest demonstration organized by the Action Council; according to PW24 A1 warned him that

he would be handled in the proper manner, pointing out that no one working against the church had ever been spared. The learned counsel for A1 attributed personal vengeance against A1 on the part of PW24 and thus, his evidence has to be discarded, so argued he, as PW24 is not a trustworthy witness. The evidence of PW24 can be appreciated only in the backdrop of the specific allegation against PW24 made by A1 through his 313 CrPC statement that PW24 had been reprimanded by A1 when PW24 had started working against the official youth group of the diocese.

203. Considering this version of A1, it is reasonable to accept the deposition of PW24 that he was threatened by A1 near Kumarakam Hotel, as it is a believable version.

204. The learned counsel for A1 attacked the version of PW24 on the ground that PW24 did not give this narration before the CBI. When a question was put to PW24 with respect to the above, PW24 explained admitted that he indeed did not state this fact before DySP Agarwal, and explained that he was upset and fed up because of repeatedly giving statements before successive Investigating Officers. That is why, he did not state the same before DySP Agarwal. The statement under 161 CrPC is seldom an encyclopedia containing everything related to a witness. In this regard, the decision of the **Hon'ble Supreme Court of India in Ram Swaroop v State of Rajasthan AIR 2004 SC2943** is remarkably appropriate to this context, wherein the **Hon'ble Court** held thus:

“It is well settled that a statement recorded under S.161 of the Code of Criminal Procedure

cannot be treated as evidence in the criminal trial but may be used for the limited purpose of impeaching the credibility of a witness”.

This proved conduct /circumstance relating to A1 further erodes the presumption of the innocence of A1.

205. Circumstance(vii):

To prove this circumstance, prosecution heavily relied on the evidence of PW19, Dr.Lalithambika and PW29, Dr. Rema. A3 was arrested on 19/11/2008 and thereafter the prosecution obtained her custody; she was produced before T.D Medical College, Aleppey with a request from PW43, N. Surendran, DySP, CBI, SCB, Chennai, through Ext.P94, to conduct medical examination on her with a view to affording evidence as to the commission of an offence. By Ext.P61 order, the Principal, TD, Medical College, Alappuzha, constituted a

medical team consisting of Dr. Lalithambika Karunakaran, Professor & HOD of Gynaecology (PW19), and Dr. Rema, Professor & HOD of Forensic Medicine (PW29), for the medical examination of A3, Sister Sephy.

206. Accordingly, the medical examination of A3 was conducted on 25th and 26th November, 2008. According to PW29, the written consent of A3 was obtained before her examination. Ext.P80 report of medical examination of female in sexual offences was jointly prepared by PW19 and PW29.

207. A3 contended that she did not give a valid consent for her medical examination. On a close scrutiny of Ext.P80, it is obvious that A3 gave her written consent as her signature is recorded under the Malayalam statement: എന്റെ ദേഹ പരിശോധനയ്ക്കും മറ്റും വേണ്ടി വരുന്ന പരിശോധനകളും നടത്തി ലൈംഗികവേഷ്ഠയിൽ ഏർപ്പെട്ടിട്ടുണ്ട്

ഉണ്ടോ ഇല്ലയോ എന്നറിയുന്നതിനു വേണ്ടി അതിന്റെ അനന്തരഫലങ്ങൾ പൂർണ്ണമായി അറിഞ്ഞുകൊണ്ട് സ്വമനസ്സാലെ സമ്മതിച്ചിരിക്കുന്നു.”, and the genuineness of her signature has not been challenged by her. In this context the contention of the learned counsel for A3 is highly relevant as he contended that there are interpolations in Ext.P79 medico-legal certificate, and it is a valid ground for disowning the certificate prepared by PW19 and PW29.

208. It is extremely significant that he did not challenge the authenticity of the signature of A3 but only pointed out the alleged infirmity in Ext P79. The presence of interpolations and corrections is normal in any handwritten certificate. However, if the interpolations / corrections are not endorsed by the maker of the certificate, it may seriously affect the genuineness of such a certificate.

209. In the present case, PW29 admitted that the interpolations appearing on Ext.P79 had been made by her and are not really interpolations but the recording of additional findings arrived at on the first day, but had not been recorded on the first day itself as PW29 wanted to consult PW19 in order to fix the appropriate terminology of the recording. In the light of this explanation there is absolutely no room for giving any weight to the contention put forward by the learned counsel for A3.

210. There is no intrinsic incompatibility within the semantic outcome of the holistic frame work of Ext P79 inclusive of the alleged interpolations whose provenance is satisfactorily explained by PW29 and the same effectively demolishes the negative contentions raised by the learned counsel for A3.

211. Again, in Ext.P48, the history was recorded by the doctors. A3 in her 313 CrPC statement, refuted that history appearing in Ext.P48. For an effective evaluation of the matter, I excerpt the history here “she gives history of gynaecology examination including per vaginal examination with gloved fingers in 1992 for temporary cessation of periods and in 2007 for hot flushes and vaginal discharge. She also gives history of sharing bed with a male, a relative who rubbed his penis on her private parts without penetrating one year back.

212. In 2004 also, she gives history of gynecologic consultation. A neurological consultation was conducted at Rajkot. She takes treatment for hypertension since 2 - 3 years. According to PW19, this is a routine proceeding: before conducting an examination on a woman, she voluntarily gives her medical history to the doctors who conduct the medical examination on her.

213. Ext.P79 is jointly prepared by PW19 and PW29. I am surprised that such a contention against the medical examination and related certificates can be taken by the accused especially when she gave her consent for her medical examination in the first place. The history shown in Ext.P79 appears to be genuine : it could not have been concocted by the two doctors and there is no reason to disbelieve the evidence of PW19 and PW29 who were specialised medical practitioners in a Govt. medical institution of higher learning carrying out their official duties.

214. The learned counsel for A3, **Sri J. Jose** went hammer and tongs against Ext P79, Ext P80 and Ext P48 but he did not raise the contention that the exhibits had been fabricated by their authors because of the prior enmity that existed between the examiners and the examinee. Perhaps this would have struck even the

defence counsel as patently absurd as the examiners and the examinee had been perfect strangers to each other before the date of the examination.

215. The defence counsel failed to suggest any ulterior motive on the part of PW19 and PW29 for allegedly manipulating Ext.P79, Ext.P80 and Ext.P48, thus further weakening the defence version.

216. The only suggestion that he could make was that PW19 and PW29 had been pressurised by the CBI into creating Ext P79 and Ext P80 out of thin air but he refused to back up this allegation with any material. The doctors of TD Medical college Alappuzha are employees of the Government of Kerala; they do not report the Central Bureau of Investigation, New Delhi, and the CBI has no authority or control over them.

217. It is beyond the imagination of this court how

CBI could make the two senior medical specialists do its bidding, as claimed by the learned counsel for A3. A3 was subjected to medical examination at TD Medical College on 25/11/2008 and 26/11/2008 and presented before the Chief Judicial Magistrate, Ernakulam on 2/12/2008. Had A3 any genuine complaint regarding Ext.P79, Ext.P80 and Ext.P48, she would have certainly voiced that complaint before the learned magistrate.

218. The fact that no such complaint was lodged demonstrates that A3 had no such complaint. A3 was enlarged on bail on 01-01-2009 and thus, she had the freedom and the resources to lodge a complaint against Ext.P79, Ext.P80 and Ext.P48, and for that matter, the very medical examination that was the point of origin of the three exhibits before the appropriate forum since then. She chose not to use the freedom and the resources at her command in such a manner, showing

that she had no such complaint at that time.

219. It is of crucial significance that PWs 19 and 29 were subjected to long and strenuous cross-examination at the hands of the defence counsel Sri. J. Jose and Sri. B. Raman Pillai, but the two doctors emerged victorious in the duel proving the validity of the impugned Exhibits.

220. The challenge to the authenticity of the impugned exhibits and the validity of the medical examination that lead to the creation of the exhibits was mounted for the first time ever by A3 in this court about a dozen years after the medical examination was conducted and the exhibits were issued making this court doubt the bonafide of the complaint and suspect that A3 has not come before this court in this matter with clean hands. Therefore, Exts.P79 and P80 are genuine

and consequently Ext.P48 certificate is endorsed by this court.

221. Let me examine closely the contents of Ext. P48, which reads thus: "there is evidence of scarring to hymen which could be due to surgical interference". The above findings do not correlate with the history that A3 had underwent per vaginal examination twice. If the hymen is intact on per vaginal examination, the hymen will be ruptured and if the hymen is already ruptured, the fingers will easily go in to the vagina. On examination of A3 PW19 found A3's hymen orifices as 1x0.5 cm, an intact hymen.

222. She noticed that just behind the back margin of the hymnal orifice, posterior, half of the hymnal tissue (1x1cm) was band like. Band means a small ribbon like narrow tissue. There was a thin linear, whitish, scarred area on either side at the junction of hymen with vulva.

223. According to PW19, this could be due to surgical interference; there may have been hymenoplasty. Hymenoplasty means repair of hymen, reconstitution of hymen and any repaired tissue will be different from original tissue due to scarring. Hymenoplasty is usually done by the plastic surgeon. PW29 substantially corroborated the evidence of PW19; PW29 was suffering from Parkinson disease and she was examined by issuing commission as per order dated 19/10/2019 in CMP No 152/19 and order dated 4/2/2020 in CMP No 13/2020. Such a matter may not be a question to be decided in a criminal court of law under more normal circumstances, but the case in hand is spiced with allegations of sex and murder, where the alleged sexual act of A3 and A1 is a relevant fact as it was alleged as a cause and effect of the fact in issue of this case.

224. Normally, the sexual antecedents of an accused do not matter, they only matter when they give a bearing to the fact in issue of the case. Thus, the answer given by PW19 during the examination of the learned counsel for A3 is crucial; it goes: Have you got any idea of the age of the scar? The last per vaginal examination as per the report is in 2007. After the last per vaginal examination, the surgical interference may have occurred (A). From the above, it is clear that A3 underwent hymanoplasty almost on the eve of her arrest by the CBI.

225. This has extremely high significance and is intimately related to the fact in issue. One can see these facts are getting quite pally with the fact in issue of this case. It is clear that A3 made an attempt, and a very successful attempt at that, to give the fact of the case an appearance favourable to herself. **Thus, it is relevant**

under illustration (e) to Section 8 of the Evidence Act, 1872, which reads thus : (e) A is accused of a crime. The facts that, either before or at the time of, or after the alleged crime, a provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

226. The learned counsel **Sri.J.Jose** argued with all his might and main to demonstrate the band like scar as a remnant of the infection caused to that particular part of anatomy of A3. PW19 simply ruled out the possibility of scar caused by scratching due to infection. **Sri. J.Jose** argued full blast that the contemporaneous version of the per vaginal examination as reflected in Ext P79 was that the examination was without gloves

and that the words “with gloved fingers” were interpolated for serving the purposes of the prosecution case.

227. From the evidence of PW19 and PW29 it is luculent that per vaginal examination is not possible without using fingers **and** the fingers are always gloved for reasons of safety and hygiene. In fine, the contentions of **Sri. J. Jose**, citing various medical authorities including Dr. K.S.Narayana Reddy cannot outweigh the evidence of sterling quality given by two eminent doctors having decades of service consistent with the decision of the **Hon’ble Supreme Court of India in State of Madhya Pradesh v Sanjay Rai ; AIR 2004 SC 2174.**

228. **Sri J.Jose** invited my attention to Ext.P48 and submitted that it does not state that the examination was

spread over two days. However, both PW19 and PW29 deposed in chorus that the examination was conducted on two days examination, and further clarified that on 25/11/2008 they conducted the gynecological examination and that on 26/11/2008 they carried out the breast examination of A3. Both dates are recorded in Ext P48 ; the date 25-11-2008 is written on the right side just below the title of the certificate and the date 26/11/2008 is recorded several times beneath the signatures of PW19 and PW29.

229. The crucial evidence of PW19 is that if there had been sexual act in the remote past, labia minora, external genitalia inside the labia majora, clitoris, fourchette and posterior commissure will be normal looking; only the hymen will not be normal looking. Considering the evidence of PW19, the litmus test in the present case is to identify the nature of hymen.

230. Ergo, it is inevitable to find this circumstance in favour of the prosecution, and thus, this conduct of accused No. 3 completely destroys her presumption of innocence.

231. Circumstance (viii):

During the 313 CrPC examination, based on the factual niceties of and the evidence available in the case, incriminating circumstances were put to the accused. A3 was asked to explain circumstances appearing against her established through the evidence of PW9 and PW11 to the effect that A3 was alone in her room on the ground floor on the night of 26/27-03-1992.

232. Question No. 18: നിങ്ങൾ A3 ഏറ്റവും താഴത്തെ നിലയിൽ കിച്ചനടുത്തുള്ള റൂമിലാണ് താമസമെന്നും അവിടെ മറ്റാരും താമസമില്ലായിരുന്നെന്നും ആഹാരം കഴിക്കാൻ പോകുമ്പോൾ നിങ്ങളെ കാണാറുണ്ടായിരുന്നെന്നും നിങ്ങൾ ഇന്ന്

കോടതിയിലുണ്ടെന്നും PW9 മൊഴി നൽകുന്നു. എന്തെങ്കിലും പരയാനുണ്ടോ? Her answer was ‘ശരിയല്ല’.

233. Question No.23: “ Sister Abhaya

മരിക്കുന്നതിന് തലേന്ന് Bible കൺവെൻഷൻ പോയിരുന്നു എന്നും രാത്രി 8.30 ഓട് കൂടി അഭയയുമൊത്താണ് മടങ്ങി വന്നതെന്നും തലേന്ന് അഭയയിൽ പ്രത്യേക മുഖഭാവം ഒന്നും കണ്ടില്ലായെന്നും 9.30 - 10.00 മണിയോടെ ഉറങ്ങാൻ കിടക്കുന്നതിന് മുമ്പ് കതകുകൾ അടച്ച് ലൈറ്റ് off ചെയ്തുവെന്നും അപ്പോൾ നിങ്ങൾ A3 room ലിരുന്ന് വായിക്കുന്നത് കണ്ടുവെന്ന് PW11 മൊഴി നൽകുന്നു. എന്തെങ്കിലും പരയാനുണ്ടോ”?

Answer :‘ശരിയല്ല’.

234. However, she admitted her presence in the room on the ground floor while answering

Question No. 22 : താൻ Pius 10th Hostel ലെ അടുക്കള ജോലിക്കാരി ആയിരുന്നുവെന്നും Sister Abhaya മരിച്ചത് 1992 March 27 നാണ് എന്നും നിങ്ങൾ A3 മാത്രമേ താഴെ നിലയിൽ ഉണ്ടായിരുന്നുള്ളൂ എന്നും PW11 മൊഴി നൽകുന്നു. എന്തെങ്കിലും പരയാനുണ്ടോ?

Answer : ശരിയാണ്.

235. This categorically shows that she was alone on the night of 26/27-03-1992.

236. Further during her examination under 313(1) (b) CrPC, when questions pertaining to “consent” and “history” were put to her, she falsely denied them against her own signed consent recorded in Ext.P80 and the history voluntarily furnished by her and recorded by PW19 and PW29 in Ext.P48. The false plea of A3 against

“the consent” and “the history” given by her is another circumstance against A3. In this regard, the learned Prosecutor brought to the notice of this court a decision reported in **Arabindra Mukharjee V. State of West Bengal : 2011 (14) SCC 352**, in which **Hon'ble Supreme Court of India** held that if the accused gave incorrect or false answers during the course of his statement under S.313 Cr.P.C., the Court **can draw an adverse inference against him.**

237. Thus, the denial spree of A3 fails to save herself, and instead only damages her position severely in the eyes of this court .

238. Failure to give a proper explanation or giving a false explanation can be taken as an additional link in the chain woven by the prosecution against her.

239. This would further reinforce the annihilation of her presumption of innocence.

240. Circumstance (ix):

The findings that I arrived at in point Nos.1.1 to 1.6 and the finding arrived at in **Circumstance: (i)** that there were disturbances in the kitchen of the St. Pius X Convent Hostel on the morning of 27/03/1992, it is not difficult to give a definite answer on this question. The centre piece of the contention of the defence is that Abhaya had committed suicide due to more than two reasons. **Firstly** she might have committed suicide because she was not good in her studies. **Secondly**, the family has a genetic history involving suicide and thus she might have ended her life. **Thirdly**, according to A3, as claimed through her written statement u/s 313(5) CrPC, Abhaya was facing an immediate ouster from the

congregation on account of her family history and hence she might have put to herself to sleep. In the light of the findings recorded in point Nos. 1.1 to 1.6, the theory can only be treated as nothing but a classic case of zohnerism.

241. Now, I would like to seek the aid of the profound insights developed by the great French Sociologist ,Emile Durkheim, in his monumental 1897 study, *Suicide :A Study in Sociology*. Durkheim classifies the entire phenomenon of suicide into four categories:

1. Egoistic Suicide, 2. Altruistic Suicide,
3. Anomic Suicide, and 4. Fatalistic Suicide.

242. Durkheim claims that the entire gamut of suicidal behavior is mapped by this classification and that every single suicide has necessarily to fall under one of the four rubrics. If Sister Abhaya had indeed committed suicide it would have been one of these four types.

243. Egoistic suicide is caused by excessive individualism. The person possesses an extremely strong personality and is not sufficiently bound to any social group. This possibility is ruled out in the case of Sister Abhaya because she was meek and humble by nature and was a pious Christian and the Christian religion forbids self-slaughter.

244. Altruistic suicide is caused by excessive integration of the individual into the group. The individual places the interests of the group above her own interests. Altruistic suicide happens when the individual feels that the interests of the group require her death. Sister Abhaya was highly altruistic by character and she was quite capable of laying down her life for the cause of the group into which she had integrated herself, if such a situation were to arise. In the present context

there was no such situation, and hence altruistic suicide is ruled out.

245. Anomic Suicide is caused by moral confusion and lack of social direction. This happens frequently when there is a dramatic social and economic upheaval. Sister Abhaya did not experience any such social and economic fall and the possibility of her ending her life by anomic suicide is ruled out.

246. Fatalistic Suicide is an extremely rare phenomenon and occurs mostly in societies so oppressive that their inhabitants would rather die than live. Sister Abhaya was a citizen of the world's greatest democracy and there is absolutely no scope for a fatalistic suicide to happen in her case. Utilizing the four fold categorization of the phenomenon of suicide worked out by Emile Durkheim, I am able to rule out each of the four kinds of

suicide identified by Durkheim, and this reinforces the conclusion that the death of Sister Abhaya was not a case of suicide.

247. A three Judge bench of the **Hon'ble Supreme Court of India** considered the examination of the accused and the situation of accused making false plea in **Shankarala Gyarsilal Dixit v State of Maharashtra; AIR 1981 SC 765** and held that a false plea can be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused, and this dictum finds a perfect applicability in this case.

248. **Circumstance(x):**

This circumstance can be considered along with the contention of the defence that due to

extremely prolonged conduct of the case some of the evidence in favour of them appears to have vanished, especially because of the non-availability of the witnesses caused by their deaths or their inability to give evidence due to health reasons .

249. This defence contention can be addressed in view of the provisions u/s 11 of the Evidence Act, 1872, which says: When facts not otherwise relevant become relevant -- **(1)** if they are inconsistent with any fact in issue or relevant fact **(2)** if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant facts highly probable or improbable.

250. A holistic reading of the above said provision makes it amply clear that the contentions raised by the defence are effectively captured within the matrix of the

term, “**fact in issue**”. For an effective adjudication, let me narrate the definition of fact in issue defined u/s 3 of the Evidence Act,1872; the expression fact in issue means and includes any fact from which, either by itself or in connection with other facts, the existence, **non-existence**, nature or extent of any right, liability or disability asserted or **denied** in any sort or proceedings necessarily follows. So, a conjoined consideration of the definition of fact in issue and Section 11 would include the defence contention within the bracket of fact in issue.

251. The nitty-gritty of this contention can be addressed only in the backdrop of the devastating allegation of the prosecution that from day one onwards there was a no – holds-barred attempt at filibustering and destroying of evidence. **Firstly**, Sister Lessieux gave FIS to the Kottayam West Police on the death of Sister Abhaya.

252. However, she changed her contemporaneous version and gave a new version to PW5, Vamadevan, Assistant Divisional Officer, Fire Force, Kottayam . This is reflected in Ext.P24 (a), portion of General diary, dated 14/3/1992 to 12/4/1992 of the Fire Force, Kottayam. PW5, the Fire force officer at the relevant time, deposed that the information given by mother superior, Sister Lessieux was recorded by him to the effect that Sister Abhaya fell into the well accidentally while she was operating the pump.

253. It is a relevant fact u/s 35 of the Evidence Act,1872, as it was entered by PW5 in his official capacity in the General Diary kept in Kottayam Fire Station. **Secondly**, the evidence of PW4 who was the police officer who attended the matter on the first day itself, adduced before this court that the inquest report

prepared by V.V. Augustine, ASI, Kottayam West Police Station, was torn off by V. V. Augustine himself; the evidence of PW10 and PW27, claimed to be the witnesses of the inquest report, along with the evidence of Dr M.A.Ali, Senior Scientific Officer Gr-1 (documents), Central Forensic Science Laboratory, New Delhi, PW21, makes it clear that the signatures of PW10 and PW27 appearing in the inquest report are forged.

254. Thirdly, PW3 was subjected to prolonged cruel and inhuman physical torture and mental torment by DySP Sri. K. Samuel under the instigation of Crime Branch SP, Sri. K.T. Michael; the same is clear from the evidence of PW3 and PW8. Further, it can be seen from Ext.P106 series of judgments that PW3 was falsely booked in a catena of cases and he was pressurized by DySP Sri. K. Samuel as per the direction and supervision of Crime Branch SP, Sri. K.T. Michael, to take

the responsibility of the crime of the murder of Sister Abhaya.

255. **Fourthly**, eight crucial MOs in this case had been obtained by DySP Sri. K. Samuel from SDM, Kottayam and thereafter he failed to return the same; this fact is proved through the evidence of PW15, PW16, PW17, PW18, PW20 and through Ext.P45. P.T.Jacob (PW20), the then Detective Sub Inspector, Crime Branch, Kottayam, was deputed by Sri. K.Samuel, DySP for receiving the material objects from the SDM Court, Kottayam. PW20 identified the signature of Sri. K.Samuel, DySP, Crime Branch in Ext.P45. He testified that at that time, Sri. K.T.Michael, Superintendent of Police was in charge of supervising the case.

256. After obtaining the eight material objects as enlisted in Ext.P44, PW20 handed over those items to

Sri. K.Samuel, DySP. Though, Sri. K. Samuel, DySP, attempted to make it appear that those items had been returned to the SDM, Kottayam, through Ext.P47, his attempt failed miserably on account of the evidence of PW17, K.Sankaran (PC3037), the then head Constable, who was claimed by Sri. K. Samuel in Ext.P47 to be the police constable deputed for returning the said material objects including plastic bottle and Sister Abhaya's footwear and veil, and the provenance of Ext.P47 has been suspected by PW15, M.D.Divakaran Nair, the then U.D Clerk attached to SDM court, Kottayam, by pointing out the absence of distribution number, verification by L.D Clerk, and the putting up order to the section clerk from Ext.P 47. PW16, V.D.John, Senior Superintendent of Revenue Divisional office, Kottayam, during the period

2014-2015, by and large corroborated the evidence of PW15 . From this, it is gleanable that a systematic, organized effort was exerted sub rosa by the powers that be to subvert the prosecution case and prevent it from reaching its logical conclusion.

257. It is relevant here that the witnesses connected to the congregation including the inmates of the St. Pius X Convent Hostel en masse turned hostile to the prosecution without rhyme or reason. **Fifthly**, there is the fascinatingly bizarre fact that PW11, Achamma the poorly paid cook in St.Pius X Convent Hostel approached **the Hon'ble Supreme Court of India** against the constitutional validity of the Narco Analysis examination and carried out highly expensive litigation in far a way New Delhi.

258. When the prosecution suggested that her counsel before the Hon'ble Apex Court had been none other than Sri. Harish Salve arguably India's greatest living lawyer, she did not deny it. Further, she conceded that her litigation had been financed by the convent and that she was not aware of its nitty-gritty, approached before **the Hon'ble Supreme Court of India**; **Sixthly**, A1 and A3 repeatedly obtained a stay from **the Hon'ble High Court of Kerala** on the trial court proceedings citing various grounds, as exemplified by the stay order of the Hon'ble high court which was operative from 13/4/2018 to 9/8/2018 (Crl.Rev.Pet.Nos 395/18 and 398/2018), on the ground that there was the possibility of the trial being started during the midsummer vacation of 2018 .The final and the supreme effort at filibustering carried out by the accused to delay indefinitely the case happened as late as a few months back when A1 and A3

successfully persuaded **the Hon'ble High Court of Kerala** to stay the trial in this court from 14/9/2020 to 28/9/2020 (Crl.MC No. 3911/2020) on the ground that the country is in the grip of the Covid -19 pandemic.

259. The prosecution brought to the attention of this court that the additional 313 statement shows that A1 was the Secretary of the Bishop of Kottayam Diocese(Knanaya). Hence, it is reasonable to suppose that A1 had at his control the immense resources of the diocese in terms of money and material and could command the obedience of priests, nuns, and laymen.

260. The prosecution could not be faulted if it attempted to work out a connection between this fact and the fact that the case came to be repeatedly and relentlessly delayed. However, this court is of the view that even if the prosecution succeeds in establishing the

above said connection it does not help the prosecution to progress in its primary duty as prosecution in this case.

261. Defence version

The defence contention is the FIR is antedated and the FIS has not been proved as the informant is no more. The first information was given to Kottayam West Police by Sister Lessieux, she was not examined because of her death. The FIR sets in motion the criminal law; the contention that the FIR was fabricated can be viewed only in conjunction with the cardinal assertion of the prosecution that the initial investigation by the local police was slipshod and hence the officers in charge of such investigation are arraigned as accused in this case.

262. Thus, the allegation of the defence that the FIR was fabricated has no bearing on the prosecution case as Ext. P 21 FIR does not divulge any information as to any

of the accused and it was not registered under any of the penal sections; as such no one can find any prejudice to the accused in this case from Ext P21.

263. Learned senior counsel Sri. B. Raman Pillai contended that the investigation was taken over by the CBI on 29/03/1993, and the last report filed on 27/06/2015 by Devraj. V, Inspector (PW48), CBI, that means the premier Investigating Agency of the nation took nearly 23 long years to complete the process of investigation in this matter. Within this time frame, numerous reports were submitted suggesting that the death of Sister Abhaya was suicidal or homicidal, and that in the latter case the investigators were unable to trace out the culprit or culprits who were responsible for the death. So, such reports are to be considered along with the present one as each of them would fall within the definition of “report”. The term report, including the

report filed u/s 173(2) and the further report filed u/s 173(8)CrPC.

264. Findings in the earlier reports are in favour of the accused and the benefits that flow from those reports have got to be credited to them, so argued he. Those reports were rejected by the learned Chief Judicial Magistrate, and further investigation was carried out by the investigating agency, and the last report filed by the CBI after conducting further investigation, on the allegation of any willful destruction of the material objects was as per the order of **the Hon'ble High Court of Kerala**. The initial reports were rejected by the learned Chief Judicial Magistrate finding them to be erroneous. The findings in a rejected final report cannot be taken in to account as the order passed by the Magistrate is a judicial order determining the rights of the parties (the State on the one hand and the accused on the other)

after the application of his mind. And if that be so, the order passed by the Magistrate must be characterised as a judicial act, and therefore, as one performed in his capacity as a Court as held by the Hon'ble Supreme Court of India in **Abhinandan Jha v. Dinesh Mishra AIR 1968 SC117**, upheld by the Hon'ble court in **Kamalapati Tripadi v state of West Bengal :1980 (2) SCC 91**, and endorsed by the Hon'ble Supreme Court in **Vinu Bhai Hari Bhai Malavika & others v. State of Gujarath ; 2019 (5) KHC 352**.

265. Therefore, the contention of A1 is unsustainable. It would appear that every possible theory regarding the nature of death and the cause of death was being thoroughly explored by the extraordinarily talented and passionately committed investigators. However, unfortunately the spectacular efforts of these brilliant Investigating Officers ultimately turned out to be

much ado about nothing. And the masterpieces authored by the investigating geniuses, being rejected by the learned CJM, are not worth the paper they are written on, have to be discarded, and are unable to come to the rescue of the accused

266. Accused raised the plea of benefit of doubt and sought acquittal on that ground. On the nature of the evidence as is available on record and as noted above, question of any entitlement of benefit of doubt would not arise: The evidence on-record is worth its credence and is trustworthy and as such generates confidence in the mind of this Court.

267. A careful and comprehensive conclusion of the evidence leads this Court to take a view that the prosecution has proved the following circumstances:

(i). The evidence of PW33, Dr. Radhakrishnan along with Ext.P62 proves that there were 6 ante mortem injuries on the person of Sister Abhaya.

(ii) Based on the evidence of PW7, Varghese Chacko, it has been proved that there were nail mark injuries on either side of the neck of the person of Sister Abhaya.

(iii). The evidence of PW33 and PW31, in the light of the antemortem injuries as noted in Ext.P62 postmortem report, proves that injury Nos. 1, 2 and 6 possess a definite characteristic of being caused to the person of Sister Abhaya before her body was submerged.

(iv) The nail mark injuries as proved through PW7 are injuries caused to the person of Sister Abhaya before her body was submerged.

(v). It is proved that there was a fracture on the skull of Sister Abhaya through PW33, Dr. Radhakrishnan.

(vi). From the evidence of PW31 and PW33 it is proved that the death of Sister Abhaya was due to head injury and drowning.

(vii) It is proved that the deceased Sister Abhaya was a very smart, pious, honest, simple, perseverant and punctilious girl meticulous in all respects. She was leading a happy and altruistic life, and also proved that it was simply impossible for her to have ended her life on her own, through the evidence of PWs1,9,11 ,25,32 and PW14.

(viii). Through the evidence of PW31 and PW33, it has been proved that Sister Abhaya died due to a combination of head injury and drowning.

(ix). Through the evidence of PW31, and PW33, and in the light of the medical evidence, and the evidence of

PWs 4, 7, 11, and 14, it is proved that the death of Sister Abhaya was homicide.

(x). It is proved that there were strange and abnormal disturbances in the kitchen work area and the kitchen wash area of the St. Pius X Convent Hostel in the morning of 27/03/1992 through the evidence of PW4, PW11, and PW24.

(xi). The solitary presence of A3 in her ground floor room of the St. Pius X Convent Hostel on the night of 26/03/1992, has been proved through the evidence of, PW1, PW9, and PW11.

(xii). The presence of A1 in the St. Pius X Convent Hostel in the night of 26/27-03-1992 has been proved through the evidence of PW3.

(xiii). It is proved through the evidence of PW6 that A1 admitted his relationship with A3.

(xiv). It is proved that A1 threatened PW24, Convener, Action Council, near Kumarakam Hotel while PW24 returning after taking part in a protest demonstration organized by the Action Council, after the incident through the evidence of PW24.

(xv). It has been proved that A3 admitted her previous sexual activities through the evidence of PW19, PW29 and Exts.P48, P79 and P80.

(xvi). It is proved that accused No.3 utilized medical intervention to shape artificially her body as that of a virgin, through the evidence of PW19, PW29 along with Exts.P48, P79 and P80.

(xvii). It is proved that there is a ban on the entry of the inmates of the St. Pius X Convent Hostel into the kitchen wash area and the kitchen work area of the

St. Pius X Convent Hostel during the time span between 10.30 pm and 5 am, through PW9 and Ext.P40.

268. Conclusion:

The crucial proved circumstances in this case are that strange and abnormal disturbances occurred in the kitchen work area and in the kitchen wash area of the St.Pius X Convent Hostel in the morning of 27/03/1992, and that A3 was alone at the relevant time on the ground floor of the St.Pius X Convent Hostel, and that Sister Abhaya's dead body was recovered from the well near the ground-floor room of A3, and that the presence of A1 in the convent on the night of 26/27-3-1992 has been proved through the evidence of PW3 and when A1 fails to give a proper explanation for his presence in the Convent during the wee hours and the evidence of PW11 shows that the compound is guarded by fierce dogs and that all

the doors were closed properly by PW11, early in the night of 26/27-3-1992, it demonstrates the nefarious conduct of both A1 and A3. From proved circumstance Nos (iv) and (v), it is inexorable to infer that A1 entered the ground floor of the convent building with the help of A3 to carry out their sexual activities and on the witnessing of the same by Sister Abhaya, she was attacked with a blunt weapon .

269. The assertion of the prosecution that while both accused were in flagrante delicto, the witness, Sister Abhaya, was attacked by the accused with a blunt weapon is apposite here and when the proved circumstances are against the accused persons, it is inevitable to take an inference by applying deductive reasoning that Sister Abhaya was attacked by both the accused with a blunt weapon .

270. The clear assertion of the prosecution is that Sister Abhaya was attacked on the rear side and the middle of her head with a hand axe by the accused, and evidence is forth coming from the doctors who when shown an identical weapon opined that it is possible to cause injury nos 1,2, and 6 with a similar weapon.

271. Given the nature of the head injury suffered by Sister Abhaya, it is sufficient to cause death, as deposed by PW31, Dr. Kandaswamy; the only inference possible here is that Sister Abhaya was attacked by the accused with intention to kill her. The inference drawn is not mere speculation or surmise, but it is the sole factual inference which could possibly be drawn from the proved set of facts.

272. The existence of the above facts is believed by this court to be true because after considering all the

aspects of the matter, the court holds that the fact are so probable that a prudent man would act upon the supposition that those are true under the given circumstances, the power house for this finding being Sec.3 of the Evidence Act ,1872 .

273. The quoting of the resounding passage of His Lordship Justice Mr.K.T.Thomas in State of West Bengal v Mir Muhammad Omar and others; 2000(8)SCC 352 is demanded by the context :

The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would

be the major beneficiaries, and the society would be the casualty. In this case, when prosecution succeeded in establishing the aforementioned circumstances, the Court has to presume the existence of certain facts. Presumption is a course recognised by the law for the Court to rely on in conditions such as this

Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reach a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when S.114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process Court shall have regard to the common

course of natural events, human conduct etc. in relation to the facts of the case.

274. The presence of A1 in the convent building was deposed by PW3 as in between 4 am and 4.30 am on the fateful day ; as PW3 remained at the site till the blowing of the siren at 5 am and PW3 did not see A1 depart from the location till his own departure, it follows that A1 remained there till at least 5 am , and according to PW31 the death of Sister Abhaya might have taken place approximately 6 to 8 hours prior to the postmortem examination, this probabalises the prosecution assertion that Sister Abhaya was attacked by the accused between 4.15 am and 5 am with intention to kill her .

275. In the light of the fact that the dead body was recovered from the well near the room of A3 at about 10.30 am on 27/3/1992 by the Fire Force, the assertion of

the prosecution that the accused, in furtherance of their common intention, to cause the evidence to disappear, dumped Sister Abhaya into the well, in order to make it appear that the said injuries were sustained during the fall, have to be inferred. The location of the murder is exceedingly significant. It is a Convent, a place from which male presence is completely and unequivocally banned. The murder is that of a nun, a Bride of Christ.

276. The judgment of the Hon'ble Supreme Court of India in **Venkateshan V. State of Tamil Nadu : AIR 2008 SC 2369** comes handy here:

The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists

of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

277. The evidence on record is more than sufficient to hold that the unbroken catena of circumstances is so complete that it cumulatively points towards the guilt of the accused, leading to the conclusion which is inconsistent with the innocence of the accused, and the only possibility is that it is the accused and the accused alone who have inflicted a fatal blow on the rear side and middle of the head of Sister Abhaya with a blunt weapon, like hand axe, at about 4.30 a.m. on 27.03.1992 on the ground floor of the St.Pius X Convent, Kottayam, to commit murder, knowing that the injuries were sufficient to cause her death, caused the evidence of the

same to disappear, by dumping Sister Abhaya in to the well near the room of A3, in order to make it appear that the said injuries were sustained during the fall and that Sister Abhaya had committed suicide, in order to screen themselves from legal punishment.

278. As I reach this firm conclusion, I draw infinite inspiration from the eloquent words of that immortal legend of Indian jurisprudence, His Lordship **Justice Mr. V.R.Krishna Iyer** who in **Narotam Singh v. State of Punjab; AIR 1978 SC1542** sagaciously observed :

Proof of guilt is sustained despite little infirmities, tossing peccadilloes and peripheral probative shortfalls. The 'sacred cows' of shadowy doubts and marginal mistakes, processual or other, cannot deter the Court

from punishing crime where it has been sensibly and substantially brought home.

279. It is extremely relevant here to mention the observation of the three Judge bench of the Hon'ble Supreme Court in Nageshwar Shri. Krishna Ghobe v State of Maharashtra; 1973 (4) SCC 23:

Justice would fail not only by unjust conviction of the innocent but also by acquittal of the guilty for unjustified failure to produce available evidence.

280. Point No. 6 :

(What, if any, are the offences committed by the accused?)

(A). Accused Nos.1, and 3 are found guilty of the offences under Secs. 302 and 201 r/w. Sec. 34 of

the Indian Penal Code and they are convicted for the said offences.

(B). Accused No.1 is found guilty of the offence under Sec.449 of the Indian Penal Code and he is convicted for the said offence. Coming to the matter of house –trespass in the case of A3, as there are no essential ingredients of criminal trespass forthcoming against A3, she is acquitted of the offence of Sec.449 IPC U/s 235(1) CrPC.

281. Bail bonds of the accused are cancelled; accused are remanded to custody.

282. The Superintendent, CBI, Thiruvananthapuram is directed to facilitate the conductivity of screening / test by Medical Officers for Covid-19, in a designated hospital.

For hearing on sentence to 23/12/2020.

Dictated to the CA, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 22nd day of December, 2020.

Sd/-
K. Sanilkumar,
Addl. Sessions Judge/Special Judge (SPE/CBI).

23/12/2020

283. Point No. 7:

Before advertng to the merit on this point under consideration, I think it is apt to speak about the learned counsel for A3, **Sri. J. Jose**, who is no longer with us today. He breathed his last on Saturday, 05/12/2020. He appeared in this court on Thursday, 03/12/2020, and argued at length with all his might and main in the concluding session of his marathon performance lasting five long days. He passed away after doing his duty to the

fullest. He remains an eternal inspiration for the legal fraternity.

284. Heard each of the two convicts on the question of sentence to be meted out to each of them for the offences with which they have been found guilty, and their responses are recorded in continuation of their statements u/s 313 CrPC. Heard their counsel, and learned Public Prosecutor as well.

285. A1 pleaded that he is a senior citizen aged 71 years, suffering from various diseases including Stage IV Carcinoma Prostate and sought that maximum mercy may be showered upon him. A3 impetrated the mercy of this Court on account of her age and her illnesses, including Deep Vein Thrombosis of right lower limb. She has parents who are nonagenarians.

286. The punishment prescribed u/s 302 IPC is either

death sentence or life imprisonment with fine. Death sentence is awarded to the convict in rarest of rare cases, and **the Hon'ble Supreme Court of India** has set the criteria for considering a case to be the rarest of rare. By navigating through the verdicts of **the Hon'ble Apex Court** including in **Bachan Singh v. State of Punjab; AIR 1980 SC 898, Machhi Singh v. State of Punjab; AIR 1983 SC 957, Muniappan C and Others v. State of Tamil Nadu; AIR 2010 SC 3718 and Muhammad Mannan @ Abdul Mannan v. State of Bihar; 2011 (2) SCC (Crl) 626**, one would find aggravating and mitigating circumstances for testing whether a case is rarest of rare or not. If the total sum of the aggravating circumstances outweigh the total sum of mitigating circumstances, the convict deserves to be slapped with capital punishment; if it is vice versa life imprisonment will be awarded to the convict as the alternative punishment for murder.

287. In the light of the survey of the guidelines laid down by **the Hon'ble Supreme Court of India** in the above mentioned cases, let us cull out the striking aggravating / mitigating circumstances as follows:

(i). Aggravating Circumstances include:

(a). If the murder has been committed after previous planning and involves extreme brutality;

(b). If the murder involves exceptional depravity;

(c). If Murder of an innocent child; a hapless woman is committed.

(ii) Mitigating Circumstances include:

(a). The offence was committed under the influence of extreme mental or emotional disturbances;

(b). The age of the accused. If the accused is young or old, he shall not be sentenced to death;

(c). The probability that the accused would not commit criminal acts of violence as would continuing threat to society;

(d). The probability that the accused can be reformed and can be rehabilitated.

288. The learned Public Prosecutor Sri. M. Navas indexed the following aggravating circumstances in this case:

- (1) The victim was a hapless novice
- (2) The accused were her superiors.
- (3) Accused carried out systematic and comprehensive destruction of evidence

289. Au contraire, the learned counsel for the convicts Sri. B. Sivadas and Sri. Sojan Micheal highlighted the following mitigating circumstances:

- (1) Both accused are aged
- (2) Both are suffering from chronic diseases

(3) Offence was not a preplanned one .

(4) Accused have no criminal antecedents

290. Gauged against the backdrop of the guiding principles laid down by **the Hon'ble Supreme Court of India** mentioned supra, it can safely be concluded that the mitigating circumstances in this case are capable of overwhelming the aggravating circumstances.

291. Ergo, it is imperative to award life imprisonment to the convict; accordingly, the accused persons are sentenced as follows:-

(1). Accused Nos. 1 and 3 are sentenced to undergo imprisonment for life and a fine of Rs.5,00,000/- (Rupees Five Lakhs only) is imposed on each of them for the offence u/s 302 r/w 34 of the Indian Penal Code, in default

of payment of fine, he / she shall undergo simple imprisonment for a period of two years.

(2). Punishment provided u/s 201 of Indian Penal Code will vary with the nature of offence for which the offender causes any evidence of the commission of that offence to disappear. Here, the offence which the accused know or believe to have been committed is punishable with death; therefore, they shall undergo rigorous imprisonment for seven years and a fine of Rs.50,000/- (Rupees Fifty Thousand only) is imposed on each of them for the offence u/s 201 r/w 34 of the Indian Penal Code, in default of payment of fine, the convicts shall undergo simple imprisonment for a period of one year.

(3). The punishment prescribed u/s 449 of the Indian Penal Code is imprisonment for life or rigorous imprisonment for a term not exceeding 10 years with fine. I do not see any reason not to award the maximum punishment envisaged by this penal section as his nocturnal misadventure paved way to the cold blooded murder of the victim.

Thus, **accused No.1** is also sentenced to undergo **life imprisonment** and a fine of Rs.1,00,000/- (Rupees One Lakh only) is imposed on him for the offence u/s 449 of the Indian Penal Code, in default of payment of fine, he shall undergo simple imprisonment for a period of one year.

292. This court finds that the convicts have financial ability to remit the fine amount.

293. The sentences of A1 and A3 shall run concurrently.

294. I am compelled to record that it is clear from the evidence of PWs 15 to 20 and from Ext.P47 that DySP Sri. K. Samuel and the then Superintendent of Police Sri. K.T.Michael were involved in the activities of destruction of the material objects in this case. The Police Head of the state will take necessary steps to ensure that such misdeeds on the part of the police including Crime Branch does not occur in future. Forward a copy of this judgment to the State Police Head.

295. For the purpose of commutation or remission, if any, the period for which each of the accused is entitled to set off will be as follows:

A1 - From 18/11/2008 to 01/01/2009

A3 - From 19/11/2008 to 01/01/2009

296. The accused No. 1 is committed to the Central Prison, Thiruvananthapuram and accused No.3 is committed to Women's Prison, Thiruvananthapuram, to serve the sentence imposed.

Dictated to the CA, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 23rd day of December, 2020.

Sd/-

K. Sanilkumar,

Addl. Sessions Judge/Special Judge (SPE/CBI).

APPENDIX

Exhibits for Prosecution:-

P1	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P2	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P3	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P4	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P5	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P6	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P7	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P8	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P9	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P10	13-06-1997	Portion of 161 statement of PW1 given before C.B.I.
P11	14-11-2008	Portion of 161 statement of PW2 given before C.B.I.
P12	14-11-2008	Portion of 161 statement of PW2 given before C.B.I.
P13	15-11-2008	Portion of 161 statement of PW2 given before C.B.I.
P14	17-11-2008	U/s 164 statement of PW 2 given

		before JFMC II, Ernakulam.
P15	14-11-2008	Portion of 161 statement of PW2 given before C.B.I.
P16	01-12-2008	U/s 164 CrPC statement of PW 3 given before JFMC -II,Ernakulam
P17	20-12-2008	Portion of 164 statement of PW4 given before JFMC-II, Aluva
P18	27-03-1992	Inquest report signed by V.V.Augustin (Time 10.00 am)
P19	27-03-1992	Request for postmortem
P20	27-03-1992	Death report
P21	27-03-1992	F.I.R No 187/1992 of Kottayam West Police Station. (Time 9.15 AM)
P 22	27-03-1992	F.I.S given by Sister Lisieux to V.V Augustin (Time 8.30 AM)
P23	27-03-1992	Incident report No.40/92 of Fire Force Department
P24	14-03-1992 to 12-04-1992	Page No. 41 of General Diary from 14-03-1992 to 12-04-1992 kept in Kottayam Fire Station.
P 24(a)		Portion of P 24
P25		Page No. 42 of General Diary
P26	18-12-2008	Portion of 164 statement given by PW 6 before JFMC - I ,Ernakulam
P27 series		Photos(6 Nos)

P28	14-11-2008	Portion of 161 statement of PW 9 given before CBI
P29	14-11-2008	Portion of 161 statement of PW 9 given before CBI
P30 Series		Specimen signature of PW10 (S-17 to S-23)
P31		Portion of 161 statement of PW11 given before CBI
P32	02-08-1997	Portion of 161 statement of PW12 given before CBI
P33	02-08-1997	Portion of 161 statement of PW 12 given before CBI
P34	02-08-1997	Portion of 161 statement of PW 12 given before CBI
P35	02-08-1997	Portion of 161 statement of PW12 given before CBI
P36	02-08-1997	Portion of 161 statement of PW12 given before CBI
P37	21-12-1993	Portion of 161 statement of PW13 given before CBI
P38	29-06-2007	Portion of 161 statement of PW 13 given before CBI
P39	22-11-2008	Portion of 161 statement of PW13 given before CBI
P40		Propectus of Pius 10 th convent
P41		Biodata of Sister Abhaya
P42	23-12-2008	164 Statement of PW14 given before JFCM-I, Kochi
P43	13-07-1992	Note sheet in file No.

		K.dis/2580/92 (2 Sheets)
P44	27-03-1992	Property list in Crime No.187/92 of Kottayam West police (1 Sheet)
P45	18-04-1992	Letter produced by DySP Samuel (1 Sheet)
P46	06-07-1992	Property list
P47	06-07-1992	Report filed by K.Samuel, DySP, CB.CID, Kollam
P48	25-11-2008	Medico Legal Certificate
P49 Series	09-12-1998	Specimen signature of Nazeer and Xaviour (S1 - S16)
P50	04-01-1999	Copy of questionnair , issued to Director, CFSL, Delhi
P51	12-02-1999	Report No.CFSL/99/D-3 of Dr.M.A.Ali(PW 21), Sr. Scientific Officer, CFSL, CBI, Delhi
P52	16-02-1999	Letter from CFSL, CBI, NewDelhi
P53	30-11-2007	Report of Dr. Aggarwal, Sr.Scientific Officer, CFSL, CBI, New Delhi
P54	18-04-1992	Report/Chemical Analysis Certificate submitted by PW22 before Geetha.R., Joint Chemical Examinor, Thiruvananthapuram
P55	24-04-1992	Report/Certificate of Chemical Analysis No:1147/92 signed by Geetha.R., Joint Chemical

		Examinor, Thiruvananthapuram
P56	30-03-1992	Requisition letter sent by Dr.C.Radhakrishnan, Police Surgeon to Chemical Examinor to Government, Thiruvananthapuram
P57	30-06-1997	Portion of 161 Statement of PW25 given before CBI
P58	30-06-1997	Portion of 161 Statement of PW25 given before CBI
P59	24-11-2008	Portion of 161 Statement of PW26 given before CBI
P60	24-11-2008	Portion of 161 Statement of PW26 given before CBI
P61	25-11-2008	Proceeding of the Principal, Govt. Medical College, Alappuzha.
P 62	27-03-1992	Postmortem Certificate
P 63	27-03-1992	Hand written Post Mortem Certificate No. 318/92 with detailed notes
P64	20-05-1993	Portion of 161 Statement of PW32 given before CBI
P65	02-01-2009	Portion of 164 Statement of PW33 given before JFMC-I, Kolanchery
P66	02-01-2009	Portion of 164 Statement of PW33 given before JFMC-I, Kolanchery
P67	02-01-2009	Portion of 164 Statement of

		PW33 given before JFMC-I, Kolanchery
P68	15-11-2008	Summons to Sanju P Mathew (PW 2) from JFMC -II ,Ernakulam
P69	17-11-2008	Letter of JFMC-II, Ernakulam to CJM, Ernakulam
P70	27-11-2008	Summons issued to Raju @ Adakka Raju (PW 3) ,from JFMC -II ,Ernakulam
P71	01-12-2008	Letter of JFMC-II, Ernakulam to CJM, Ernakulam
P72	01-12-2008	Summons issued to Chellamma Das from JFMC -II , Ernakulam
P73	03-12-2008	Portion of 164 statement of Chellamma Das given before JFMC-II, Ernakulam
P74	03-12-2008	Portion of 164 statement of Chellamma Das given before JFMC-II, Ernakulam
P75	03-12-2008	Portion of 164 statement of Chellamma Das given before JFMC-II, Ernakulam
P76	03-12-2008	Letter of JFMC-II, Ernakulam to CJM, Ernakulam
P77	17-07-1995	Report signed by Dr.Mahesh Varma and PW36
P78 Series		Photographs of dummy demonstration (6 Sheets)
P79		Hand written Medico Legal

		Certificate and examination findings
P80	25-11-2008	Report of Medical examination of female in sexual offences
P81	17-03-1993	Direction to CBI, Cochin Branch to take over the investigation by Assistant Inspector General of Police(P), CBI
P82	17-05-1993	Letter of the Commissioner and Secretary to Government of Kerala to the Secretary to Government of India, Department of Personal and Training, New Delhi
P82(a)	10-05-1993	Notification No.22365/J3/93/Home issued by C.P Nair, Commissioner and Secretary to Government
P83	29-03-1993	Copy of FIR in RC 8(S)/93/SPE/KER
P83(a)	29-03-1993	Original of FIR in RC 8(S)/93/SPE/KER
P84	02-06-1994	Seizure memo signed by PW39
P85	06-08-1997	Receipt memo for the medical records received by Sri.Surender Paul, DSP, CBI, SIC-II, New Delhi
P86	19-04-2007	Receipt memo for the chemical analysis report received by Sri.Subhash Kundu, Inspector/SCR-II, New Delhi

P87	29-08-1997	Seizure memo having signature of Karmain Singh, Inspector/CBI, SIC-II, New Delhi
P88	30-06-2007	Order of CJM, Ernakulam in CMP-2989/2007 (Permission for Narco Analysis Test of A1)
P89	29-06-2007	Written consent of A1 for Narco Analysis Test
P90	29-01-2008	Written consent of A1 for Polygraph Test
P 91	14-08-2007	Order of CJM, Ernakulam in CMP-2661/2007
P 92	14-08-2007	CMP No.2661/2007 of CJM, Ernakulam
P 93	10-07-2007	Consent letter given by A3 for scientific test
P 94	25-11-2008	Letter of PW43 to the Principal, Medical College, Alapuzha
P 95	23-01-2009	Crime Scene recreation proceedings held at St.Pius Xth Hostel, Kottayam
P 95(a)	23-01-2009	Specimen seal impression used for Sealing Miniature Cassettes
P 95(b)	23-01-2009	Specimen seal impression used for Sealing Miniature Cassettes
P 96	18-11-2008	Arrest -Cum-Inspection /Personnal Search Memo of A1
P 97	19-11-2008	Medical Certificate of A1

P 98	19-11-2008	Arrest -Cum-Inspection /Personnal Search Memo of A3
P 99	19-11-2008	Judicial Custody Application filed by PW 49 before CJM , Ernakulam.
P100	19-11-2008	Police Custody application filed by PW49 before CJM, Ernakulam.
P101	19-11-2008	Inclusion report of accused and section of law filed by PW49.
P102	02-05-1992	Letter from the commissioner and Secretary to Govt.of Kerala to Secretary Ministry of Home Affairs, Govt.of India ,New Delhi.
P102 (a)	10-04-1992	Letter of Sister Benecassia, CMC,Suprior General President, General Chapter to C.M, Kerala.
P103	09-01-2009	Original Mini Plan of Ground Floor of St.Pius Xth Convent Hostel.
P103 (a)	09-01-2009	Original Mini Plan of Cellar Floor of St.Pius Xth Convent Hostel.
P103 (b)	09-01-2009	Original Mini Plan of St.Pius Xth Convent Hostel.
P104	09-01-2009	General Plan of First and Second floor of St.Pius Xth Convent Hostel.
P104 (a)	09-01-2009	General Plan of Third floor and Terrace of St.Pius Xth Convent Hostel.
P105	13-11-2008	Rough Sketch of Cellar Floor of

		St.Pius Xth Convent Hostel prepared by PW49.
P105(a)	13-11-2008	Rough Sketch of Third Floor of St.Pius Xth Convent Hostel prepared by PW49.
P105(b)	13-11-2008	Rough Sketch of Second Floor of St.Pius Xth Convent Hostel prepared by PW49.
P105(c)	13-11-2008	Rough Sketch of First Floor of St.Pius Xth Convent Hostel prepared by PW49.
P105(d)	13-11-2008	Rough Sketch of Ground Floor of St.Pius Xth Convent Hostel prepared by PW49.
P105(e)	13-11-2008	Rough Sketch of St.Pius Xth Convent Hostel prepared by PW49.
P106	04-05-1993	Certified copy of Judgment in C.C 819/92 of JFMC -I ,Kottayam
P106(a)	04-06-1993	Certified copy of Judgment in C.C 826/92 of JFMC -I ,Kottayam
P106(b)	04-06-1993	Certified copy of Judgment in C.C 825/92 of JFMC -I ,Kottayam
P106(c)	10-06-1993	Certified copy of Judgment in C.C 830/92 of JFMC -I ,Kottayam
P106(d)	10-06-1993	Certified copy of Judgment in C.C 828/92 of JFMC -I ,Kottayam
P106(e)	10-06-1993	Certified copy of Judgment in C.C 827/92 of JFMC -I ,Kottayam
P106(f)	10-06-1993	Certified copy of Judgment in C.C

		829/92 of JFMC -I ,Kottayam
P106(g)	10-06-1993	Certified copy of Judgment in C.C 831/92 of JFMC -I ,Kottayam
P106(h)	14-06-1993	Certified copy of Judgment in C.C 832/92 of JFMC -I ,Kottayam
P107	03-05-2010	Certified copy of Order of Hon'ble Supreme Court in Petition(s) for special leave to Appeal (Crl) No(s) 7159 -7160 /2008
P108	06-10-2020	Certified copy of Order of Hon'ble High Court of Kerala in Crl M.C 3911/2020 .

Witness for Prosecution:-

PW1	26-08-2019	Sister Anupama Mathoor
PW2	27-08-2019	Sanju .P. Mathew
PW3	29-08-2019	Raju @ Adacka Raju
PW4	30-08-2019	M.M. Thomas
PW5	31-08-2019	Vamadevan
PW6	02-09-2019	Kalarcode Venugopalan
PW7	03-09-2019	Varghese Chacko
PW8	04-09-2019	Shameer
PW9	04-09-2019	Nisharani
PW10	05-09-2019	John Scaria
PW11	06-09-2019	Achamma
PW12	16-09-2019	Sister Annie John

PW13	16-09-2019	Sister sudeepa
PW14	17-09-2019	Prof. Thressiamma
PW15	14-10-2019	Divakaran Nair
PW16	14-10-2019	John .V.D
PW17	15-10-2019	K. Sankaran
PW18	15-10-2019	Raju Namboothiri
PW19	18-10-2019	Dr. Lalithambika Karunakaran
PW20	19-10-2019	P.T. Jacob
PW21	21-10-2019	Dr.M.A.Ali
PW22	22-10-2019	M.Chithra
PW23	22-10-2019	R.Geetha
PW24	24-10-2019	Jomon Puthenpurackal
PW25	04-11-2019	Sister Elicitta
PW26	04-11-2019	Sister Thressiamma
PW27	05-11-2019	T.A.Nazeer
PW28	05-11-2019	Aliamma
PW29	05-11-2019	Dr.PRema [Examined by Commissioner (JFMC-I, Thiruvananthapuram) at her residence]
PW30	19-11-2019	S.G.K.Kishore
PW31	20-11-2019	Dr.Kanthaswami
PW32	23-11-2019	Sister Sherly
PW33	10-12-2019	Dr. C. Radhakrishnan.
PW34	21-12-2019	K.N. Muraleedharan Pillai.

PW35	10 -01-2020	Sarathchandran. K.S.
PW36	29-01-2020	Dr. S.K.Pathak.
PW37	17-02-2020	Suresh Kumar. E.P
PW38	20-10-2020	Varghese P. Thomas.
PW39	20-10-2020	K.V. Harivalsan.
PW40	21-10-2020	A.K. Ohri.
PW41	27-10-2020	R.K. Agarwal.
PW42	27-10-2020	K.M. Varkey.
PW43	28-10-2020	M.Surendran.
PW44	28-10-2020	C. M. Salim Sahib.
PW45	28-10-2020	Abdul Aziz.
PW46	30-10-2020	Premkumar.
PW47	30-10-2020	Darvin.K. J.
PW48	02-11-2020	Devraj.V
PW49	03-11-2020	Nandakumar Nair.

Defence Exhibits:-

D1	11-07-2007	Portion of 161 statement of PW3 given before CBI
D2	01-12-2008	Portion of 164 statement of PW3 given before JFMC II,Ernakulam
D3	01-12-2008	Portion of 164 statement of PW3 given before JFMC II,Ernakulam
D4	11-07-2007	Portion of 161 statement of

		PW3 given before CBI
D5	20-11-2008	Portion of 161 statement of PW3 given before CBI
D6	01-08-1997	Portion of 161 statement of PW4 given before CBI.
D7	15-12-2008	Portion of 161 statement of PW6 given before CBI.
D8	27-03-1992	Portion of 161 Statement of PW11 given before Kottayam West Police.
D9	21-12-1993	Portion of 161 Statement of PW13 given before CBI.
D10	13-07-2007	Order in C.C. 527/2002 of JFMC.I, Kottayam.
D11	23-12-2008	Portion of 164 Statement of PW14 given before JFMC-I, Kochi.
D12	16-12-2008	Portion of 161 Statement of PW14 given before CBI.
D13	23-12-2008	Portion of 164 Statement of PW14 given before JFMC-I, Kochi
D14	30-01-1993	Final Report of Dy.SP. Samuel filed before the SDM Court, Kottayam.
D15	30-06-1997	Portion of 161 Statement of PW25 given before CBI. 198

D16	30-06-1997	Portion of 161 Statement of PW25 given before CBI.
D17	12-05-2007	Portion of 161 Statement of PW26 given before CBI.
D18		Portion of 161 Statement of PW26 given before CBI.
D19	24-11-2008	Portion of 161 Statement of PW26 given before CBI.
D20	10-07-1994	Portion of 161 Statement of PW27 given before CBI.
D21	20-06-2007	Portion of 161 Statement of PW27 given before CBI.
D22	20-06-2007	Portion of 161 Statement of PW27 given before CBI.
D23	05-02-2000	Copy of letter of PW31.
D24	16-02-2009	Portion of 161 Statement of PW31 given before CBI
D25	17-12-2008	Portion of 161 statement of PW33 given before CBI.
D26	01-07-1997	Portion of 161 statement of PW34 given before CBI.
D27	19-06-2007	Portion of 161 statement of PW34 given before CBI.
D28	01-08-1997	Portion of 161 statement of PW4 given before CBI.
D29	24-01-2008	Certified copy of the order of the Hon'ble Supreme Court of India in CrI.Appl.No. 1267/2004.
D30	18-11-2005	Certified copy of judgment of

		the Hon'ble High Court of Kerala in OP. No. 32840/2001.
D31	15-11-2008	Certified copy of the Proceedings of the CJM, Ernakulam in Order no.C1-5455/2008.
D32	21-07-2007	Certified copy of the Final Report in Crime no 133/2007 of Piravam Police Station filed before the S.D.M Court ,Muvattupuzha
D33	10-02-1993	Certified copy of the deposition of Shri Shameer in C.C 819/1992 before JFMC-I ,Kottayam
D33(a)	10-02-1993	Certified copy of the deposition of Shri Shameer in C.C 829/1992 before JFMC-I ,Kottayam
D33(b)	01-02-1993	Certified copy of the deposition of Shri Shameer in C.C 831/1992 before JFMC-I ,Kottayam
D33(c)	01-02-1993	Certified copy of the deposition of Shri Shameer in C.C 827/1992 before JFMC-I ,Kottayam.
D33(d)	01-02-1993	Certified copy of the deposition of Shri Shameer in C.C 825/1992 before JFMC-I ,Kottayam.

D33(e)	01-02-1993	Certified copy of the deposition of Shri Shameer in C.C 832/1992 before JFMC-I ,Kottayam.
D33(f)	01-02-1993	Certified copy of the deposition of Shri Shameer in C.C 830/1992 before JFMC-I ,Kottayam.
D33(g)	01-02-1993	Certified copy of the deposition of Shri Shameer in C.C 826/1992 before JFMC-I ,Kottayam.
D33(h)	01-02-1993	Certified copy of the deposition of Shri Shameer in C.C 828/1992 before JFMC-I ,Kottayam.

COURT EXHIBITS:-

C1	21-11-2008	Application filed by the Counsel for A1 to grant permission to meet A1 while he was in police custody(C.M.P.10083/2008)
C2	24-11-2008	Objection filed by PW49.
C3	02-12-2008	Petition filed by IO(PW 49) for remand of accused to judicial custody.
C4	16-12-2008	Remand extension report.
C5	29-12-2008	Remand extension report.

C6	15-11-2008	Petition filed by I.O (PW49) for recording the statement u/s 164(5) Cr.PC of PW2.
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Sd/-

K. Sanilkumar,

Special Judge (SPE/CBI)/Additional Sessions Judge

CALENDER STATEMENT IN SESSIONS CASE No. SC.1114/2011
SPECIAL COURT (SPE/CBI), THIRUVANANTHAPURAM

Serial No.	Sessions Case No. SC.1114/2011
Name of Police Station & Crime No. of the offence	R.C 8 (S)/1993/ CBI / KER.

Description of Accused in the trial

A1

Name : Father Thomas Kottoor.
Father's Name : K.T. Mathew
Caste & Religion : Christian
Occupation : Private Person
Residence : Kottoor House,
Kidangoor,Kottayam.
Age : 71 years.

Date of:-

Occurrence : 27/03/1992
Complaint : 17/07/2009
Apprehension : 18/11/2008
Release on Bail : 01/01/2009
Commencement of Trial : 05/08/2019
Close of Trial : 10/12/2020
Sentence or order : 23/12/2020

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A3

Name : Sister Sephy.
Father's Name : Joseph
Caste & Religion : Christian
Occupation : Private Person
Residence : St.Joseph's Generalate,
S.H. Mount, Kottayam,
(Kangrathumoothy House,
Kurumulloor, Kottayam)
Age : 57 years.
Date of
Occurrence : 27/03/1992
Complaint : 17/07/2009
Apprehension : 19/11/2008
Release on Bail : 01/01/2009
Commencement of Trial : 05/08/2019
Close of Trial : 10/12/2020
Sentence or order : 23/12/2020

// True Copy//

Sd/-
Additional Sessions Judge/
Special Judge(SPE/CBI)

(By Order)

Sheristadar.

Typed by :
Compared by :

**Judgment in SC No.1114/2011
Dated: 23/12/2020**