

**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE -VI,
KOLLAM**

Present: Sri. M. Manoj, Addl. District & Sessions Judge-VI, Kollam.

On Wednesday 13th day of October, 2021/21st day of Aswina, 1943

Sessions Case No. 820/2020

C.P. No. 49/2020 of JFMC-I, Punalur

Complainant:- State of Kerala represented by
Dy.S.P., Crime Branch,
Kollam (Rural) represented by **Adv. G. Mohan Raj**
Special Public Prosecutor .
(Crime No. 1540/2020 of Anchal Police Station)

Accused:- Suraj. S. Kumar, Aged 27/2020 years,
S/o Surendra Panicker,
Residing at Sree Soorya,
Karakkal Junction, Parakkodu Muri,
Adoor Village.

**By Adv. S. Ajith Prabhav, Brijendralal S.P, Jithu S Nair,
A. Ashok Kumar, K.B. Sreekumar**

Charge Offences punishable u/s. 307, 328, 302 and 201 IPC

Plea of the Accused Not guilty

Finding of the Court Guilty

Sentence of Order

In the result,

(i) The accused is sentenced to undergo imprisonment for life and to pay a fine of Rs.5,00,000/- (Rupees Five Lakhs only) for the commission of offence punishable U/s 302 I.P.C;

(ii) In default of payment of fine the accused shall undergo rigorous imprisonment for 1(one) year;

(iii) The accused is sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/-

(Rupees Fifty Thousand only) for the commission of offence punishable U/s 307 I.P.C;

(iv) In default of payment of fine the accused shall undergo rigorous imprisonment for 6 (six) more months;

(v) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and to pay a fine of Rs. 25,000/- (Rupees Twenty Five Thousand only) for the commission of offence punishable u/s 328 I.P.C;

(vi) In default of payment of fine the accused shall undergo rigorous imprisonment for 3 (three) more months;

(vii) The accused is sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs.10,000/- (Rupees ten thousand only) for the commission of offence punishable u/s 201 I.P.C;

(viii) In default of payment of fine he shall undergo rigorous imprisonment for 1 (one) more month.

Dates of Trial

01/12/2020, 02-12-2020, 09/12/2020, 10/12/2020, 21/12/2020, 22/12/2020, 24/12/2020, 01/01/2021, 04/01/2021, 06/01/2021, 07/01/2021, 18/01/2021, 30/01/2021, 05/02/2021, 08/02/2021, 09/02/2021, 10/02/2021, 11/02/2021, 16/02/2021, 17/02/2021, 18/02/2021, 19/02/2021, 23/02/2021, 24/02/2021, 25/02/2021, 27/02/2021, 01/03/2021, 02/03/2021, 04/03/2021, 10/03/2021, 12/03/2021, 18/03/2021, 23/03/2021, 20/04/2021, 30/04/2021, 24/06/2021, 30/06/2021,02/07/2021,05/07/2021,06/07/2021, 07/07/2021,12/07/2021,13/07/2021,14/07/2021, 15/07/2021,19/07/2021,20/07/2021,22/07/2021, 26/07/2021,02/08/2021,04/08/2021,06/08/2021, 16/08/2021,18/08/2021,26/08/2021,

This sessions case have been finally heard on 04/10/2021 and the Court on 13/10/2021 delivered the following:-

J U D G M E N T

This is a case of diabolic and ghastly uxoricide, committed stealthily, by inflicting induced Cobra bites causing fatal envenomation, with extreme wickedness, to disguise it as death due to accidental Cobra bite.

2. The accused stands charged by the D.Y.S.P, District Crime Branch Kollam Rural, in Crime No. 1540/2020 of Anchal Police Station for the alleged commission of offences punishable u/s 307, 326, 302 and 201 of the Indian Penal Code. The prosecution case is summarised in nutshell as follows:-

The accused married Uthra, the sister of CW2, a differentially abled lady (the deceased in this case) on 25/03/2018 with the object of financial gain. After a child was born in the wedlock, the accused who was dissatisfied with the mental and physical disability of Uthra, contrived a plot to get rid of her by causing her death in a manner without causing suspicion to her relatives, so that he would continue to get financial assistance from the family of Uthra and he would be able to retain the gold ornaments, with which she was adorned and the cash gifted to her at the time of her marriage. In prosecution of the said evil design to cause death of Uthra, the accused intended to commit her murder by

causing venomous snake bite to her. Thereafter, the accused got acquainted with the behaviour of venomous snakes by surfing the Internet and YouTube and got acquainted with CW1, who had expertise in handling and capturing venomous snakes. On 26/02/2020 the accused purchased a Viper, a venomous snake from CW1 for 10,000/- rupees and took it in a plastic container to his house named Sree Surya at Parakkodu. On 27/02/2020 he kept the viper in the staircase and sent Uthra upstairs to take his mobile phone with the intention that Uthra will be bitten by the viper; but failed in the attempt since Uthra saw the snake and raised alarm calls; then the accused skilfully captured the viper and carefully put it into a sack and kept it; then on 02/03/2020 he mixed sedative tablets in 'പായസം' and gave it to Uthra in the said house, as a result of which she fell fast asleep; then the accused took the venomous Viper and caused it to bite Uthra and threw it out of the house to destroy evidence. Due to excruciating pain Uthra woke up and cried. With intent to cause her death, the accused who knew driving did not take her to the hospital and also failed to seek the aid of his father who also knew driving, to take her to the hospital and deliberately delayed medical aid to her. Finally, Uthra was taken to the hospital with the aid of PW9, Sujith. She was initially taken to the Govt. Hospital, Adoor, and on being referred to higher centre, taken to Holy Cross Hospital, Adoor. From there also Uthra was referred and she was admitted in the I.C.U of Pushpagiri

Hospital at Thiruvalla, and after undergoing treatment for 52 days there, her life was saved. She had to undergo skin grafting in her leg and was non ambulant at the time of discharge. Thereafter, while Uthra was convalescing in her house, named Vishu at Anchal, on 24/04/2020 at 11.40 a.m., the accused purchased a venomous Cobra from PW1 for 7,000/- rupees and clandestinely took it to his house and kept it hungry. On 06/05/2020 he took the Cobra in plastic jar kept in a bag, to the house of Uthra. Thereafter, on the same day before going to sleep he gave sedative tablets to Uthra mixed in juice and after being convinced in the night hours that she was fast asleep, he took the Cobra and with intent to cause death of Uthra, caused it to bite on her left arm twice and ensured her death by envenomation. Then the snake crawled to a corner of the room. Thereafter, the accused stay awake the whole night. He destroyed the evidence by washing the glass tumbler, in which he gave the sedative mixed juice to Uthra and also destroyed evidence by destroying the stick used by him to handle the snake and deleting the call history in his mobile phone whereby he had called PW1.

3. In the morning of 7/05/2020, PW4 Manimekhala, the mother of the deceased found her lying motionless in the cot, situated in the western side of the room and raised alarm calls, hearing which PW2 and PW3 rushed to the bedroom. Thereafter, Uthra was taken to the Anchal St. Joseph's Mission

Hospital by PWs 2, 3, 4 and the accused. PW62 Jeena Badhar, the Casualty duty doctor of the said hospital confirmed the death of Uthra and since the death was not natural and a medico legal case, PW81 J. Joy, the Grade Sub Inspector, Anchal Police Station conducted inquest on the corpse of Uthra on 7/05/2020. On the same day itself, PW 65 Dr. Ragesh. R, who was working as Medical Officer in Department of Forensic Medicine, Govt. Medical College Hospital, Thiruvananthapuram conducted post-mortem examination of Uthra, gave preliminary opinion that the cause of death was due to snake bite and forwarded the viscera for chemical analysis. Later, on getting the certificate of chemical analysis, the death of Uthra was confirmed as due to Cobra envenomation. PW3 Vishu, the brother of Uthra had lodged the F.I.S on 7.5.2020 at the Anchal police station and PW81 had registered the F.I.R. u/s 174 Cr.PC for unnatural death. Thereafter, PW82 Pushpakumar, the Sub Inspector of Police, Anchal inspected the scene of occurrence and prepared the scene mahazar. After post-mortem examination, the body was released and it was cremated on 7.5.2020. In the meanwhile, while PW2 and PW4, the parents of Uthra became suspicious regarding the circumstances of the death of Uthra and lodged a complaint before the Rural District Police Chief, Kollam. As per the order of the Rural District Police Chief, Kollam, PW85 Ashokan, the DYSP of District Crime Branch, Kollam Rural took over the investigation on 23.5.2020.

On 24.5.2020 initially the F.I.R was forwarded to the Sub Divisional Magistrate Court, Punalur as the case was registered only U/S 174 Cr.PC. Then PW85 filed a report to the Sub Divisional Magistrate Court, Punalur and the case records were forwarded to the J.F.C.M-I, Punalur. On the basis of the disclosure statement made by the accused, MO1 plastic jar used to keep the Cobra was recovered by PW85 on 25.5.2020. Since the accused persons had also committed offence punishable under the Wild Life (Protection) Act, the Forest Department had also registered cases against the accused and PW1. The carcass of the dead snake was exhumed from the premises of the residence of Uthra by the Veterinary Surgeon and Forensic Expert on the direction of PW85. On verifying the call detail records of the accused it was revealed that he had made calls to PW1 Chavarukavu Suresh who was a snake handler. Thereafter, PW85 interrogated the accused and PW1 and arrested both of them. While undergoing judicial custody PW1 who was arrayed as the 2nd accused filed an application before the J.F.C.M-I, Punalur stating that he is willing to give the disclosure statement. On the basis of the said report PW85 filed an application before the Chief Judicial Magistrate, Kollam. The Chief Judicial Magistrate, Kollam recorded the statement of PW1 and since the statement was found to be voluntarily made and the Investigating Officer was of the opinion that it was a full and true disclosure of the facts of the case, PW1 was tendered pardon by

the Chief Judicial Magistrate, Kollam. PW1 accepted the pardon and he was deleted from the array of the accused and made as approver in this case. After completion of investigation, PW85 filed Final Report against the accused alleging commission of offences u/s 302, 307, 326 and 201 I.P.C. The J.F.C.M-I, Punalur took the case on file as committal proceeding, furnished copy of the Final Report and prosecution case records to the accused, who is in judicial custody and committed the case to the Sessions Court, Kollam.

4. The Sessions Court took the case on file and made it over to this Court for trial and disposal. The accused who was in judicial custody was produced in Court. He was represented by defence counsel Adv. Ajith Prabhav. Thereafter, due to Covid-19 restrictions he was produced, vide Video Conference. The Special Prosecutor Adv. Mohanraj opened the case by describing the case against the accused and by what evidence he proposes to prove the guilt of the accused. On consideration of the record of the case and the documents submitted therewith and hearing the submissions of the defence counsel and prosecution, the charge U/Ss 302, 307, 328, and 201 of Indian Penal Code was framed, read over and explained to the accused, vide Video Conference. (Due to Covid-19 pandemic and restrictions, even the defence agreed to frame the charge via video conference.) He pleaded not guilty and

claimed to be tried. In this case, prosecution examined PW1 to PW87 and marked Exts. P1 to P286 and MO1 to MO40. While evidence was recorded the accused was physically produced in court. When questioned u/s 313 Cr.PC, the accused denied all the incriminating circumstances against him and filed written statement.

5. The accused stated that, in February, 2020 snakes were seen on several instances in the premises of his house and he had called PW1 over phone. PW1 agreed to come to his house when he comes to Adoor, Ezhamkulam, Kulathupuzha etc. for the purpose of vehicle sales. In the last days of February, 2020 on one day at 7 a.m., in the morning, PW1 came to his house for capturing snakes, but could not find any snakes. On 02/03/2020 himself, Uthra and the child went to the Ezhamkulam Devi Temple in connection with the festival and returned by about 8.30 p.m., by walking along the paddy field. Thereafter he had gone out to meet his friends and returned by about 10 p.m. Himself and his father consumed liquor on that day. When he returned, Uthra told him that, by about 9 PM when she went out of the house for washing the clothes of the child something bit her and she fell down and she had headache. Uthra told him, she had sibilium tablets for headache and he went to sleep in the night. Later Uthra was found crying and on enquiring she stated about pain in her leg. Immediately he called PW9 Sujith and by about

3.15 p.m., Uthra was taken to the Adoor Government Hospital. Since the lady doctor and nurse stated that, the blood of Uthra was clotting and they are not able to understand what had bitten her, from there Uthra was referred to the Adoor Holy Cross Hospital. From Adoor Holy Cross Hospital also after conducting blood test, Uthra was referred. Thereafter Uthra was taken to the Pushpagiri Medical College Hospital, where one Doctor Shama examined her. The Doctor of Pushpagiri Medical College stated that, they are not able to identify the snake which had bit Uthra. No Doctor of Pushpagiri Medical College had stated that, Uthra was bitten by a Viper. On administering anti-venom Uthra had severe allergic reaction in the morning of 03/03/2020 by 10.30 p.m. Doctor Bhuvaneswari had not examined Uthra. After Uthra was discharged from Pushpagiri Medical College Hospital, he was taking her for dressing. On discharge Uthra was prescribed certain medicines. These aspects were stated in the bills issued from the Pushpagiri Medical College Hospital. However PW85 had seized the said bills and failed to produce it before Court.

6. As requested by Uthra he went to her residence at 6 p.m., on 06/05/2020. At that time there was heavy rain and he was not able to walk out of the house. He had slept in a room near the kitchen and not with Uthra. PW4 had slept with Uthra in her room. Uthra was lying in the cot situated adjacent to the eastern window and his child was also in the said room. Since Uthra was

uncomfortable with air-conditioning the windows of the room were open. There were CCTV cameras in the said house and it were controlled by the mobile phone of PW3. These aspects could be seen from the CCTV footage. On 07.05.2020 at 6.30 p.m., while he was standing outside the house near a bathroom he heard an alarm call of PW4 and went to the room of Uthra. He had taken Uthra and put her inside the car. On 07/05/2020 the Anchal Police had seized his mobile phone and they had sealed the room of Uthra on that day itself. The police had examined the CCTV visuals on 08/05/2020 and prepared the mahazar of Uthra's room. The police are in possession of the CCTV visuals. Since there were no incriminating materials against him, the police had suppressed the CCTV footage. Due to the enmity regarding the property dispute and the custody of his child, the family members of Uthra have influenced the Crime Branch and instituted this false case against him. Uthra had variation in her blood pressure. The allegation that, he had inflicted induced bites on Uthra with a snake is false. He does not know how to handle snakes and is afraid of snakes. PW19 is not a Herpetologist. Uthra had no disability and she used to operate her bank account. She rides scooter and chats in the WhatsApp by writing Malayalam words in English letters.

7. After hearing the prosecution and the defence it was found that there was no ground to acquit the accused u/s 232 Cr.PC, and he was called on to enter on his defence and case was posted for defence evidence. The defence examined DW1 to DW3 and marked Ext. D1 to D24 series and DMO1 to DMO4. Thereafter, the Court suo moto invoked the power u/s 165 of Evidence Act and u/s 311 Cr.PC and summoned the Office of the Chief Minister of Kerala to cause the production of print out of an e-mail send by the accused forwarding copy of a complaint to the Chief Minister, along with it's certificate u/s 65(B) of Evidence Act and marked it as Ext. C1 series. The accused when questioned further u/s 313 Cr.PC denied the incriminating circumstances against him and stated that his mobile phone was in the custody of the police.

8. Heard both sides. Adv. G. Mohanraj, the learned Special Public Prosecutor and Shri. Ajith Prabhav, the learned defence counsel filed detailed argument notes.

9. The points that arise for consideration are :-

- (1). Whether the death of Uthra was caused by Cobra envenomation ?

- (2). Whether the Cobra envenomation resulting in the death of Uthra was caused by inflicting homicidal, induced Cobra bites?
- (3) Whether the accused intentionally caused to inflict homicidal, induced Cobra bites on Uthra in the night of 6/05/20 inside the bedroom of her residence and caused her death and thereby committed culpable homicide ?
- (4) Whether the accused committed murder of Uthra, the deceased in this case ?
- (5) Whether on 3.3.2020 at the residence of the accused at Parakkodu, Uthra sustained viper envenomation ?
- (6) Whether on 3.3.2020 the accused attempted to murder Uthra by causing to inflict venomous viper bite on her person ?
- (7) Whether the accused administered stupefying drugs and snake venom to Uthra, in the night of 2.3.2020 and in the night of 6.5.2020 and thereby caused bodily hurt to her ?
- (8) Whether the accused caused destruction of evidence in a murder case ?
- (9) What, if any, are the offences committed by the accused ?
- (10) Sentence or order ?

10. **Point No. (1)**: Whether the death of Uthra, the deceased in this case, was caused due to Cobra envenomation ? **& Point No. (2)**: Whether the Cobra envenomation resulting in the death of Uthra was caused by inflicting homicidal, induced Cobra bites?

11. As the evidence and legal aspects to be considered in these points overlap, they are considered together.

12. The evidence of PW2, PW3 and PW4, the parents and brother of Uthra, relevant to these points will be stated very briefly and it will be discussed elaborately later on while considering the other points.

13. The evidence of PW2 Vijayasanen, the father of Uthra is to the effect that she was convalescing in her house, named Vishu at Anchal, Eram after undergoing treatment for viper envenomation. Both PW2 and PW4 had testified that during that time, she was non ambulant due to surgery and skin grafting done on her legs. PW75 Dr. Cyril Joseph, Head of Department of Plastic Surgery, Pushpagiri Medical College Hospital, Tiruvalla who had treated Uthra has also testified that at the time of discharge Uthra was unable to walk. In the morning of 7/05/20, the corpse of Uthra, the deceased in this case, was first witnessed by her mother, PW4 Manimekhala. PW4 testified that in the

morning of 7/05/2020, she found Uthra lying motionless and unresponsive in a supine position in the cot on the western side, in the bedroom situated in the ground floor of her house at Anchal Eram and raised alarm calls. On hearing her shrieks, PW2 and PW3 rushed to the bedroom. At that time the accused also came to the room. Thereafter, Uthra was taken to the Anchal St. Joseph's Mission Hospital by PWs 2, 3, 4 and the accused. PW2 and PW3 deposed in like manner and corroborated the above facts testified by PW4.

14. PW62 Jeena Badhar, is the doctor who examined the corpse of Uthra and confirmed her death. She testified that while on duty as the Casualty Medical Officer of St. Joseph's Mission Hospital, Anchal on 7.5.20, Uthra, the deceased in this case was brought to the hospital before 7 a.m., to the Casualty. When Uthra was brought she was in the doctors room. The staff from the observation room informed her to go quickly as there was no pulse and blood pressure to the patient. When she was going to the observation room through the passage, a bye-stander of Uthra was heard telling that there was a bite mark on the hand of Uthra and it has to be looked into. Thereafter, she understood that the said person was the husband of Uthra and the accused in this case. She identified the accused who was present in Court. On examination of Uthra, who was lying in the stretcher she could not detect pulse and blood pressure. The extremities of Uthra were cold and pupils were dilated.

At the time of inspection the accused was not present in the observation room. **She saw bite marks with clotted blood on the left arm of Uthra.** Only when she swiped the blood with alcohol swab the bite marks were visible. Altogether there were 4 bite marks. Thereafter, she conducted E.C.G examination of Uthra and confirmed her death. For the purpose of declaring the death of Uthra she called the by-stander and at first the mother of Uthra came inside. When she interacted with Uthra's mother the history of the Viper bite and treatment were revealed. Her mother told that in the morning, after Uthra's husband left the bedroom, she found Uthra in an awkward position in the bed and she was not responding. Thereafter, she called Uthra's father inside the room and declared Uthra's death. She informed him about the bite marks on the arm of Uthra and asked him to inform the police and that the post-mortem examination had to be conducted. At that time Uthra's father informed her that he received a phone call that the snake was found inside his house. When she asked him about the type of snake, Uthra's father made a telephone call and he was informed over telephone that it was a Cobra. Thereafter, she informed the police. Ext. P153 is the attested photocopy of the 'Brought Dead Register' of St. Joseph's Hospital, Anchal and in the 3rd page marked as Ext. P153 (a) she has made the relevant entry in her own handwriting. The original 'Brought Dead Register' was obtained back by her on interim custody on Ext.

P154 receipt. In cross-examination she clarified that at the time when she declared the death to Uthra's father she was not aware that a snake was found inside the house. She denied the suggestion that the accused had not told that there were bite marks on the arm of Uthra. On the findings of PW62 who confirmed the death of Uthra, it is evident that there were four bite marks on the left arm of Uthra.

15. PW3 Vishu testified that, after PW62 had confirmed the death of Uthra, himself and the accused proceeded to the house of Uthra and the Cobra hidden beneath the almirah in Uthra's room was killed by him (PW3). (evidence of PW3 will be discussed in detail later on in this judgment).

16. The testimony of PW5 Suresh with regard to the dead snake found inside the house of the deceased is as follows:- On 7.5.2020 at about 7 a.m., he knew about the death of Uthra due to snake bite and arrived at the house of PW2. He saw the snake carcass inside the room. He took a photograph of the snake carcass in his mobile phone. As instructed by the police, himself, the Panchayat Member Mohanan and Baladevan buried the carcass in the premises. A photo of the carcass near the pit was also taken. A stick was pitched on the top of the covered pit as a sign.

17. The fact that corpse of Uthra had blood cots on her left arm is also stated by PW81 Joy, the Gr. Sub Inspector, Anchal Police Station who testified that on 7.5.2020, he recorded Ext. P7 First Information Statement given by PW3 Vishu Vijayan regarding the death of Uthra due to snake bite. He registered Ext. P7 (a) First Information Report and forwarded it to Court. Exts. P7 and P7 (a) bears his signature and seal. The case was registered U/S 174 Cr.PC. Thereafter, on 7.5.20 at about 11.30 a.m., he conducted inquest on the dead body of Uthra. Ext. P184 is the inquest report and at that time the photographer and witnesses were present. The blood clots above the left arm of deceased were noted by him. MO26 (a) night gown worn by Uthra was seized by him. MO34 series are the ortho pad and bandage with which the right leg of Uthra was bandaged. He forwarded the corpse for post-mortem examination to the Medical College Hospital, Thiruvananthapuram and appraised PW65 Dr. Ragesh about the grave nature of the case. The MOs collected at the time of post-mortem examination were forwarded to the Chemical Lab. The further investigation was conducted by the Principal Sub Inspector. Thereafter, during investigation of the case on 19.5.2020 he visited the Pushpagiri Hospital and seized the Case Sheets of Uthra which were produced by the hospital Superintendent, vide Ext. P185 mahazar. He also seized Ext. P171 O.P Case Sheet and Ext. P173 I.P Case Sheet. In cross-

examination, PW81 admitted that it is not stated in Ext. P7 that Uthra and her husband slept in the same room. However, it is stated that both of them went to sleep. In Ext. P7 (a) First Information Report, it is mentioned that Uthra and her husband went to sleep together. The fact mentioned in Exts. P7 and P7 (a) are having the same meaning.

18. PW44 Shafeeca who was working as Scientific Officer, D.C.B., Kollam City testified that on 26.5.2020 she visited the residence of deceased Uthra at Anchal Eram and participated in the exhumation process of the buried snake carcass. The exhumation process was conducted in the presence of the Investigating Officer, Veterinary Surgeon, Veterinary doctors, photographers and the decayed carcass of the snake was exhumed. She collected soil from the pit where the snake was buried, packed and sealed it and handed it over to the Investigating Officer. Thereafter, on 29.5.20 she inspected the Maruti Baleno car found in the car porch of the residence of Uthra and from beneath the floor mat of the driver's seat, she recovered MO16 tablet strip which had eight empty pockets and two tablets. The batch number of MO16 strip was T 8121. MO16 is Monty L.C tablet. Thereafter, on 1.6.20 she inspected the residence of the accused at Parakkodu and recovered MO21 strip containing 20 Okacet tablets. The batch number of MO21 was N 390148. In cross-examination, she stated that a finger print expert also had accompanied her at the time of seizure of

MO16. However, finger prints were not verified or lifted from MO16. According to her, there were blood stains in the bed sheet found in the scene of occurrence.

19. PW45 Spensar Bose, the Photographer of the Police Department has also deposed that he took photographs of the snake carcass at the time of exhumation on 26.5.20.

20. PW65 Dr. Ragesh. R, who was working as Medical Officer in Department of Forensic Medicine, Govt. Medical College Hospital, Thiruvananthapuram, testified that he had conducted post-mortem examination of the dead body of Uthra on 7.5.2020 and issued Ext. P157 post-mortem certificate. There were two ante-mortem injuries on the body which are noted as follows :

1. Two puncture wounds. 0.2x0.1x0.7 cm and 0.1x0.1x0.7 cm., 2.3 cm apart, on back of left forearm, 5.7 cm above wrist with infiltration of blood in the surrounding skin and soft tissue.
2. Two puncture wounds 0.1x0.1x0.5 cm each, 2.8 cm apart, on back of left forearm, 5.5 cm above wrist with infiltration of blood in the surrounding skin and soft tissue.

21. He testified that injury numbers 1 & 2 were suggestive of snake bite marks. The internal organs were congested and he had preserved soft tissue and skin from the bite site, sample of blood and viscera for chemical analysis. His opinion as to cause of death is that ***post mortem findings are consistent with death due to snake bite.***

22. He received Ext. P158 Chemical Analysis Report after analysing Viscera etc. Based on Ext. P158 Chemical Report, his final opinion as to cause of death was death due to Cobra envenomation. Presence of Cetirizine (antihistamine) 0.542/mg/dl was also detected in blood. He issued Ext P159 final opinion.

23. He opined that from the post-mortem appearance he could exclude viper bite since there was no severe local reaction and bleeding tendency from the bite marks. The bite of krait typically shows no local reaction. Since, there was a minimal infiltration of blood and tissue reaction around the bite marks, it was suggestive of a bite by Cobra and it was subsequently confirmed by Ext. P158 chemical report. According to his opinion, the wounds (bite marks) appeared to be unusual due to the following reasons :-

(1). Two successive bites.

(2). The two bites in close proximity.

(3). Wider than usual bite marks.

(4). Significant difference between the fang width of both bite marks.

24. **Moreover, Ext. P158 Chemical Analysis Report reveals a non therapeutic level of Cetirizine. The cumulative effect of all these circumstances would make accidental snake bite improbable.** The last meal had by Uthra could be within 6 hours of her death. According to him, the approximate time of death could be 2.30 a.m, i.e, approximately 12 hours prior to commencement of post-mortem.

25. He further stated that the weight of the brain of deceased Uthra was only 720 grams, whereas the normal brain weight of an adult female is 1250 grams to 1350 grams. A significant reduction in the weight of brain is associated with reduction in intelligence.

26. PW65 stated in cross-examination that on 7.5.20 he was pursuing his M.D in Forensic Medicine and a Junior Resident in the Department of Forensic Medicine. He had conducted around 600 post-mortem examinations in his career. He has witnessed and participated in 3 snake bite cases before conducting the post-mortem examination in this case. There is no practice in any Government Medical Colleges stipulating 72 hours for submission of post-

mortem report after conducting the examination. In this case, this post-mortem examination certificate was completed by him on 25.5.20, though the detailed notes were prepared just after the examination. Based on that detailed notes, discussion is conducted with the Head of Department. Due to work load sometimes delay is caused in dispatch of post-mortem certificate. **He explained the dynamics of death of neurotoxic venom as the causation of paralysis of nerves which leads to respiratory paralysis and as asphyxia. This asphyxia causes death in neurotoxic envenomation.** According to him, after death all muscles goes to flaccidity and thereafter it goes into rigor mortis. An ante-mortem paralysis of muscles cannot be confirmed by post-mortem examination. The diaphragm of Uthra was in it's intact anatomical structure. The paralysis of diaphragm could only be confirmed by its effects in the body. **The body of Uthra showed signs of asphyxia in as much as there was congestion of organs and oedema of brain.** According to him the lung of Uthra was not oedematous and he has mentioned in Ext. P158 as such. According to him if the lungs were oedematous it would be mentioned as oedematous. If it was not so, it would not be mentioned. **He stated that respiratory arrest by neuronal paralysis need not show lung oedema.** Lung oedema is seen in cardiac failure and lung injury cases usually. **Thereafter, to the pointed question as to why it is not mentioned in Ext. P158 that there was**

hypoxia or respiratory paralysis he stated that the cause of death is the initial event in the chain of causation of death. In this case, the initial event was snake bite. Hence, cause of death was mentioned as death was consistent with snake bite. Fatty streaks in aorta are normal for the age and not suggestive of cardiac ailment. By infiltration of blood it is meant as spread of blood into the surrounding tissues. He denied the suggestion that infiltration is suggestive of bleeding. According to him, in Cobra bite death is due to respiratory paralysis and hence, pedal odema cannot be seen. According to him, Cobra venom firstly affects the tissue around the bite, then it passes through the blood and affects the nerves and respiratory paralysis is caused. It affects muscles through neuronal paralysis and not directly. The venom of scorpion contains multiple enzymes and it contains neurotoxins also.

27. PW65 was recalled and examined by the defence during the stage of defence evidence. He testified that he has read the text book authored by Dr. Narayana Reddi and V. V. Pillai on Toxicology. Local reaction at the bite site is severe in case of viper bite. In case of Cobra the local reaction is minimal and local reaction like swelling around the bite site is minimal. Ext. D14 is the copy of the detailed notes of post-mortem examination of Uthra. In Ext. D14 he has not mentioned that the bite sites were not oedematus. To the suggestion that neurotoxic venom has primary toxicity for respiratory and cardiac centre

and it can cause marked cardiac and vascular changes, he stated that neurotoxic venom causes only change in blood pressure and it does not cause rupture of blood cells or haemolysis. Viper venom causes haemolysis. The lungs of Uthra were congested and heart was grossly normal. According to him the opinion that the fang width at bite site of snakes may vary from 8 mm to 4 cm stated in V. V. Pillai's book is a general statement considering all the species of snakes. In Kerala this much fang width is not seen. In case of Viper bite there may be blood in urine. Venom is detected by antigen antibody reaction tests. To the suggestion that, Dr. Pillai and Dr. Narayana Reddy have specifically stated that Elisa test is the only test which can detect Cobra venom, he replied that Elisa test is one of the antigen antibody reaction tests. The Chemical Examiner's laboratory detects Cobra venom by doing antigen antibody reaction tests with monovalent anti venom which is species specific also. Elisa test for snake venom is not available in Thiruvananthapuram Medical College Hospital. He explained the overwriting in the measurement of injury numbers 1 & 2 in Ext D14 that since there were four puncture wounds they could be paired in two ways and the fang width of the other pairing would be 1.2 and 2.5 cms and the said pairing appear to be improbable. It was corrected in Ext. D14 by overwriting to the present pairing of fang width as 2.3 and 2.8 cm. He denied the suggestion that the distance between the two

puncture marks in injury number 2 is only one-fifth of the distance from the wrist in relation to the distance from the wrist as 5.5 cm. The original photos showing bite marks on the arm of Uthra, taken by him, caused to be produced by the defence, were marked as Ext. D15 series. He denied that the distance between the two puncture marks in injury number 1 is only 1 cm as seen in Ext. D15 photograph. According to him, there are studies suggesting that a significant reduction in brain weight is associated with reduction in intelligence.

28. **In further re-examination, he stated that Cobra envenomation as noted in Exts. P157 and P159 is sufficient in the ordinary course of nature to cause death.** It was clarified that in neurotoxic envenomation, the diaphragm will be paralysed. But it will be anatomically be normal even after paralysis and death. It cannot be detected in post mortem examination. ***But the effect of paralysis can be seen in other organs as signs of asphyxia. There will be congestion in all organs. In haemotoxicity drowsiness is not a usual finding.***

29. PW76 Eureka. M. R, who was working as Asst. Chemical Examiner in Chemical Examiners Laboratory, Thiruvananthapuram deposed that on 7.5.2020 she received the samples collected from the deceased Uthra, examined them and issued Ext P158 certificate. She testified as follows :-

Item no. 1 was stomach and part of intestine with contents, Item no. 2 was part of liver and one kidney, item no. 3 was blood, item no. 4 was skin and subcutaneous tissue from bite site and item no. 5 was saturated saline (central sample preservative). All the items were forwarded from department of Forensic Medicine, Govt. Medical College Hospital, Thiruvananthapuram. All the items were subjected to chemical examination using standard techniques and she issued the Chemical Analysis Report, already marked as Ext. P158 which bears her signature and seal.

Results Snake venom (Cobra venom) was detected in item no. 3 & 4 (blood and subcutaneous tissue from bite site of Uthra). Cetirizine an antihistamine was detected in item no. 1, 2 & 3 that is stomach and intestine, liver and one kidney and blood. The sample under item No. 3 (blood) contains 0.542 mg of Cetirizine per 100 ml of blood. The details of examination have been mentioned in Ext. P158. Snake venom is usually detected by micro diffusion method. Then it is confirmed by Control Cobra venom. Micro diffusion is a forensic tool for detecting snake venom.

30 It is stated in Ext P158 that thin layer chromatography test for anti histamines are positive. For clarity, the relevant results and process of analysis stated in Ext. P158 are extracted as follows :-

Thin layer Chromatography details of item numbers 1, 2, 3

<i>Adsorbant</i>		<i>Silica Gel G</i>
<i>Solvent System</i>	<i>S1</i>	<i>Chloroform:Methanol (85:15)</i>
<i>Spray Reagent</i>	<i>SR1</i>	<i>Uv visualisation at 254 nm</i>
	<i>Item Nos.</i>	<i>Reference Compounds</i>
	<i>1, 2, 3</i>	<i>Citirizine</i>
<i>1. RF value in S1 and SR1</i>	<i>0.72</i>	<i>0.72</i>
<i>2. Colour of spot in S1 and SR1</i>	<i>Light green</i>	<i>Light green</i>

Characteristic and identical spots were obtained for the samples under item numbers 1, 2, 3 and for the reference sample of Cetirizine.

<i>Item Nos.</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
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IV) Other tests

<i>a. Microdiffusion test for snake venom</i>	<i>---</i>	<i>---</i>	<i>Positive for snake venom (Cobra Venom)</i>	<i>Positive for snake venom (Cobra Venom)</i>	<i>---</i>
<i>b. uv-visible spectroscopy analysis</i>	<i>---</i>	<i>---</i>	<i>Positive for Cetirizine 0.542 mg%</i>	<i>---</i>	<i>---</i>
<i>c. Estimation for uv-visible spectrophotometry</i>	<i>---</i>	<i>---</i>	<i>---</i>	<i>---</i>	<i>---</i>

Conclusion

Snake venom (Cobra venom) was detected in item numbers 3 and 4.

Cetirizine, an antihistamine was detected in item numbers 1, 2 & 3.

31. PW76 testified in cross-examination that the quantitative analysis of tissues are not conducted in the laboratory, hence the weight and volume of the tissue are not recorded. In the three stage process, first Cetirizine was detected then it was confirmed and then it was quantitatively analysed within the blood. The samples are analysed by the analysts under her supervision and the details are recorded by the Analyst. She has witnessed every stage of analysis, which is a continuous process spanning several days. The specific dates of tests cannot be mentioned, but on completion of analysis, report will be issued. Usually five days will be taken for estimation. To a question that she cannot state the dates of micro diffusion test, she answered that usually it takes two days for detection and another two days for confirmation. She cannot state the dates now, but the records mentioning the dates are available in the laboratory. She denied the suggestion that the examination was conducted in contravention of Rule 10 of Kerala Chemico Legal Examinations Rules and that Ext. P158 was issued against the relevant rules. According to her, Cetirizine is a Piperazinil ester. One molecule of Cetirizine contains the atoms of carbon,

hydrogen, oxygen, chlorine and nitrogen. The molecular weight of Cetirizine is around 480. Since in the forensic lab, Cetirizine is detected from post mortem samples and not directly, the method of analysis adopted has no relation to the melting or boiling point. The manufacturer of the drug has also provided a chromatographic test for identifying the drug. According to her, the tests suggested by the manufacturer are for quantification of drug in a tablet, but in the forensic lab they are not doing drug analysis, but doing viscera analysis. She got the result in Ext P158 by conducting thin layer chromatography technique provided by standard textbook for forensic science. (test for Cetirizine). It is the Clark's analysis for drugs and poisons. She stated that chromatography is a technique for separating compounds especially with impurities. The result in Ext. P158 was obtained by conducting thin layer chromatography technique provided in standard text book for Forensic Science. (chromatography test has reference to detection of Cetrizine) In text book Clarks analysis for drugs and poisons, it is stated that Cetirizine is soluble in Methanol or Chloroform mixture. In chromatography tests, compound solubility is not a factor. She stated the procedure for analysis as follows. *An adsorbant is made by cutting a thin film of Silica gel in a glass plate. Then the samples are spotted on the plate. More than one compound present in the extract prepared from the post-mortem samples are all then adsorbed in the*

plate. Then it is placed in a solvent mixture which depends on the type of poison or drug which is being looking for. If it moves on the plate it is dipped in the solvent system mentioned and the compounds separate. Thereafter, by using a detection reagent, various compounds are detected. She denied the suggestion that Silica gel is not a scientifically recognized adsorbent of Cetirizine. The test is done along with control Cetirizine and she has done Cetirizine sampling before. She is able to produce such results. Ultra violet visible spectro photometers connected with a computer was used in this case and the result is shown as a graph. A particular compound with a certain wave length range is scanned and the adsorbents of the compounds against the wave length will be plotted as the results, which are being compared with a standard solution of Cetirizine. Thereafter, the strength of the unknown solution is calculated. A computer generated result is available in the laboratory. She has conducted micro diffusion test for identifying cobra venom on prior occasions with control venom. Micro diffusion test is done to identify specific species of venom. Diffusion is a manual method. According to her, micro diffusion device is not a single device. It is actually a gel plate made of agarose gel or other gel which are placed in a petty dish with colouring. Micro diffusion test is actually an antigen antibody reaction, which is an immuno assay method

stated in any Bio Chemistry book. She categorically stated that with control venom a specific venom could be identified by conducting micro diffusion test.

32. PW76 was recalled at the stage of defence evidence and cross-examined further and Exts. D17 series and D18 series replies given by her along with the application under right to information act and forwarding letters were marked. She stated that detection of Cobra venom by using kits is only one of the methods. The method used for detection of Cobra venom is antigen antibody reaction. The antigen is already present in the snake venom. For detection it has to react with an antibody which is taken from the anti-venom. The Elisa test is not used in the laboratory. She denied the suggestion that, other than Elisa test there are no antigen antibody tests. According to her, when a protein combines with its antibody there is an antigen antibody reaction. In micro diffusion test, the antigen in the snake venom combines with the antibody in the anti-venom and forms precipitate. The snake venom may contain many enzymes, proteins etc. The control cobra venom and control viper venom are available and both are used. Control sample is used for confirmation. There are records to show the receipt and supply of anti-venom from the Medical College Hospital. According to her, the Rajiv Gandhi Institute of Biotechnology detects snake venom by D.N.A method. She denied the suggestion that only Rajiv Gandhi Biotechnology Institute could detect

specific species of snake venom. Since, the examination certificates of the laboratory are related to crimes as per section 8 (1) (4) of the Right to Information Act, the information cannot be furnished, other than in those cases. She explained that in Ext. D19 Distribution Register, wherein the samples received in this case are mentioned, there is a clerical error and instead of recording that five samples were received it is stated that only four samples were received. It is not an official register and in other registers the number of samples are correctly written. She stated the reasons for refusing to issue the answers and documents as per the application under the Right to Information Act, marked as Ext. D17. As per the request of the Investigating Officer blood was forwarded to the Rajiv Gandhi Institute.

33. In re-examination she explained that blood and tissue from the bite site are the best specimen for analysing snake venom. The other specimens like stomach, kidney etc., may have complex proteins or other substances which may interfere with analysis.

34. PW64 Dr. Asha. S, the Head of Department of Pharmacology, Government Medical College Hospital, Thiruvananthapuram testified that Pharmacology is the study of drugs and its effects. According to her, the therapeutic dose is the optimum dose of the drug which produces the desired effects of the drug. A toxic dose of the drug is the dose of the drug which

produces side effects and does not give the desired effect. It causes adverse effects and undesirable effects. **Okacet is composed of the chemical Cetirizine.** This belongs to the group of antihistamines. **It is mainly used for allergic conditions, running nose, and other allergies. It is given orally. The therapeutic dose is 10 mg.** Once it is consumed, 8 to 10% of the said drug is metabolised in the liver. The remaining part is eliminated through the kidney as such, without any change. (it is eliminated through urine). The main side effects it produces are lethargy, slowness of reaction to stimulus and reduction in muscle power, minimal sedation etc., for therapeutic doses. Actually, though this drug falls in the category of antihistamines in the non sedative group, a toxic dose of Cetirizine will produce central nervous system depression which lead to sedation, reduction in muscle power, reduced response to stimulus etc. **Monty L.C tablets is composed of the chemical combination of Montylucast and Livocetrizine. In this combination Montylucast therapeutic dose is 10 mg and Livocetrizine therapeutic dose is 5 mg.** This drug is also given orally. Once this drug is taken, the Montylucast part gets metabolized in liver and is eliminated by bile and faeces. The Livocetrizine part is very minimally metabolized and eliminated by kidney. **Livocetrizine is an isomer of Cetrizine. It is more potent than Cetirizine. This is also given mostly in allergic situations like bronchial asthma and all other**

allergies. A therapeutic dose of Montylucast will produce headache, drowsiness etc. No other significant changes in therapeutic dose. **But a toxic dose of Montylucast will produce central nervous system depression and sedation and muscular weakness.** These side effects are mainly contributed by the Livocitrizine part. The half life period (T half) for Cetirizine is 7 to 10 hours and the action lasts for 24 hours. That is why only once daily dose of Cetirizine is given. For Montylucast the half life period is (T half) 2.5 to 7 hours maximum. The action of this drug does not last for 24 hours. **According to her, if the sample of a person after his death and elimination from body contains 0.542 mg per 100 ml of Cetirizine, it is a toxic dose and the total amount of the drug present in the body would be in the range of 30 mg in the whole circulative system.** It is calculated as 0.542×6 litres (6 litres is the average volume of blood in an adult person).

35. PW66 Bushra Beegum. N. R, who was working as Assistant Director of Biology in the Biology Division of Forensic Science Laboratory, Thiruvananthapuram testified that on 17.7.20 she received five unsealed packets from the Scientific Officer, Biology. She examined MOs for detection of urine and issued Ext. P160 certificate. Item number 1 nightgown and item number 5 bed sheet contained urine.

36. PW67 Suja. P. S., Scientific Officer of Forensic Science Laboratory, Thiruvanthapuram examined the MOs in this case and issued Ext. P161 certificate. Item number 5 (MO8) contained human blood. Item numbers 3 & 4 corresponding to MO5 and MO6 was forwarded to the Physics Division for examination and item numbers 1 to 5 were also forwarded to the Biology Division and the obtained report is enclosed with her report. Item numbers 1 & 5 were also forwarded to D.N.A Division and the report was forwarded to Court separately. Item number 1 corresponds to MO26(a), item number 2 corresponds to MO27, item number 3 corresponds to MO5 and item number 4 corresponds to MO6.

37. PW68 Sreevidya. K. V, who was working as Assistant Director, D.N.A., State Forensic Science Laboratory, Thiruvananthapuram deposed that on 18.6.20 and 23.7.20 she received the MOs in this case and examined them and issued Ext. P162 certificate. **She detected urine stains in item numbers 1 & 5 and those belongs to Uthra to whom sample blood in item number 6 belongs.** Blood stains in item number 5 (MO 8) belonged to Uthra. Item number 1 is MO 26 (a) and item number 6 was sample blood of Uthra.

38. PW69 Sahra Muhammed who was working as Scientific Officer, Forensic Science Laboratory, Thiruvananthapuram testified that on 13.7.20 she

received the MOs which are clothes in this case and conducted examination to verify whether there was any snake bite or puncture mark in them and issued Ext. P163 certificate. She could not detect any such snake bite or puncture mark. She has also received the sealed packet containing the fang and measured it and issued Ext. P164 certificate. In cross-examination, she testified that she had received only one fang along with some tissues attached to it. The other fang was in a detached condition.

39. PW77 Dr. R. Radhakrishnan, Head of Department of Laboratory Medicine and Molecular Diagnostics at Rajiv Gandhi Centre for Biotechnology, Kariyavattam testified that as per Government of India report, around 60,000/- snake bite deaths occur all over India. So, Government of India, Department of Science and Technology asked them to develop a lateral flow based point of care device, similar to pregnancy card to identify which snake has bitten. So, they started that Project and completed the Project in 2019 and submitted the technology to Department of Science and Technology, Government of India. The point of care device, is a device which can be used by the patient at bed side. In this particular case immediately after the snake has bitten or as soon as the patient reaches the hospital, the device will detect one among the four major snakes classified by W.H.O and Government of India. These four snakes are Cobra, Krait, Russell's Viper and Saw scale Viper. **It is a point of care**

diagnostic tool and not a forensic tool. Normally they should take the exudae or the fluid coming from the bite wound which is the ideal sample and drop it in the card and two drops of buffer on to it included in the kit and normally get a result under five minutes. The results will be shown as lines. For negatives they have to wait for twenty minutes to confirm as negative. Venom being a protein, its traces will diminish from blood if it is not preserved in proper preservative or with time lag. It is known as autolysis. The forensic tool for detection of venom would be microdiffusion or immunodiffusion from the bite site itself either from the tissue or from the wound exudae. In this case they received a sample from J.F.C.M., Punalur involved in Crime No. 1540/20 of Anchal police station for detecting the type of venom. After conducting the examination he prepared Ext. P175 report, which bears the signature of the Dean. The result was they could not detect Cobra venom. The photo of the strip is also shown in Ext. P175. Ext. P158 was handed over to PW77 and he perused the same. According to him the findings in Ext. P 175 will not affect the credibility of Ext. P158 because results were obtained by using forensic tools and they were using point of care tool. In his opinion the reason for non detection of Cobra venom as per Ext. P175 could be delay. They got the sample only after two months. **It was not an ideal sample. It was blood.**

40. PW77 testified in cross-examination that the test was conducted in the device referred to by him. The result of the tests would be entered in the registers electronically in the software called 'LIMS'. To a question as to whether L.F.A is the quintessence of high sensitivity, specificity, long life span etc., he disagreed and stated that even the current test for Corona Virus is an L.F.A test and it gets only 50% sensitivity and 80% specificity. **Only if the sample is ideal, the L.F.A test would have high sensitivity. He categorically stated that the protocol and procedure of the tests conducted in Exts. P158 and P175 are different and both methods cannot be compared.** WHO recognises the method of testing adopted by his institution as a point of care device. **He stated that venom is a protein and it is not normally excreted by the urine because proteins have positive charge and kidney has negative charge. Therefore, it is very difficult to obtain snake venom by conducting urine test.** Only if a person had a damaged kidney, protein will be excreted. Only in Australia, Enzyme Linked Immuno Assay (ELISA) test is recognized as an authority for detecting snake venom. Radio immuno assay method of analysis cannot be deployed in the site or field or point of care. The said method uses radio active materials which needs personal protection, lead wall etc. He categorically stated that Elisa test is recognised by WHO as the only

commercial diagnostic test that makes it possible to confirm the test of snake venom, because lateral flow (LFA) is a point of care test and it is not marketed.

41. The testimony of PW80 is stated briefly, to decide point numbers 1 & 2 and it will be discussed in detail later on in this judgment. PW80, U. Suresh Kumar, D.N.A. Examiner, Rajiv Gandhi Centre for Biotechnology, Kariyavattam gave evidence that he received the samples related to Crime No. 1540/20 of Anchal police station for D.N.A analysis. The samples were 14 in number. Out of which serial numbers 1 to 4 were scales, muscles and bones of Naja Naja (Cobra). Serial number 5 were fangs of naja naja. After standard procedure and examination, he prepared Ext. P183 D.N.A analysis report, which bears his signature and office seal. **After the analysis it was concluded that serial numbers 1 to 5 belong to the species Naja Naja, common name Indian Cobra. Serial number 5 fangs were analysed for human D.N.A., but was not found.**

42. A team of experts comprised of PW71 Dr. K. Sasikala, the Head of Department of Forensic Medicine, PW19, a Herpetologist, PW51, a Divisional Forest officer, and PW63, a Veterinary Surgeon was constituted to study the nature and circumstances of the snake bites sustained by Uthra.

43. PW63 is Dr. Kishore Kumar. K. J, the Veterinary Surgeon of Animal Husbandry Department, who was on deputation in the Kerala Forest Department as Assistant Forest Veterinary Officer. He conducted necropsy of the exhumed snake carcass and issued Ext. P156 Necropsy Report. He testified as follows :-

He completed his B.V.S.C and A.H from College of Veterinary Sciences, Mannuthy. He has completed his M.S in Animal Science from Michigan State University, U.S.A. During the course of his study as a Veterinary student, he had the occasion to learn Wild Life course which included snake as one of his course credit. In that, he learned the basics of behaviour, habitat, anatomy, physiology and other clinical aspects of snakes. During May, 2020, he was working as Asst. Forest Veterinary Officer, Kottayam Division. As requested by the Investigating Officer he had been included as one of the Veterinary doctors in the Team constituted for conducting Necropsy of the snake which allegedly bit Uthra, the deceased in this case. The other Members of the Committee were Dr. Jacob Alexander (CW165), Asst. Director, Thiruvananthapuram Zoo and Dr. Lawrence, Asst. Director, Mount Police Force, Thiruvananthapuram. They conducted the Necropsy of the Cobra on 26.5.20. The carcass of the Cobra was exhumed as a single block of soil and the soil was intact. The Necropsy was conducted at the premises of the house,

named Vishu at Eram. **On Necropsy, the snake was found to be of the species Naja Naja, which is also known as Indian Spectacled Cobra. The spectacle mark was evident on the hood. The death of the snake was from cardio pulmonary failure because of the injury below the hood.** On examination it was an adult Naja Naja of approximately 152 cm. The internal organs were decomposed because of the age of the carcass. The fangs could be seen. The left fang was intact in place in the maxilla. The right fang was detached and found inside the oral cavity. Usually when Necropsy of reptiles are done there will be remnants of small invertebrates in the coelomic cavity which was absent in this case. It was suggestive of starvation for a long time, may be from captivity. The fangs, various body parts and samples were collected in brine, normal saline and D.N.A extraction liquid. A preliminary Necropsy report was submitted on the same day itself. It bears the signature of all the three team members including him. The report was marked as Ext. P155. A detailed Necropsy report was submitted to the Investigating Officer thereafter. The said detailed report was marked as Ext. P156. The species was confirmed to be Naja naja. The cause of death was confirmed to be cardio pulmonary failure as a result of traumatic injury just below the hood and head resulting in severing of spinal cord, which resulted in injury to vital organs. The absence of food remnants in the cavity indicates that the snake has not preyed for several

days. He identified the samples of the decomposed body parts of the snake collected for various scientific examinations. The fangs of the snake were also collected and marked as MO26 series, 5 in number (plastic bottles). These MOs were handed over to the Investigating Officer.

44. After that he was nominated as one of the Members of the Expert Committee constituted for finding the facts of the snake bites on Uthra as to whether the snake bite on the deceased was natural or induced bites. Dr. K. Sasikala (PW 71) was the Chairperson of the Committee. PW19 and PW51 were other Members. The Committee met on two occasions and visited the places where the bite incidents occurred and came to the conclusion that the nature of the bite is not natural. They were experts on different fields. His reason for stating that these bites on Uthra are not natural were (1) The fang width. There is a documented data base which states that the fang width of Cobra lies between 1 cm plus or minus 0.6 cms. It varies from 0.4 to 1.6 cms. *In his experience while discharging official duty and examining snake bitten animals, he had not (seen) a bite mark of a Cobra with inter fang width of more than 2 cm. The space between two bite marks also raise questions which is nearly impossible due to multiple reasons. Basically Cobras are very frugal in spending their venom. Naturally after one bite they tend to evade the person. If the bites are from the same Cobra, there would not be much*

variation of the inter-fang distance. If there are multiple bites, the bites would be at different places. The possibility of a Cobra inside the room where Uthra was found dead is excluded. The room was tightly closed, even if the snake tries to enter the room through the window, it is nearly impossible as they can only raise upto one-third of their height. The behaviour and habit of Cobra, is Crepuscular (They are active during evening time from 5 p.m to 8 p.m).

45. Thereafter, he went to the Sree Surya Home, Parakkodu. It was not the usual habitat of Russell's Viper. Russell's Vipers prefer dry and arid regions. As Russell's Viper is not arboreal, the sustaining of viper bite at the first floor is impossible. They do not climb often. From these findings along with the Committee, he came to the conclusion that the snake bites on Uthra are not natural, but induced. Ext. P21 report bears his signature and seal.

46. In cross-examination, he stated that the draft of Ext. P21 was send to him by e-mail. The Expert Committee met a couple of times. From his experience a Cobra can raise only to one-third of its height. The fang width of the Cobra which was subjected to Necropsy was not measured. He has conducted Necropsy of about 5 snakes in his official capacity and during his studies he has conducted Necropsy of 20 to 25 snakes. The suggestion that the one-third height theory of ability of a Cobra to rise was not correct, was

denied. He admitted that Cobra is in category of Elapid family. The suggestion that the findings with regard to the fang width, induced bite etc., were erroneous was denied. **In answer to a Court question as to why the fang width of a Cobra increases in case of induced or forced bite, he stated that when pressure is put on the maxilla the inter cartilage space increases and the width of the fangs increase. When the milking of Cobra venom is conducted also the fang width increases.**

47. PW71 Dr. K. Sasikala, the Head of Department of Forensic Medicine, Government Medical College Hospital, Thiruvananthapuram testified that as a Member of the Team of the experts she visited the crime scene along with the other experts and the Investigating Officer. Ext. P21 report is signed by her. According to her, after going through the post-mortem report of Uthra, the bite marks of the Cobra and Viper, the treatment records and discharge summary of Uthra issued from Pushpagiri Hospital, and from the scene visit, **the Team of Experts were of the opinion that the Cobra bite noted in the post-mortem report of Uthra was not an accidental one and it was a homicidal bite. The reasons for arriving at that conclusion from forensic perspective is because of**

(1). Two successive bites at a distance of 2 mm apart on the back of left forearm.

(2). The distance between the fang marks of 2.3 and 2.8 cm in each bite.

(3). The history. She was discharged from Pushpagiri hospital on 22.4.20 after the treatment of Viper bite on 2.3.20 and the Cobra bite was on 7.5.20. She was found unconscious. It was unusual from having a Cobra bite within 15 days after being discharged from treatment for Viper bite. The chemical analysis of the Viscera had shown the presence of Cetrizine beyond the therapeutic dose.

She had seen Exts. P157 and 159. After examining the photograph of Viper bite she is of the opinion that those bite marks were possible in a lying position rather than a standing position.

48. In cross-examination, she stated that Viper bites by jumping also. The lie of the bite mark depends on the position of the body part and how the snake bite. She has conducted more than 100 cases of snake bite where the maximum fang width which she had observed is around 2 cms. According to her, all the other 3 Members of the Expert Committee were experts regarding habits and habitats of snakes and they were handling snakes also. All of them were of opinion that a snake cannot raise beyond one-third of its height. According to her, in a case of death due to Cobra envenomation the lungs usually would be congested, sometimes there will be odema and the

diaphragm usually will be paralysed, but it could not be seen in post-mortem examination and it could not be identified that it was a paralysed diaphragm.

49. PW19 Mavish Kumar. M. V, is a Herpetologist. He testified that he is working as the Chief Zoologist of Mithila Wild Life Trust, Nepal and Aquatic Team Service, Dubai. He is also the Chairman of the Mahindra Wild Life Foundation, a registered society. He is a Member of the Committee constituted by the Kerala Forest Department which formulated the standard operation procedure guidelines for scientific snake handling and rehabilitation. In co-ordination with the Kerala Forest Department he rescues and rehabilitates snakes and reptiles found in Kasaragodu district. His father was conducting 'Serpent Yajna' and so he is acquainted with the handling of snakes from early childhood. He testified about his educational qualifications in the filed of Zoology and Environmental Science and stated that he worked as Asst. Professor on contract basis in Kannoor University and he dealt with behaviour of reptiles. He has presented research papers regarding snake bite management and attended seminars regarding snake behaviour etc. He has given his expert opinion in this case to the Investigating Officer. **On analyzing the facts of the Cobra bite in the night, the nature of the bite and the fang width, he was convinced that it was not a natural snake bite.** Thereafter, along with Forensic Surgeon Dr. Sasikala who was the Chairperson, Dr. Kishore, Muhammed

Anwar and himself as Committee Members, an expert committee was constituted to conduct a study about the snake bite in this case. At first, the Committee visited the house of deceased Uthra at Anchal on 21.6.2020. He inspected the house and its premises and the room where Uthra was bitten by the snake to analyse the possibility of a Cobra entering the house. **The Cobra can raise only one-third of its height and the dead Cobra in this case had a length of 152 cm. Therefore, the said Cobra could raise only 50 cm from the ground to a vertical wall. The window of the room was at a height of 62 cms from the foundation. Therefore, it was convinced that the snake involved in this case could not enter the house through the said window. Due to the very minimal gap (2-4 mms) between the door and ground and it was impossible for the snakes to pass beneath the door.** Even if the snake had entered the house through the open main door it could have hidden beneath the dark space under the sofa and there was no possibility of it coming to the room where the snake bite occurred. **Due to the minimal gap between the door and floor of Uthra's room and the nature of ventilator and bedroom drains fixed with a cover, the fact that the window of the dressing room was at a height of more than 2 metres, the possibility of the snake coming naturally into the room of Uthra was ruled out. Moreover, Uthra's room had the smell of kerosene and phenol which are snake repellants. On examination of the bite marks on the**

hand of Uthra, the fang width was found to be varying at 2.3 and 2.8 cms.

On the basis of his experience and studies a Cobra with such a large fang

width did not exist. The normal fang width of a Cobra is 1 to 1.6 cms. On the

basis of his experience and the anatomy studies of National Centre for Bio

Technology and Information, the activity time of Cobras is between 5 p.m and 8

p.m and after that it usually remains inactive. When the fact that Uthra had

sustained fatal bite late at night was analysed it was more convincing that it

was not a natural snake bite. After that they proceeded to the residence of the

accused where Uthra sustained Russell's Viper bite. Usually the habitat of the

Russell's Viper is a dry area and they dislike wet areas. The locality of the

residence of the accused was not suitable for Russell's Viper habitat. A

Russell's Viper would not easily move through the wall and smooth surface of

the tile to the staircase landing wherein it is found that the residence of Uthra.

Moreover, Russell's Viper is non arboreal. The bite marks on the leg of Uthra

were vertical which was inconsistent with the natural horizontal bite mark of

a Russell's Viper on the lower portion of the leg. It disclosed that Uthra

might have sustained the Viper bite when she was lying down. Moreover,

when a person is bitten by Russell's Viper and Cobra there would be

excruciating pain. It was also not possible for viper to climb upon a cot

wherein Uthra had lay. Therefore, they became convinced that the bite

sustained by Uthra from the Russell's Viper was not natural. The expert committee submitted Ext. P21 report stating their above said opinion and he has also signed the same.

50. Thereafter with the permission of the Chief Wild Life Warden, for obtaining more clarity, a live demonstration with live snakes and dummy was conducted at Arippa Forest Training Institute. The first demonstration was conducted by using a live Cobra on 28.7.2020 after recreating the scene of Uthra's room by himself in the presence of Assistant Conservator of Forests Muhammed Anwar, the Investigating Officer and Tahsildar, Punalur and its video was recorded by the police department. The time of demonstration was after 8.30 p.m. A dummy having the size of Uthra was laid down on the cot and a fresh broiler chicken piece was tied on its hand. Thereafter, a Cobra was released from the container on top of the dummy. However, the Cobra did not make any attempt to bite the dummy and crawled down to the ground. Usually Cobras bite only on moving objects after displaying defensive mechanisms like hooding and hissing. Otherwise the Cobra is to be inflicted pain. Thereafter, they removed the arm of the dummy tied with the chicken piece and provoked the Cobra. After several attempts and provocation, the Cobra bit on the chicken piece tied to the arm of the dummy. Before inflicting the bite, the Cobra displayed defensive mechanisms on several times. **Another natural bite**

on provocation of the Cobra was obtained in the said chicken piece and the fang width of both bites were uniform at 1.7 cms. Thereafter, he caught the Cobra by its head and induced two bites on the chicken piece and the fang width were found to be varying in larger dimensions at 2 and 2.4 cms. The fang width of the induced bites were more than the natural bite fang width. According to him, the skull of the snakes is made up of movable joints and when pressure is applied the upper jaws where the fangs are found would expand. Therefore, in the case of induced snake bite the fang width would be larger than the natural bite fang width. When the snake was released it crawled beneath a cupboard. He has signed Ext. P22 report regarding the live demonstration. The video footage of the live demonstration using Cobra and dummy was displayed by playing the C.D through the laptop and viewed through the monitor of the Court. PW1 identified himself, the Investigating Officer and Muhammed Anwar who were present at the time of the demonstration. Again on 5.8.2020 at the said place the scene was recreated and by using a dead rat tied to the leg of the dummy and a live Russell's Viper, a live demonstration was conducted. Since, there was no thermal radiation, the Russell's Viper did not bite the dead rat. Thereafter, a rat which was alive was again tied to the leg of the dummy and the snake was released on top of it. When the rat moved the Russell's Viper bit on it. The Russell's Viper is

nocturnal. At the time of the said live demonstration also the Investigating Officer and Muhammed Anwar were present. Ext. P23 is the report signed by him and Muhammed Anwar. The C.D of the visuals of the above said live demonstration produced by the prosecution was displayed as aforementioned and the fact that the Russell's Viper did not bite the dead rat and it had bitten the live rat was noticed. **PW19 also stated that the venom of the Russell's Viper is haemotoxic and the venom of the Cobra is neurotoxic.**

51. In cross-examination PW19 stated that the Aquatic Team LLC company in which he had worked is engaged in designing and constructing zoos and now it is converted as Johnzas company and renamed as such. According to him in the Website of Johnzas company his name is shown. The Mahindra Wild Life Foundation run by him is a non profit institution. According to him, his papers in Herpetology were published by the Mahatma Gandhi University. He is not a PHD holder, but he is guiding PHD students. Ext. P21 was prepared by Dr. Sasikala after consolidating the opinion of the Committee Members. The exact spot where Uthra was bitten inside the room was pointed out by her parents and brother. The grow bags kept outside the window of the room of Uthra was not touching the wall. **The suggestion that a Cobra could use the support of the grow bags and enter the room through the eastern window was categorically denied.** There is literature regarding the fact

that Cobras can raise only up to one-third of their height. Moreover, experience also supports the said one-third height theory. He stated that the cot in which Uthra had slept was not adjacent to the eastern window of the room. Cobras cannot climb through the pipe fixed to the wall of the house. He admitted that Cobras may climb the small heights on top of trees to catch birds. He stated that the habitat of Vipers are usually dry areas. The locality of the accused's house is marshy land. He has not rescued any Vipers from wet places. However, during rainy seasons and floods Vipers could be found in canals. In summer seasons Cobras are active between 3 a.m to 6 a.m in the morning. Since Uthra sustained the snake bite late at night the live denomination using Cobras was conducted after usual activity period of the Cobras between 5 p.m to 8 p.m. The normal length of the fangs of a fully grown Cobra is 6 to 7 millimeters and fang width is 1 to 1.6 cms. Cobra can distinguish between a living and dead animal. According to him, snakes would not bite a dead animal. The penetration of the fangs of the Cobra were not measured and it is also not mentioned whether venom was injected when the Cobra bit the chicken piece. The video recording of the live demonstration is having duration of about 3½ hours and it is edited by them to the present duration of 5 minutes by incorporating only relevant visuals. He stated that in the case of an induced bite, the fang width and depth would be much more.

The suggestion that there are instances of Vipers biting people above their ankles were denied. The bite mark depends upon the position of the human being and the snakes.

52. PW51 Muhammed Anwar. Y, the Deputy Director of the State Forest Training Institute, Arippa, testified that he joined service in the year 2005 as Range Forest Officer and completed Ranger's training from the Rangers Training Institute at Darjeeling. The most scientific training in forest and wild life is imparted in the Indira Gandhi National Forest Academy, Dheradoun to forest officers and he underwent 18 months training there. While he was working as Ranger in the Forest department he used to actively engage in snake rescue activities, animal rescue activities and disaster management activities. In 2015 he was promoted as Asst. Conservator of Forests. He is a Member of the Committee constituted by the Kerala Forest Department which has prepared scientific guidelines for rescuing snakes. He has prepared the draft guidelines which was approved by the State Government and was appointed as State Nodal Officer to train snake rescuers and implement the guidelines. He is the Master Trainer and Nodal Officer of the guidelines for the rescue and release of snakes from human dominated areas of Kerala, a scheme of the Forest department recognized by the Government of Kerala. He has imparted training to almost 1250 active snake rescuers all over Kerala. Due to

his personal interest he has studied and read a lot about snakes. He was a Member of the Expert Committee formed at the request of the Investigating Officer as per the direction of the Chief Wild Life Warden. The Expert Committee had visited the residence of Uthra at Anchal on 21.6.20. There were hideouts in the locality which had undergrowth of bushes conducive for Cobra habitat. After excluding the said habitat the possibility of snakes crawling into the well maintained courtyard and polished floor of the house were very minimal. They have examined the eastern window of the room of Uthra and it was found that the window was at a height of 122 cms from the ground. **A Cobra having height of 152 cms entering the room through the said window was impossible according to the committee. Usually the Cobras can raise only up to one-third of their body height without external support. He is aware of the said fact from his years of experience. There was no other external support enabling the Cobra to reach the said window.** He also supported the version of PW19 Mavish Kumar and stated that it was impossible for the snake to enter the room of Uthra through the gap between the floor and the door. He testified that on examining the adjoining bathroom, dressing room etc., himself and the committee were convinced that there was no possibility of a Cobra entering the said room. **Thus the Committee Members including himself were convinced that the Cobra was brought to the said room.** Even if

a snake was released through the eastern window it would have only reached the cot situated on the eastern side where accused was sleeping. From these aspects, the Committee was convinced that Uthra sustained an induced snake bite. Moreover, on examination of the postmortem report, the fang widths of the bite marks on the corpse of Uthra was found to have varying dimensions of 2.3 cm and 2.8 cm. Such a variation is not possible in the case of an accidental snake bite and it had occurred since the Cobra was gripped by its head and a bite was induced. The activity time of Cobras is between the dusk to 8 p.m. Thereafter, the Committee examined the residence of Uthra. The locality was marshy land and it was not conducive for habitation of Russell's Viper. Russell's Viper usually is found in dry areas. ***Since the Russell's Viper was non arboreal, it was not possible for it to naturally climb to the landing in the staircase. Moreover, on examining the bite marks on the leg of Uthra, it was found that she had sustained the bite when she was lying down. In normal circumstances, when a snake bites a person the bite mark would be on the ankle or foot horizontally placed. On the basis of these circumstances the Committee was convinced that the Russell's Viper was deliberately brought to the first floor of the residence of the accused and bite was induced while Uthra was sleeping.*** He has signed in Ext. P21 report. PW51 corroborated the testimony of PW19 Mavish Kumar regarding the live demonstration by using

dummies and the live Cobra and Viper conducted at Arippa Forest Training Institute. PW51 has admitted his signature in Exts. P22 and 23 reports and identified the visuals in MOs 24 and 25 which were displayed through the monitor of the Court as the recording of the live demo at Forest Training Institute, Arippa. According to him the behaviour of the Russell's Viper towards the live and dead rats, in the live demonstration reveals the thermal sensation ability and aggressive nature of Russell's Viper. He also testified that the fang width of a Cobra would increase when it is held by its head and induced to bite. Even if the Cobra inflicts successive bites, if there is no inducement by force on its head, the fang width will be the same. The variation in fang width of the bite marks when induced bites were made by the Cobra on the chicken piece tied to a dummy would also suggest the same theory that when induced bites are made by Cobra the fang width varies and increases.

53. In cross-examination PW51 admitted that he had not conducted a test by keeping a prey at a height of 1 metre from the Cobra to verify the theory that the Cobra can raise only up to one-third of its height without support. He categorically stated that from his 16 year service in the Forest Department he has seen and handled snakes inside the forest and from his observation the said

one-third height theory is correct. He admitted that in the necropsy report of the snake that had bitten Uthra, its fang width was not mentioned as it had sustained a blow on its head. He does not know whether any Herpetologist had studied and published a book supporting the theory that fang width increases in induced bites. He testified that Cobras would eat dead animals which have not lost their body temperature. He had collected snakes from different Rapid Rescue Team units on the basis of the direction of the Wild Life Warden to conduct the demonstration. He stated that he had received Cobras from the Anchal Rapid Rescue Team for the purpose of training. He stated that the grow bags found on the eastern side of the residence of Uthra were not touching the wall. He does not recollect which books read by him support the induced bite theory. The status of a Herpetologist is very high than that of a snake rescuer.

54. PW45 Spenser Bose, the Police Photographer testified that he videographed the live demonstration conducted on 28.7.20 at Arippa Forest Institute. Mavish Kumar who handled the snake, Deputy Director Anwar, the investigating team and Punalur Tahsildar were present at the time of the said modus operandi test. MO24 is the C.D of the said video which is edited by incorporating only the relevant visuals. He also recorded the video of the modus operandi test using a viper, conducted at the Arippa Forest Institute on

5.8.20 and MO25 is the C.D. Exts. P266 and 267 are the certificates u/s 65 (B) of Evidence Act marked through PW85.

55. Ext. P21 is the report of Expert Committee on death of Uthra, signed by Dr. K. Sasikala, Dr. K. J. Kishore Kumar, Y. Muhammed Anwar and M.V. Mavish Kumar. For clarity of the various circumstances it is necessary to extract Ext. P21 in it's entirety as follows-

Site visit at Scene 1 (date - 21/6/2020)

Site 1 was the bed room of Uthra in her paternal home, 'Vishu', Vellasseril House, Eram, Thadicadu P.O., Anchal. The house is a two storied building. The surroundings of the building was observed. It is difficult to estimate whether cobra is present in the surroundings based on zoological survey. There may be local variations, which has to be estimated through local enquiry conducted with various stakeholders. No supporting structures like branches of trees etc. which would enable a snake to enter the house/room were present. The said bed room is situated on the north eastern portion of the house. It includes a bath room and a dressing area. The room is having one entry door on the west side, two windows and two air holes on the east side wall. Bath room is having an exhaust fan attached to a ventilator on the north side and the dressing area is having a window and air hold on the north side. Inside the room 2 single cots with bed and pillows were laid. One was to the west side

wall and the other was to the east side wall adjacent to the windows. Bathroom and dressing area were situated adjacent to each other to the northern side of the room. In the dressing area a steel almirah was found. The room was fitted with an air condition unit on the eastern wall and all the 3 air holes were seen sealed.

Possibility of a Cobra (Naja naja) naturally Entering the bed room

(a) Windows

The room is having 3 windows as mentioned above. The window in the dressing room at the northern side of 115 cm from the ground when measured from outside. The two windows in the bedroom on the eastern side wall is at a height of 122 cm from the ground when measured from outside. Scientifically it is known that any snake can raise its body without any support for a maximum of its one third of the body length. **In this case, length of Cobra is 152 cm. A cobra of body length 152 cm cannot raise its head to a height beyond 50 cm. A natural entry of a 152 cm length Cobra through any window is not possible. Moreover, Cobra cannot climb a flat surface vertically without support. Natural entry through any of the 3 windows can be ruled out.**

(b) Bathroom ventilator & Exhaust fan

*Bathroom ventilator is located at 210 cm from the ground level of the building when measured from outside. A 2.5 inch smooth vertical PVC pipe is seen at 9.5 cm away from the ventilator. One side of the pipe is affixed to the outside wall and the top end of the pipe is 267 cm above the ground. It is not possible for the cobra to climb to the height of the ventilator vertically. **The above mentioned PVC pipe is also insufficient for assisting a cobra to climb. Natural entry through this way can hence be ruled out.***

(c) **Bath Room Drainage**

This possibility is ruled out as the drain plate cover is permanently fixed inside the bath room.

(d) **Main door of the bed room**

The gap between the bottom edge of the main door (bed room) and the floor was measured to be 2 to 4 mm. The possibility of a natural entry of a cobra of the mentioned size underneath the closed door can be ruled out.

(e) **Air holes**

There are 3 air holes in the room. All the three air holes were sealed and blocked. The possibility of a natural entry of a cobra through air holes can be ruled out. Hence the possibility of natural entry of cobra in to the bed room at the north eastern side of the house can be ruled out if the main door of the bed room remains closed.

Time of Bite

Cobra is most active between 5 pm and 8 pm. Beyond this time the cobra species does not generally come out of its hiding place and bite, unless there is a grave provocation/inducement.

Pain in a Cobra bite

Cobra bite is associated with excruciating pain. From the postmortem certificate there has been 2 successive bites of 7 mm and 5 mm depth. The postmortem photographs show significant bluish discoloration indicating high envenomation. Such a deep bite with significant envenomation is usually associated with severe pain. It is unnatural for a normal person not to respond to such pain.

Successive bites with different bite width

The postmortem report revealed that there were 2 puncture wounds 7 mm deep, 2.3 cm apart and 2 puncture wounds 5 mm deep, 2.8 cm apart 5.7 cm and 5.5 cm above wrist respectively. This shows that the person has been subjected to two successive snake bites in close proximity. The bite width also varies from 2.3 cm to 2.8 cm. (i.e., a variation of 0.5 cm). Such a cobra bite is indicative of an externally induced bite and not a natural one.

Site visit at Scene II: (date – 21/6/2020)

The scene of crime is the bed room and stair case landing situated in the first floor of the marital home of Uthra, 'Sree Surya', near Karakkal jn, Parakkodu P.O, Adoor. The house is a two storied building. There was no supporting structures like branches of trees etc, which would enable the entry of a snake in to the house. **The general surrounding of the building was found unsuitable for Russell's Vipers.** The presence of Russell's Vipers in the specific region cannot be estimated form zoological survey. It has to be verified through localized study. The floor of the building was tiled. The staircase in the hall room leads to the first floor landing. The first floor comprises of the bed room and a sit out. The said bed room is having one entry door and 2 windows. The room is bath attached. A double cot with bed and pillows were found in the room. The room had a wall almirah.

General nature of Russell's Vipers

Russell's Vipers is one of the most adaptive venomous snakes of Kerala. They usually dwell under shrubs and dry places and avoid wet habitat. **Russell's Vipers species are very dangerous and aggressive than any other species of snakes in Kerala. They can bite any warm blooded species in its range without any provocation. Russell's Vipers are nocturnal in nature and are most active in night. Russell's Vipers are non-climbing species and do not prefer to leave the ground.**

Inferences on bite on the victim

The treatment records of Uthra at Pushpagiri Hospital, Tiruvalla, discharge summary and photographs are indicative of a Russell's viper bite. The bite mark was oblique, on the outer aspect of right leg about 20 cm above the ankle. Such a bite is possible only in lying position. Russell's viper bite is associated with excruciating pain and is hemotoxic in nature. The victims of such bite would respond immediately due to unbearable pain under normal circumstances.

Possibility of natural entry of a Russell's viper to site II

Location 1- Stair case landing

Normal entry of a Russell's Viper to this place can be ruled out as they are non-climbing in nature.

Location 2 – Bed room on the I floor

Possibility of natural entry of a Russell's viper to the bed room on the first floor of the house can be ruled out.

The possibility of a natural bite of a Russell's viper on a victim sleeping on a bed in the bed room on the first floor of the house can be ruled out. Such an incident is suggestive of induced bite.

56. PW52 Vava Suresh testified that for the last 30 years he is engaged in rescuing snakes which enter human habitations. He observes the nature of the snakes which are caught by him and hands it over to the

Forest Department. He has been bitten three times by venomous Russell's Viper and 10 times by Cobra, causing critical condition. According to him, there would be excruciating pain when Russell's Viper bites a person. Even if a person is sleeping, if he sustains a bite from Russell's Viper he is bound to know it. Likewise, on sustaining Cobra bite also there would be severe pain. He had amputated his left middle finger on sustaining a Cobra bite. After sustaining a Cobra bite to his right wrist, he cannot rotate the wrist inwards. He is aware of the death of Uthra. From his experience with snakes he can state that the bite sustained by Uthra from the Russell's Viper and the Cobra are suspicious in nature. On the date on which Uthra was bitten by Russell's Viper he told some persons that, there is no chance of a Russell's Viper biting Uthra In the first floor of a building. In his experience he has not found a Russell's Viper inside the house or on the first floor of the house. Moreover, in his experience no one has sustained bite from Russell's Viper inside the house. He had visited the Adoor and Parakkodu area after the incident and was told by the local people that within 15 years of the incident, no one has seen a Russell's Viper in the locality. Even if Uthra was asleep, on sustaining the bite from the Viper, she is expected to jump and immediately wake up. He has expressed his opinion that it is unnatural for a girl to be bitten by a Cobra on the first floor. Thereafter, on one day when he

went to Anchal, the local people told him that Uthra was dead. He told the local people that there are suspicious circumstances and Uthra was murdered in cold blood after executing a sinister plan. On his inspection of the residential house of Uthra, he could not see any signs of a snake therein. He also stated about the fact that a Cobra can raise only up to 3 feet, if its length is 4 metres. On inspection of the room of Uthra, it was revealed that there was no possibility of a snake entering Uthra's room through the air hole. According to him the fact of entry of Cobra in the house of Uthra is 100% suspicious. According to him, Cobras and Vipers would not attack persons without provocation in normal circumstances. However, on some occasions, the Russell's Viper will bite in a person's feet. **However, a Cobra bites only after grave provocation and hissing and hooding.** He stated that he has seen Russell's viper lying down in the well and marshy areas. According to him, these snakes would have fell on the water accidentally. According to him, Russell's Viper would not raise its height and bite a person. From the fact that Uthra was bitten by Russell's Viper between her knee and feet and that there is possibility of the fangs of the Viper getting entangled on the night gown worn by Uthra, there is possibility of Uthra being aware of the Viper bite. From these circumstances, he is convinced that the bite sustained by Uthra from a Russell's Viper is not natural. Moreover, usually Cobras would attack only on grave provocation. On being sensitive of any

movement, the Cobra spreads its hood and makes a fake bite to scare. He has expressed his view that the Viper and Cobra bites on Uthra were unnatural and suspicious in his programme 'Snake Master' telecasted by Kerala Kaumudi channel.

57. In cross-examination, it was elicited that on the day Uthra was bitten by Viper he had come to a nearby house at Parakkodu to rescue a non venomous snake which had fallen into the well. He has gone to the Parakkodu area and rescued snakes on about 30 occasions. Parakkodu area is having estates and paddy fields. There are canals in the said area. He had visited the residence of Uthra after about 20 days of her death. There is a sacred grove near the residence of Uthra. He ruled out the possibility of a Cobra or Russell's Viper entering the house through a hole fixed to support a tarpaulin. **He categorically stated that even if a Cobra crawls over a person and the person accidentally swipes at it and successive bites are made by Cobra, the fang width of the bites will be of the same size.** He admitted that on 2.10.2020 an Indian Common Krait had bitten a child which was sleeping in his house at Pathanapuram and the said child had died. According to him, the fangs of a Krait are very small and a bite may not be recognized. According to him on 24.7.2020 a child sustained a bite from a Cobra from behind the curtain inside

the house. On 20.8.20 a person named Anilkumar who was sleeping in the floor of his house which had no secured doors was inflicted a fatal bite by a Cobra. He admitted that on 4.12.20 he had rescued a Viper from a canal in Attingal. According to him, the Rural employment scheme workers found the Viper moving through the land and informed him. When he reached, the Viper had fallen into the canal while it was moving and he was attempting to catch it. He admitted that on 04.11.2018 he stated in a programme telecasted in Amrita T.V that the Vipers will bite in any direction in a spring action. He stated that though he was bitten 16 times by Viper and 340 times by Cobra, the bites were critical only on 3 and 10 instances respectively. On other occasions, the antibodies in his body had neutralised the venom. According to him, the body part where Viper had bitten him had not become infected, but the Cobra bite was infected. According to him, during rainy season Vipers would float in flood water and it will rest in the bushes. In the Snake Master programme telecasted on 21.9.19 he has rescued a Viper and Cobra from the same tree. According to him both these snakes had come in the flood water and taken refuge in the tree. He also admitted that in the Snake Master programme on 8.1.21 a Cobra was caught by him from the second floor of a flat. According to him, the Cobra was pestered by the local people and it had crawled the stairs. During rainy season when the hideouts of snakes are filled with water, they get

out. *In answer to Court questions he stated that the snakes inject venom on their prey and enemies. In case a snake bites an enemy for self protection it would immediately escape from the spot and would not bite the enemy again.*

58. PW52 was recalled by the defence at the stage of defence evidence and DMO2 pen drive containing the video clipping of the witness rescuing a Cobra from a flat in Attingal was displayed in Court and identified by the witness. He stated that in Snake Master Episode No. 647, the story is that of a child who jumped on the top of a Viper being bitten twice by the said snake. The episode of a girl, named Saari being bitten 4 times by a snake within a span of 3 months was deleted since the version was not found to be genuine. DMO3 C.D containing video clipping wherein the witness is seen handing over a non venomous snake to students and celebrities was identified by the witness. In re-examination by the prosecution, he clarified that initially the celebrities would be afraid of snakes and they would handle the snakes only after getting acquaintance with them and the recording session usually takes up to 3 hours. *He clarified that a Cobra having a length of 150 cms is able to raise only to a height of 50 cms on its own.* He also clarified that in his chief examination what he actually meant was that a Cobra can raise only to one-third of its height and not that a 5 feet long Cobra would raise 3 feet. In re-cross he admitted the news that in February of this year, a Cobra found inside an

almirah, inflicted a fatal blow to a lady at her house in Sasthamcotta. According to him, the said house was not secure enough.

59. It was contended by the defence counsel that no symptoms of snake bites were mentioned in the post-mortem certificate marked as Ext. P157. PW65 was not aware of the protocols of conducting post-mortem examination. He was unable to state whether the diaphragm of deceased Uthra was paralysed or the orifices were normal and there was lack of oedema in the bite site. There are over writings in the detailed post-mortem notes which are made subsequent to Right to Information Act application. The difference in the distance between the bites and the elbow as seen in the photographs of deceased Uthra would make it evident that the fang width is more than 2.7 cms. Moreover, PW65 was not competent to conduct post-mortem examination. It was also contended that there was an enormous delay in issuing the post-mortem certificate.

60. The defence counsel contended that as per Ext. P175, no Cobra venom was detected in L.F.A test from the blood sample of Uthra and the author of Ext. P175 Dr. Santhosh who is cited as CW196 was not examined. PW77 tried to support the prosecution by impeaching the certificate of his own institution. The test which was done to obtain Ext. P175 certificate is the one

recognized by the W.H.O. There is no scientific literature to show that micro diffusion test is an authoritative test, better than ELISA test. The testimony of PW77 that snake venom cannot be detected by urine test is against the basic tenets of toxicology. As per Ext. P183 from the tissues of bite site of Uthra, the D.N.A of Cobra was not extracted. The D.N.A of Cobra was not extracted from the blood of Uthra also. Therefore, the certificates issued from the Rajiv Gandhi Institute of Biotechnology rule out the possibility of snake envenomation on Uthra. The defence counsel assailed the statement of PW80 in cross-examination that the possibility of getting snake's D.N.A from the site of bite is very minimal, even it was tested soon after the bite and it is contrary to the researches of Dr. V. V. Pillai. According to the defence counsel, the fact that the D.N.A of Naja Naja was not found from the alleged bite site tissues and blood is a sufficient ground to extend the benefit of doubt to the accused. The defence counsel relied on the decision reported in **2012 (2) KLT 898**, wherein it was held that “ *When there are conflicting reports after testing the two samples sent for chemical analysis, the one which is in favour of the accused is to be relied upon, so long as the prosecution has no good explanation for impeaching the correctness of the said report.*”, and the decision of the Supreme Court, reported in **Harbeer Singh Vs. Sheeshpal & other (2016) 16 SCC 418** and

contended that if two views are possible, the one favouring the accused should be adopted.

61. PW1 deposed that from Alamkode the snake caught was a female which had begotten eggs. It also appears that the Cobra was caught by PW1 while was brooding the eggs. But as per Ext. P156, the sex of the snake was not identifiable. As per Ext. 183 (PW80), serial numbers 1 to 5 respectively, Exts. A to E are body parts of Naja Naja. The finding of the expert is that the said exhibits belong to the species Naja Naja, at the same time the conclusion No. 12 Ext. E, serial No. 5, of Ext. P183, i.e, in the fangs of Naja Naja, no human DNA was found. Ext. F yielded the DNA of Indian Cobra. But it was not found to be of the same DNA as in Exts. A to E.

62. The scales of the snakes were not found inside the MO1, Jar. If the prosecution case was correct, the snake has had been kept in the jar from 23/04/2020 to 06/05/2020, i.e, for fourteen days, definitely, there will be scales or remnants of the snake visible to the naked eye.

63. The learned defence counsel challenged Ext. P158 chemical analysis report issued by PW76 and contended that the testimony of PW76 is not reliable and her veracity is to be doubted, since she has given evasive

replies to the applications submitted by the defence regarding the various tests conducted by her and seeking information about the matters of the previous tests of Cetirizine and Cobra venom conducted by her as borne out by Exts. D17, D18 and D19 records. It was contended that PW 76 has not conducted the approved chromatographic test for identifying Cetirizine as provided by the manufacturer. She has admitted contrary to Ext. P158 report that the solubility is not a factor of determining Cetirizine, that she tested Cetirizine without even a written request from the Investigating Agency and that PW85 has never requested the chemical laboratory to test for Cetirizine. She testified that the Ultra Violet visible photometer attached to a computer was used to test for Cetirizine and that the result of the computer data is available with Time stamp in the laboratory. However, it is not produced though an application was submitted under the Right to Information Act. Moreover, the most modern ELISA test which is the best method to identify snake venom was not conducted and PW77 Dr. Radhakrishnan has admitted that W.H.O has recognized ELISA test for detecting snake venom. Though the laboratory records were sought for by the defence, Ext. D17 reply was given evading furnishing of records by contending that answers are not furnished. As per Ext P175, in the test conducted at Rajiv Gandhi Institute of Biotechnology, Cobra venom was not detected in the samples collected from Uthra. Thus there is

conflict of scientific opinion regarding detection of cobra venom from the body of Uthra. It was also contended that the findings of PW76 Ureka was manipulated by the Investigating Officer and the prosecution and no reliance can be placed on the same. It was thus contended that PW76 has colluded with the Investigating Agency and Ext. P158 is the outcome of such collusion and not reliable.

64. The Prosecutor contended that the delay in issuing post-mortem certificate was because that it took time to consultation with the Head of Department and the final opinion would be given only after Chemical Analysis report of the Viscera was obtained. According to the learned Public Prosecutor, the contention regarding the 1966 Notification that only Police Surgeon can conduct post-mortem examination is not correct. The learned Public Prosecutor contended that as per the evidence of PW65 Dr. Ragesh, who conducted the post-mortem examination of Uthra, the clinical features of the bite site disclosed there was no bleeding and severe local reaction and only minimal infiltration of blood. The bite of viper and krait could be excluded. The clinical features at the bite site were suggestive of bite mark of Cobra and was confirmed by Ext. P158 report of chemical analysis that cobra venom was detected from the blood of Uthra. Moreover, PW80 conducted analysis and concluded that the samples analysed belong to the species Naja Naja.

According to the learned Public Prosecutor after taking Uthra to St. Joseph's Mission Hospital, Anchal, the accused and PW3 came back to the bedroom of Uthra to search for snakes and the accused pointed a Cobra beneath the wooden almirah. Thereafter, PW3 had killed the Cobra. PW5 had taken photographs of the dead Cobra, vide MO10 and he testified that the carcass of the Cobra was buried in a pit. The testimony of PW63 proves that at the time of necropsy the block of soil from which the carcass of the Cobra was exhumed was intact and on necropsy it was found to be of the species of Naja Naja of spectacle Cobra. The spectacle mark was also evident on the hood. PW45 the photographer of the Police Department has also deposed that he took photographs of the snake carcass at the time of exhumation on 26.5.20. The samples of the said snake were sent for examination to the Rajiv Gandhi Institute of Biotechnology. The learned Special Public Prosecutor contended that the accused had admitted in Exts. P16 and P169 (e) complaint and his 313 statement that a Cobra was found inside the room of Uthra after her death. Thus, according to the learned Special Prosecutor, from the proved circumstances and based on the medical and scientific evidence, it has been proved that Uthra has died due to Cobra envenomation as the Cobra which had bit Uthra was found inside her room after she sustained a fatal Cobra envenomation and was declared dead.

65. The learned special Public Prosecutor has submitted that no evasive replies were given by PW76 in answer to the queries under the Right to Information Act. In fact, confusing questions and questions in the manner of fishing for facts were given without mentioning specific instances and which were rightly not answered. It was also contended that the questions which were rejected were rightly rejected under Sec. 8 of the Right to Information Act. It was also contended that there is no conflict between the results obtained by PW77 and PW76 as the methodology of both the tests are different. The test conducted for detecting cobra venom by PW77 is by a point of care device, whereas PW76 conducted approved forensic methods of analysis.

66. The medical and scientific evidence tendered by prosecution is evaluated and the contentions are considered along with the proved and admitted circumstances. PW62, the doctor who confirmed the death of Uthra found bite marks, with clotted blood on her left arm. The bite marks could be seen in Ext. D15 photographs, of the arm of Uthra taken by PW65, caused to be produced by defence. The accused has admitted in his 313 statement in answer to question No. 49 that there was a snake in the room of Uthra and it was killed by Vishu. PW3 Vishu has also testified that immediately after taking Uthra to the hospital himself and the accused returned, found a Cobra in the room of Uthra and he killed it. PW5 testified that the snake carcass was buried in the

premises of Uthra's House. PW44 Scientific Officer, D.C.B, Kollam city has testified that she participated in the exhumation process of the buried snake in the premises of the residence of Uthra on 26.5.20. PW63 Dr. Kishore Kumar who was present at the time of exhumation of snake carcass conducted necropsy at the site. He had testified that the soil wherein the snake carcass was buried was in tact and it was a single block. He has confirmed that the snake which was found killed inside the room of Uthra and which was buried in the premises was of the species of Cobra. The body parts of the exhumed snake was forwarded for DNA analysis to the Rajiv Gandhi Centre For Biotechnology. PW80, testified that he conducted DNA analysis of scales, muscles and bones and fangs of the forwarded samples and confirmed that it contained DNA of Naja Naja (Cobra). No circumstances were elicited to discredit the veracity of these witnesses. From the above referred evidence, it is proved beyond a reasonable doubt that on the date of death of Uthra a live Cobra was found inside the room where Uthra, the deceased this case, was last found alive and it was killed by PW3. It is pertinent to note that the search of the snake was made only after Uthra was taken to the hospital and by the time, the snake was killed, the death of Uthra was also declared.

67. In this case there is no direct evidence regarding the act which caused death of Uthra. The prosecution relies on circumstances and scientific evidence to prove that Uthra died due to Cobra envenomation. It is proved that, there were bite marks on the arm of Uthra and a short while after her death, a live Cobra was found inside the room, where she was last found alive. According to the testimonies PW65 and PW76 which is discussed supra, death was caused to Uthra due to Cobra envenomation and there was toxic dose of cetirizine, a central nervous system suppressant in her blood. The prosecution relies on expert evidence to prove these facts.

68. S.45 and 46 of the Indian Evidence Act speaks of expert evidence. It reads as under:

'45. Opinions of experts.-- When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. Such person called experts.

Illustrations.

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinion of experts on the question whether the two documents were written by the same person or by different persons are relevant.'

46 Facts bearing upon opinions of experts.

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant

Illustrations

(a) **The question is, whether A was poisoned by a certain poison.**

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

69. **Venom is a type of poisonous fluid secreted by animals and insects. It is a specialised type of poison that has evolved for a specific purpose.** The essential difference which distinguishes venom from other types of poison is in the method of delivery. Venom is injected into the body of the victim or prey by bite or sting. On the other hand, poisons which include toxins are dangerous and deadly when consumed, inhaled etc.

70. The first illustration to section 45 and 46 of Evidence Act makes it clear that, when the question is whether death of a person was caused due to poison, the opinion of experts as to symptoms produced by the poison by which death was caused are relevant. Under section 46 collateral facts which support or are inconsistent with the opinion of experts are also relevant. Detection of traces of venom, a type of poison, from the bodily tissues and blood of the victim, is a scientific analytical process, which requires special skill and scientific knowledge. So also the effects of the venom and symptoms it causes on the living body, the method of delivery of venom on the body of the victim

etc., are matters which require in depth knowledge and experience on the point. Therefore, the opinion of experts on these points are necessary to aid the court in forming an opinion.

71. The evidence of Experts is to a large extent advisory in nature for the purpose of aiding the Court. The Court must derive its own conclusion upon considering the opinion of the experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes. The Court is considered as the Expert of Experts.

72. The Supreme Court in *State of H.P. v. Jai Lal and Others*, 2000 KHC 491 : 1999 (7) SCC 280 : 2000 (2) KLT SN 17 : AIR 1999 SC 3318 : 1999 CriLJ 4294 : 1999 AIR SCW 3309 : 1999 (4) CRIMES 4 : JT 1999 (6) SC 548 : 1999 (5) SCALE 445 : 1999 SCC (Cri) 1184 : 1999 (8) Supreme 401 held as under regarding expert evidence:

'17. S.45 of the Evidence Act which makes opinion of experts admissible lays down that when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a

witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. 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.

19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination.

73. It needs to be noticed that PW76 is the Asst. Chemical Examiner and her report of analysis is admissible as a Government Scientific Expert u/s 293 Cr.PC and may be used as evidence in the trial without even examining her. I have evaluated the evidence of PW76 and Ext. P158 and also the replies given by PW76 marked as Exts. D17 to D19. PW76 testified convincingly regarding

the various methods of analysis in the Forensic Science Laboratory, about her experience in analysis, has good knowledge of chemical analytic processes and is competent in the field of forensic analysis of samples. Therefore, she qualifies as an Expert. It is to be noticed that for detecting Cetirizine, a chromatograph test by using silica gel was conducted and for identifying Cobra venom micro diffusion test using agar-agar gel was conducted. PW76 stated in cross-examination that while conducting chromatograph test to detect Cetirizine, Ultra Violet Spectrometer attached to a computer was used and the results are available in the laboratory. However, in the application submitted under the Right to Information Act marked as Ext. D17, the specific query was whether snake venom was detected by using Ultra Violet Spectrometer and it was answered in the negative. It is evident that misleading questions were put in the query under the Right to Information Act. Now on the basis of the said answer that ultra violet spectrometer was not used to detect snake venom, the contention is raised that PW76 is not reliable. PW76 has not testified that ultra violet spectrometer was used to detect snake venom, but had stated that it was used in the chromatograph test to detect cetirizine. She categorically stated that for detecting snake venom, micro diffusion test was done. The tests suggested by the manufacturer for detecting cetirizine is from the drug or medicine itself, but in this case in the forensic laboratory, the tissues and blood of the deceased

were analysed forensically. The methodology of forensic analysis of the tissues and blood is entirely different from analysing the medicine itself, provided by the manufacturer. PW76 has given a detailed description of the tests conducted by her while analysing the samples, in her testimony and stated that all the tests were conducted in conformity to guidelines and methodology validated and recommended for uses in the laboratory.

74. It is also to be noted that PW77, an official of the Rajiv Gandhi Centre of Biotechnology has stated that the test kit developed by the said institution is a point of care device to detect Cobra venom. It is not a forensic tool. A point of care device means that it is used directly from the bedside by collecting the blood and tissues from the bite site of the patient and the test is carried out. It is a diagnostic tool used immediately after the bite to decide the course of treatment for the patient. He has clearly stated that the ideal sample for the point of care device are the tissues and the exudae from the bite site. Blood is not the ideal sample. Moreover, Venom being a Protein, it's traces will disappear from blood if not preserved properly and the sample of blood in this case was received after two months.

75. The Supreme Court of India has analysed the scientific literature on the point regarding lack of success by chemical analysis to isolate and recognise

poisons in Anant Chintaman Lagu's Case AIR 1960 SC 500 and held as follows:-

There are various factors which militate against a successful isolation of the poison and its recognition. The discovery of the poison can only take place either through a post mortem examination of the internal organs or by chemical analysis. Often enough, the diagnosis of a poison is aided by the information which may be furnished by relatives and friends as to the symptoms found on the victim, if the course of poison has taken long and others have had an opportunity of watching its effect. Where, however, the poison is administered in secrecy and the victim is rendered unconscious effectively, there is nothing to show how the deterioration in the condition of the victim took place and if not poison but disease is suspected, the diagnosis of poisoning may be rendered difficult. In Chapman's case Notable Trials Series, the victim (Maud Marsh) was sent to Guy's Hospital, where the doctors diagnosed her condition to be due to various maladies "including cancer that doctors can be deceived by the symptoms of poison into believing that they have a genuine case of sickness on hand. In Dr. Palmer's case Notable Trials Series, two medical witnesses for the defence diagnosed the case from the symptoms as being due to Angina Pectoris or epilepsy with the tetanic complications.

66. The reason for all this is obvious. Lambert in his book, "The Medico-Legal Post Mortem in India" (pp. 96 , 99-100) has stated that the pathologist's part in the diagnosis of poisoning is secondary, and has further

observed that several poisons particularly of the synthetic hypnotics and vegetable alkaloids groups do not leave any characteristic signs which can be noticed on post mortem examination. See Modi's Medical Jurisprudence and Toxicology, 13th Edition, pages 450-451 and Taylor's Principles and Practice of Medical Jurisprudence Volume II, page 229. The same is stated by Otto Saphir in his book "Autopsy" at pp. 71 and 72. In Dreisbach's Handbook of Poisons, 1955, it is stated that pathological findings in deaths from narcotic analgesics are not characteristic. He goes further and says that even the laboratory findings are non contributory. The position of the pathologist who conducts a post mortem examination has been summed up by Modi in Medical Jurisprudence and Toxicology, 13th Edn., p. 447 as follows :

"In order to make a probable guess of the poison and to look for its characteristic post mortem appearances, it is advisable that a medical officer, before commencing a post mortem examination on the body of a suspected case of poisoning, should read the police report and endeavour to get as much information as possible from the relatives of the deceased regarding the quality and quantity of the poison administered, the character of the symptoms with reference to their onset and the time that elapsed between the taking of the poison and the development of the first symptoms, the duration of the illness, nature of the treatment adopted, and the time of death. He will find that in

most cases the account supplied by the police and the relatives is very meager, or incorrect and misleading. His task is, therefore, very difficult, especially when many of the poisons except corrosives and irritants do not show any characteristic post mortem signs and when bodies are in an advanced state of decomposition"

Similarly, Gonzales in Legal Medicine and Toxicology states at p. 629 :

"The question of whether or not a negative toxicologic examination is consistent with death by poison can be answered affirmatively, as many persons overcome by carbon monoxide die after twenty four hours, at which time the gas cannot be determined in the blood by chemical tests. Likewise, the organs of individuals who have been poisoned by phosphorus may not contain the toxic substance responsible for death if they have managed to survive its effects for several days.

Many conditions seriously interfere with the toxicologic examination, such as post mortem decomposition"

76. In this case, PW76, the Chemical Analyst has adopted a forensic method which is approved to detect snake venom. A forensic method of analysis and a point of care device used to detect poison are entirely different. PW77 has explained that due to lapse of time, and the not so ideal quality of the sample, it could be that Cobra venom was not detected by using the test kit at

the Rajiv Gandhi Institute of Biotechnology. Thus, it is found that there is no conflict between Ext P158 and Ext P175 as the methodology of analysis and samples analysed are entirely different. The ratio of the decisions relied by the defence reported in 2012 (2) KLT 898 Rajappan .V. State of Kerala and **Harbeer Singh Vs. Sheeshpal & other (2016) 16 SCC 418**, are not applicable to the facts of this case. Thus, it is held that the challenge made by the defence against Ext. P158 and the testimony of PW76 Asst. Chemical Analyst, is not sustainable. In fact, there is no conflict of opinion between PW76 and PW77, in view of the different methods of analysis. The expert evidence tendered by PW76 is convincing and the finding that Snake venom (Cobra venom) was detected in item no. 3 & 4 (blood and subcutaneous tissue from bite site of Uthra); Cetirizine an antihistamine was detected in item no. 1, 2 & 3 that is stomach and intestine, liver and one kidney and blood of Uthra and the sample under item No. 3 (blood) contains 0.542 mg of Cetirizine per 100 ml of blood, is reliable.

77. The defence counsel contended that PW65 Dr. Ragesh. R was not competent to hold a post-mortem examination as per the relevant rules. PW71, the Head of department of Forensic Medicine, Government Medical College Hospital, Thiruvananthapuram, has categorically testified that she has seen the post mortem certificate issued by PW65. PW65 has stated that he had

conducted about 600 post mortem examinations. If PW65 was not competent to conduct Post mortem examination, the Head of Department would not have authorised him to do the same. Moreover, as per illustration (e) to section 114 Evidence Act, it may be presumed that all official acts were regularly performed. On evaluating the testimony of PW65, it is satisfied that he is competent in the field of Forensic Medicine and Surgery and qualifies as an expert. Thus, the above referred contentions of defence counsel are not at all tenable.

78. PW65 has clearly explained the characteristic of Cobra venom, which is neurotoxic. He explained with clarity that, Cobra venom being neurotoxic, first it affects the tissues around the bite site. Then it passes through the blood and affects nerves and then respiratory paralysis is caused. It affects muscles through neuronal paralysis. Asphyxia causes death in neurotoxic envenomation. He clearly stated that after death, all muscles go into flaccidity. An ante-mortem paralysis of muscles cannot be confirmed by post-mortem examination. He also clarified that the effects of neurotoxic venom affects respiratory and cardiac centre, causes change in blood pressure, but does not cause rupture of blood vessels or haemolysis. In re-examination he clarified that the effect of paralysis can be seen in other organs as signs of asphyxia and

there will be congestion in all organs. He clarified that in the case of respiratory arrest by neuronal paralysis, lung oedema need not be caused.

79. Under section 57 of Evidence Act, in addition to the 13 facts stated therein, in matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference, and take judicial notice of facts. The fact that envenomation by Cobra bite causes death of human beings is common knowledge. PW65 has asserted that Cobra venom is neurotoxic and Viper venom is haemotoxic. Even the defence has not seriously challenged the above referred scientific facts. That apart, it being a "notorious fact" being in the knowledge of the whole World and especially those in medical profession and experts in medical jurisprudence and toxicology, the Court could take judicial notice of such facts, by referring to authoritative text books on toxicology. In the case of Onkar Nath & Ors. Vs. Delhi Administration, 1977 (2) SCC 611. the Supreme Court held as follows:

"6. One of the points urged before us is whether the courts below were justified in taking judicial notice of the fact that on the date when the appellants delivered their speeches a railway strike was imminent and that such a strike was in fact launched on May 8, 1974. S.56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be proved. S.57 enumerates facts of which the Court "shall" take judicial notice and states that

on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in S.57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge. (See Taylor, 11th Edn., pp. 3-12; Wigmore, S.2571, footnote; Stephen's Digest, notes to Art.58; Whitley Stokes' Anglo - Indian Codes, Vol. II, p. 887.). Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to common sense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No court therefore insists on formal proof, by evidence, of notorious facts of history, past or present.

80. In Textbooks of Medical Jurisprudence and Toxicology authored by Modi, it is stated about symptoms of snake venom and poisoning (Ophitoxaemia), that Cobra venom causes weakness of muscles and paralysis and Viper venom causes haemorrhages. The above symptoms refer to neurotoxic nature of cobra venom and haemotoxic nature of viper venom. In

H.M.V Cox's text book of Medical Jurisprudence and Toxicology also, the nature of Cobra venom is stated to be neurotoxic. Moreover, in V. V. Pillay's Text book on Modern Medical Toxicology fourth edition, (relied on by the defence counsel) at page 141 and 142 it is stated that Viper venom is haemotoxic and Cobra venom is neurotoxic. U/S 57 of Evidence Act the Court can resort to refer to these text books to aid in coming to a conclusion and cross checking the explanation given by expert witnesses regarding these notorious question of facts regarding nature of Cobra venom and Viper venom.

Thus, it is held that the prosecution has substantiated that Cobra venom is neurotoxic.

81. The explanations given by PW65 regarding the dynamics of death due to neurotoxic envenomation caused by Cobra bite is scientific and acceptable. Since, the nerves are affected and respiratory muscles are paralysed, there need not be oedema or petechial haemorrhage in the lungs. Though, PW65 has not stated explicitly so, it can be inferred that paralysis of respiratory muscles causes hypoxia, which progresses to anoxia and leads to Asphyxia. PW65 categorically stated that all internal organs were congested, which is a symptom of Asphyxia. The challenge made by defence counsel by relying on text books against the testimony of PW65 is not sustained.

82. Moreover, in the decision reported in 1991 KHC 337 State of Kerala .V. Mani, the High Court of Kerala relied on the decision of the Supreme Court in Anant Chintaman Lagu's case and held that irrespective of absence of medical evidence, the Sessions Court has to analyse circumstantial evidence and find the cause of death. It was held as follows-5. Sessions Court has to decide on the cause of death of the deceased in a murder case not merely with the help of medical evidence. A doctor, who conducts autopsy has only the dead body before him. Sometimes it may be difficult for the doctor to finally pronounce as to how the deceased died. If he expresses such inability, it does not mean that the court, on that score, becomes helpless. Cases have been reported in which either dead body was not traced out at all, or dead body had been cremated without conducting autopsy or skeleton alone was available for post mortem examination. Sessions Courts were not helpless in such cases and in many such cases courts were able to conclude regarding cause of death in spite of absence of positive medical evidence. In Anant Lagu v. State of Bombay (AIR 1960 SC 500) without positive medical evidence as to how the deceased died and even without a report of chemical analyst suggesting any symptom of poison in the system the Supreme Court concluded, from other circumstances, that the deceased in that case had died due to poisoning.

83. It is to be noticed that PW65 and PW76 have stood the test of cross-examination and there is no iota of suspicion to doubt their veracity. They have given valid and cogent reasons to support their opinions. It is true that the evidence of PW65 and PW76 falls in the category of expert opinion. However, the evidence tendered regarding their opinion is based on scientific facts, which they have explained in their testimony. It is found that their opinion evidence, which is also stated in Exts. P157, P158 & P159 are relevant and acceptable. Thus, the opinions of PW76 and PW65, also stated as findings in Exts. P157 post-mortem certificate, P158 chemical analysis report of the viscera and blood of Uthra and P159 final opinion of post-mortem after obtaining the report of the viscera, which are exhaustively discussed above, are accepted. PW65 testified that the cobra envenomation sustained by Uthra and noted in the post mortem certificate is sufficient in the ordinary course to cause death. Thus, there is positive medical evidence regarding the cause of death. Moreover, Uthra who was convalescing after sustaining a viper bite about 50 days back had no other fatal disease at the time of her death, there were two bite marks in the left arm of Uthra, who was bedridden, she was found dead in the morning, and a live cobra was found in her room. All these circumstances also unerringly point out to the cause of death of Uthra as cobra envenomation. In view of the scientific and medical expert evidence adduced by the prosecution it is concluded that

Uthra died due to cobra envenomation and she had a non therapeutic dose of cetirizine in her body. **Thus, it is found that the prosecution has proved conclusively that the death of Uthra was caused due to Cobra envenomation.**

84. The learned defence counsel contended that Ext. P21 report is a preposterous document which is made on the basis of the opinion rendered by PW19 Mavish Kumar, who claims to be a Herpetologist. The defence contended that PW19 has made exaggerated claims about the qualification and his present employment. Though, he claims to be the Chief Zoologist of Aquatic Team Service LLC, Dubai, the said company is not in existence and from the name, it is suggestive of a water theme park where there is no scope for a Zoologist. The Mahindra Wild Life Foundation, of which PW19 claims to be the Chairman, is defunct from the year 2016. On the basis of his educational qualification of B.Sc Botany and M.Sc Earth Science, he cannot be said to be an Herpetologist or Zoologist. There is no Research Paper published in his name. Moreover, PW19 is not a Ph.D holder, but he made untenable claim that he had guided M.Phil and M.Sc students. Though, PW19 testified that the one-third height theory of Cobras is mentioned in the book of J. C. Daniel and Vivek Menon, it is without understanding the purport of the said author who had merely stated in the book that when alarmed, the snakes will

raise its fore-body approximate of one-third of its total length. This proposition is not with respect to the creeping ability of Cobras and PW19 mislead the Expert Committee. The Expert Committee was not pointed out to the place where Uthra was bitten, by the Investigating Officer. Moreover, the testimony of PW63 that the absence of the remnants of food in the coelomic cavity of the dead snake is suggestive of the fact of starvation is also not correct as snakes may not consume food for months. According to the defence counsel, the theory that snakes cannot creep in a vertical wall beyond one-third of their actual length and that there was no possibility of a snake entering from outside through the eastern window of the room, wherein Uthra was sleeping was not probable, is not at all correct. The theory propounded regarding the elongation of fang width of Cobra when pressure is exerted to the head is also not correct as it is not stated as a theory in any of the books published by renowned authors. According to the learned defence counsel, PW63 was not aware of the various modes of locomotion methods of snakes. PW63 was not aware of the books on Herpetology published by renowned authors from U.S.A. The book written by J. C. Daniel is only elementary, whereas the books of authors referred to when PW63 was cross-examined are in depth research. Likewise, PW51 Muhammed Anwar has also stated that the theory that snakes can raise about one-third of their height from the ground is a fact which is known to him

from his experience. To propound such a theory authoritatively, the occasion has so far not arisen. PW19 has asserted without any basis that the fang width of Cobra is 1 to 1.6 cms. The book written by J. C. Daniel, relied by him does not have any reference to fang width. There is no reference to the increased fang width in case of an induced bite and these are mere assumptions of PW19. PW63 who conducted necropsy of the snake has not referred its fang width. The validity and admissibility of the live demonstration using live cobra and viper was also vehemently challenged and it was contended that the court cannot rely on the said demonstrations, to come to a conclusion on its basis. The prosecution should have examined a Herpetologist from the Wild Life Institute, Dehradun and other Herpetological foundations. It was contended that even for an expert snake handler, it is difficult to inflict induced bite.

85. Per contra, the learned Public Prosecutor contended that, PW19 is an expert in the field of Herpetology and snake rescue and his expertise is recognized by the Forest and Wild Life Department of Kerala. He was even a member of the committee which formulated the guidelines for the rescue and release of snakes from the human dominated areas by the Wild Life Department. The Public Prosecutor relied on Ext P279 series documents to buttress his contentions that PW19 is an expert in Herpetology.

86. According to the learned Public Prosecutor, PW51 Muhammed Anwar, who has years of experience as a Forest Ranger has observed the behaviour of snakes in their natural habitat and he is also capable of handling snakes. Therefore, PW51 is also an expert in the matter of behavioural aspects of snakes.

87. Regarding PW52 Vava Suresh, the learned Public Prosecutor contented that, he has rescued thousands of snakes and has got bitten by venomous snakes on several occasions and is a survivor of snake bites. Therefore, PW52 has vast knowledge and experience about behavioural aspects of snakes and is competent to depose as an expert. It was contented by the learned Public Prosecutor that each venomous and non-venomous snake bite sustained by PW52 has to be regarded as a medal of his experience.

88. The Prosecutor also pointed out the qualification and experience of PW63 Dr Kishore Kumar, as Veterinary Surgeon and PW71, Dr. Sasikala, the Head of Department of Forensic Medicine, Government Medical College Hospital Thiruvananthapuram, as a bench mark of their competence as expert witnesses.

89. The post-mortem findings and the ante-mortem injuries on Uthra would prove that she had two successive Cobra bites in close proximity on her

left arm, she died due to cobra envenomation and there was non therapeutic dose of cetirizine in her blood.. The Team of Experts constituted by the Investigating Officer, PW71 Dr. Sasikala, the Head of Department of Forensic Medicine, Government Medical College Hospital, Thiruvananthapuram, PW63 Dr. Kishore Kumar, the Veterinary Surgeon of Animal Husbandry Department, PW19 Mavish Kumar, and PW51 Muhammed Anwar, conducted a detailed on the spot study of the circumstances and submitted Ext P21, report. PW52 Vava Suresh has also testified regarding the behaviour of Cobra and Viper snakes. The testimony of these witnesses fall in the category of expert evidence. Moreover, PW19 and PW51 conducted live demonstrations using a live Cobra, live Viper and dummy to ascertain the nature, and characteristics of natural bite of Cobra and induced bites and behavioural traits of these snakes. The law on the point is discussed hereinafter to consider whether they qualify as experts, about the admissibility of their opinions and the validity of live demonstration tests they performed.

90. In the decision of the **Division Bench of Kerala High Court in CRL.A.No. 760 of 2009 (D) dated 13.9.2012 – Chellappan Vs. State of Kerala, 2013 KHC 55, 2013 (2) KLJ 279**, the relevance, procedure of admission and manner of appreciation of expert evidence was exhaustively considered. **In that case the Court considered the admissibility of a report**

prepared by two experts in the field of Dentistry, accepted the expert evidence tendered and Justice Bhavadasan who authored the Judgment held as follows :-

41.... “It is the function of the Judge to draw conclusions from the facts before him. Situations may arise when the court finds it difficult to make the correct evaluation or judgment without the help of a person specially skilled or experienced or knowledge on a particular subject. In such circumstances, the court has to look up to experts in that particular field. The normal rule of evidence is relevant in such cases. The rule of admissibility of expert opinion is one founded on necessity.

It is by virtue of Section 45 of the Indian Evidence Act that the opinion of an expert skilled in foreign law, science or art becomes relevant. The term expert has been broadly defined as a person specially skilled. The term expert seems to imply both special knowledge and practical experience in the art or profession. He is a person who has acquired special knowledge in any science, art, trade or profession. The skill so acquired may be by practice, observation, research or careful study. Expert’s evidence is normally an exception to the general rule that opinion of ordinary witnesses are irrelevant. Regarding the test of admissibility of such evidence, Phipson on Evidence - 16th Edn. Note No.33-46 at page 1014 observed as follows:

‘The classic statement as to the test of admissibility which has been followed in England, is that of the South Australian Supreme Court in R.v. Bonython, where it is said that there are two questions for the judge to decide:

“The first is whether the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible. This... may be divided into two parts:(a) whether the subject matter of the opinion is such that a person without instruction or experience in the area of knowledge or human experience would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area, and

(b) whether the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organized or recognized to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion or assistance to the court.

The second question is whether the witness has acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issues before the court.”

*“The author further observed **“Though the expert must be “skilled”, by special study or experience, the fact that he has not acquired his knowledge professionally goes merely to weight and not to admissibility. Likewise the***

fact that the proponent of a particular form of expertise adopts an approach which would be unacceptable to the majority of experts in that field does not mean that he is incapable of giving expert evidence about the topic, provided he can demonstrate that his approach is based on rational considerations, backed up by adequate intelligence, study and relevant formal qualifications. Equally, one can acquire expert knowledge in a particular sphere though repeated contact with it in the course of one's work, notwithstanding that the expertise is derived from experience and not from formal training.

91. To qualify as an expert, u/s 45 of Evidence Act, the person should have acquired special skill either by practice, observation, research or careful study or gained practical experience in any science, art, trade or profession.

91 (a). Section 51 of the Indian Evidence Act reads as follows :-

51 Grounds of opinion when relevant.- Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant

illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

92. The opinion of an expert U/S 45 of the Evidence Act loses its value unless the grounds on which the opinion is based are known. Wherever the opinion is relevant, the grounds on which such opinion is based are also relevant. Sec. 51 of the Evidence Act is therefore, essential to explain the sections which precedes it by which opinion evidence has been made admissible. The soundness of the opinion expressed must depend to a large extent on the reasons on which the opinion is held. **As per the illustration to Sec. 51, an expert may give accounts of experiments performed by him for the purpose of forming his opinion.** The legal issue to be resolved is whether the live demonstration using live snakes and dummy, conducted by the experts, to demonstrate the grounds of the expert opinion regarding increase and variation of fang width in induced bites, is relevant under section 51 of the Evidence Act and comes within the ambit of the experiment mentioned in the illustration. It is also to be considered whether the Court can view the video footage/clippings of the live demonstration contained in MO24 & MO25. With these legal aspects in mind, the contentions of the defence and prosecution regarding relevance and admissibility of the opinion of the team of experts, Ext P21 report and the live demonstration conducted by them and relevant video footage produced and marked as and the evidence is appreciated.

93. I have analysed the evidence tendered by PW19, PW51, PW52, PW63, PW65 and PW71, to consider their competency in their respective fields.

As per Ext. P279 series issued by the Principal Chief Conservator of Forests (WL) and Chief Wild Life Warden, Kerala (HRB) Thiruvananthapuram, it is seen that, PW19 had participated in the meeting called by Forest and Wild Life Department, to finalise the guidelines for rescue and release of snakes from the human dominated areas in Kerala by certified snake handlers. As per Ext. P279 (f), the Principal Chief Conservator of Forests (WL) and Chief Wild Life Warden, Kerala (HRB) Thiruvananthapuram, has issued a letter of appreciation to PW19 Mavish Kumar for his involvement, dedication and contribution towards the preparation of the guidelines for rescue and release of snakes from the human dominated areas in Kerala by certified snake handlers. All these documents were produced by the Prosecution under the Right to Information Act and it was marked through DW1, the State Information Officer, Wild Life Department, Thiruvananthapuram. It is to be noticed that, though the competency of PW19 is vehemently challenged by the defence, it is crystal clear that his competency is acknowledged by the Chief Wild Life Warden and he is a Member of the Committee which formulated guidelines for handling snakes. The Chief Wild Life Warden is the authority, which is statutorily

vested with the protection of wild animals and wild life as per the Wild Life (Protection) Act, of the State of Kerala. Therefore, when the Chief Wild Life Warden has acknowledged the competence of PW19 and included him in various other committees, which dealt with handling of snakes, the contentions raised by the defence that PW19 is not at all a competent Herpetologist, falls into insignificance. It is to be noticed that the competency of PW19 in the field of Herpetology is acknowledged by the Chief Wild Life Warden and the Forest Department of Kerala State. Moreover, in the live demonstration PW19 could be seen handling a cobra with ease. Therefore, the challenge against the competence of PW19 by the defence is not at all tenable. In the said circumstances there is no reason to doubt about the skill and competency of PW19 in this field. Therefore, it is found that, PW19 is having competence in the field of snake behaviour, snake rescue and handling and herpetology and he is qualified as an expert in the said field.

94. As discussed in the judgment of the High Court of Kerala Supra, to qualify as expert, in a specific science or field, a person need to acquire special skill on the basis of practice, observation or experience alone and he need not have to acquire the skill by formal education or by engaging in any formal profession. PW52 Vava Suresh has eloquently testified about his vast experience in handling and rescuing thousands of different variety of snakes,

from varied terrains and the fact that he was bitten by venomous snakes etc. He was bitten 16 times by Viper and 340 times by Cobra and has also sustained envenomation on several occasions. In fact, his body has scars received from venomous snake bites. That PW52 Vava Suresh is an expert in snake handling is evident from his testimony. The fact that he is an expert in snake handling is acknowledged and admitted by the defence while cross-examining him on his programme “Snake Master” telecast by Kaumudi Channel wherein he is found handling snakes and talking about the snakes which he rescued. Therefore, it is found that, PW52 Vava Suresh is also competent to depose about behaviour of snakes and manner of infliction of snake bite etc.

95. PW51 Muhammed Anwar, the Deputy Director of the State Forest Training Institute, Arippa has testified that he has seen and studied snakes in their natural habitat. While he was working as Ranger in the Forest department he used to actively engage in snake rescue activities, animal rescue activities and disaster management activities. He is a Member of the Committee constituted by the Kerala Forest Department which has prepared scientific guidelines for rescuing snakes. He has prepared the draft guidelines which was approved by the State Government and was appointed as State Nodal Officer to train snake rescuers and implement the guidelines. He is the Master Trainer and Nodal Officer for the guidelines for the rescue and release of snakes from

human dominated areas of Kerala, a scheme of the Forest Department recognized by the Government of Kerala. He has imparted training to almost 1250 active snake rescuers all over Kerala. Due to his personal interest he has studied and read a lot about snakes. He was a Member of the Expert Committee formed at the request of the Investigating Officer as per the direction of the Chief Wild Life Warden. Therefore, the challenge against his competency is also not tenable.

96. Likewise, PW63 Dr. Kishore Kumar has also narrated his experience in conducting Necropsy of snakes and behavioural patterns observed by him. PW71 Dr. Sasikala, the Head of Department of Forensic Science Department has testified that she had conducted post-mortem examination of several persons who died as a result of snake bites. Both PW63 and PW71 are having academic qualification as well as experience in their profession. In fact the defence has not seriously taken exception to the competence of PW63 and 71 in their respective Spheres. Thus, it is held that PW63 and PW71 are also competent as experts.

97. In the said circumstances, it is held that all the Members of the Team of Experts constituted by the Investigation Officer to study the circumstances of snake bite and the nature of fatal snake bites on Uthra were

competent and they are experts. Ext P21 Report of Experts corroborates their evidence and it is also admissible and relevant.

98. In *Gopalakrishnan @ Dilip. V. State of Kerala* 2019 (5) KHC 794, the Supreme Court has distinguished between real evidence in the form of material objects and documents and held that if the **contents in the form of video footage/ clippings are to be relied, of electronic records like Pen drive, memory card etc., they are to be considered as documents.** For deciding regarding admissibility of electronic records and the issue whether the court can view the images, video footage/clippings etc., in electronic records like pen drives, mobile phone memory, and compact discs it would be apposite to refer to the above referred decision wherein the Supreme Court analysed both Indian and English laws on the point and held as follows

- 21..... *It can be safely deduced from the aforementioned expositions that the basis of classifying article as a "document" depends upon the information which is inscribed and not on where it is inscribed. It may be useful to advert to the exposition of this Court holding that **tape records of speeches, Tukaram S. Dighole v. Manikrao Shivaji Kokate, 2010 KHC 4083 : 2010 (4) SCC 329 : 2010 (1) KLT SN 97 : AIR 2010 SC 965 : 2010 (2) SCALE 109 : 2010 (2) SCC (Cri) 826 : 2010 (2) SCC (Civ) 112 : 2010 (1) UPLJ 138 and audio / video cassettes, Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdas***

Mehra and Others, 1976 KHC 709 : 1976 (2) SCC 17 : AIR 1975 SC 1788
including compact disc, Shamsheer Singh Verma v. State of Haryana, 2015
KHC 4763 : 2016 (15) SCC 485 : 2016 (1) KHC SN 3 : 2016 (1) KLD 1 : 2015
(4) KLJ 741 : 2015 (12) SCALE 597 : 2015 (4) KLT 1031 : 2016 CriLJ 364
were "documents" under S. 3 of the 1872 Act, which stand on no different
footing than photographs and are held admissible in evidence. It is by now
well established that the electronic record produced for the inspection of the
Court is documentary evidence under S.3 of the 1872 Act, Anwar P. V. v. P. K.
Basheer, 2014 KHC 4602 : 2014 (10) SCC 473 : 2014 (10) SCALE 660 : 2014
(4) KLT 104 : AIR 2015 SC 180.

23.....we may refer to Phipson on Evidence (Hodge M. Malek, Phipson on Evidence, 19th Edn, 2018, pg. 1450), and particularly, the following paragraph(s):

"The purpose for which it is produced determines whether a document is to be regarded as documentary evidence. When adduced to prove its physical condition, for example, an alteration, presence of a signature, bloodstain or fingerprint, it is real evidence. So too, if its relevance lies in the simple fact that it exists or did once exist or its disposition or nature. In all these cases the content of the document, if relevant at all, is only indirectly relevant, for example to establish that the document in question is a lease. When the relevance of a document depends on the meaning of its contents, it is considered documentary evidence."

30. It may be apposite to refer to the exposition in Halsbury's laws of England (Fourth Edition, 2006 reissue, Vol. 11(3) Criminal Law, Evidence and Procedure) dealing with Chapter - "Documentary and Real Evidence" containing the meaning of documentary evidence and the relevancy and admissibility thereof including about the audio and video recordings. The relevant exposition reads thus:

"(12) DOCUMENTARY AND REAL EVIDENCE.....A video recording of an incident which is in issue is admissible (Taylor v. Chief Constable of Cheshire, (1987) 1 All ER 225, 84 Cr.App. Rep 191, DC). There is no difference in terms of admissibility between a direct view of an incident and a view of it on a visual display unit of a camera or on a recording of what the camera has filmed. A witness who sees an incident on a display or a recording may give evidence of what he saw in the same way as a witness who had a direct view (Taylor v. Chief Constable of Cheshire, (1987) 1 All ER 225, 84 Cr.App. Rep 191, DC. As to the admissibility of video recordings as evidence identifying the defendant see also R. v. Fowden and White (1982) Crim. LR 588, CA; R. v. Grimer, (1982) Crim. LR 674, CA; R. v. Blenkinsop (1995) 1 Cr.App. Rep 7, CA. A recording showing a road on which an incident had occurred was admitted in R. v. Thomas (1986) Crim. LR 682. As to the identification of the defendant by still photographs taken by an automatic security camera see R. v. Dodson, R. v. Williams (1984) 1 WLR 971, 79 Cr.App. Rep 220, CA; as to identification generally see para 1455 ante; and as to the admissibility of a copy of a video recording of an incident see Kajala v. Noble (1982) 75 Cr.App. Rep 149, CA.)" (emphasis supplied)

44. In conclusion, we hold that the contents of the memory card / pen drive being electronic record must be regarded as a document.

Even in *Santhosh Madhavan @ Swami Amritha Chaithanya v. State*, 2014 KHC 31 : 2014 (1) KLD 254. *Santhosh Madhavan*, where the High Court of Kerala held that a court cannot step in to the shoes of a witness and identify persons by viewing a video cassette and render a finding of guilt, the power of the court to view video footage was approved as follows- **There can be no quarrel regarding the right of the Court to view the cassettes like the Court is entitled to make a visit of the scene of offence etc. But those are all only for the purpose of appreciating the evidence in the case in a proper manner.**

However, in *Sherin.V. John.V. State Of Kerala* 2018 (3) KHC 725, (In *Jizal Razak's* case, the dictum of this decision, that compact discs are material objects is distinguished and held that when the contents of the same are relevant, it has to be treated as electronic record and consequently documents.) though in the context of that case, it was held that, compact discs etc., are material objects held that the court can view the contents of the same as follows- *What is the evidentiary value or probative value of the material objects which have been made part of the evidence in a case? In this context, the definition of 'proved' in the Indian Evidence Act, becomes relevant. It runs as follows:*

""Proved"-- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

36. *The section makes it clear that the Court has to reach a conclusion not on the basis of evidence alone. But on the basis of matters before the Court. Of course, these matters include evidence. There can be other matters also before the Court. The facts like identity of the person who is present before the Court*

*or presence or absence of a party before the Court are matters before the Court. The Court need not examine anyone with regard to his identity or presence or absence. **It has the authority to ascertain whether the person who is present before it is the one seen in the visuals in the material objects like cassette, compact disc, pen drive.***

37. A material object made part of the evidence in the case is a matter before the Court. The Court has the authority to examine it. The identity of the accused and the victim who are present before the Court is also a matter before it. The question whether those persons and the persons seen in the visuals in the cassette marked in evidence in the case are the same persons is one to be answered on the basis of the matters before the Court.

99. Therefore, on the basis of the above referred judicial precedents it is crystal clear, that for appreciation of evidence, this Court can view the video footages contained in MO24 and MO25 CD's recording the live demonstrations by using a cobra, viper and dummy in re enactment of the mode of commission of the act of inflicting and inducing snake bites on Uthra.

100. In the judgment of the Hon'ble Supreme Court in the case of Arjun Panditrao Khotkar - vrs. Kailash Kushanrao Gorantyal and others decided on 14th July, 2020 the procedure for issuing Certificates U/S 65B of evidence act and admitting electronic records are laid down as follows : (Reported in AIR 2020 SC 4908), it has been laid down as follows...

31. *The non obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of S.65B, which is a special provision in this behalf - S.62 to 65 being irrelevant for this purpose. However, S.65B(1) clearly differentiates between the "original" document - which would be the original "electronic record" contained in the "computer" in which the original information is first stored - and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that S.65B differentiates between the original information contained in the "computer" itself and copies made therefrom - the former being primary evidence, and the latter being secondary evidence.*

32. *Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and / or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with S.65B(1), together with the requisite certificate under S.65B(4).*

53. *In a criminal trial, it is assumed that the investigation is completed and the prosecution has, as such, concretised its case against an accused before commencement of the trial. It is further settled law that the prosecution ought not to be allowed to fill up any lacunae during a trial. As recognised by this*

Court in Central Bureau of Investigation v. R. S. Pai (2002 KHC 403 : 2002 (5) SCC 82 : 2002 (2) KLT 149 : 2003 (1) KLJ NOC 4 : AIR 2002 SC 1644 : 2002 CriLJ 2029), the only exception to this general rule is if the prosecution had 'mistakenly' not filed a document, the said document can be allowed to be placed on record. The Court held as follows:

"7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge - sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge - sheet, it is always open to the investigating officer to produce the same with the permission of the Court."

57. Subject to the caveat laid down in paragraphs 50 and 54 above, the law laid down by these two High Courts has our concurrence. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence.

58. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a 'responsible official position' in relation to the operation of the relevant device, as also the person who may otherwise be in the 'management of relevant activities' spoken of in sub-section (4) of S. 65 B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, S.65B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief" (Obviously, the word "and" between knowledge and

belief in S. 65 B (4) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time).

101. The law on the point discussed above with reference to electronic evidence explicitly holds that video footage of events recorded in electronic devices have to be treated as documentary evidence and the certificate u/s 65 B of evidence act can be produced at any time before the hearing in a trial is not over, the belated production of such certificates is also permissible. Though the Electronic records have to be treated as documents, and marked as Exhibits, due to an inadvertent oversight, since the Compact discs, pen drives etc., were produced in this case as material objects by the police, they were marked as MO's. However, all the electronic records were displayed in open court, while the relevant witnesses were examined and they identified the contents. The defence had also notice to such displaying of contents of electronic records in open court through the display unit/monitor of the court and have not objected to such procedure. Hence it is found that the marking of electronic records as MO's in this case has not caused any prejudice to the accused.

The expert evidence tendered by PW19, PW51, PW52, PW63, and PW71 are elaborately discussed above. In view of section 51 of the Evidence Act, and the law regarding electronic evidence/video footage discussed above, it is crystal clear that the said live demonstration is relevant and admissible and the court

can treat said video footage as documentary evidence and view the same contained in MO 24 and MO25. At the time of examination of PW19 and PW51, the video footage of live demonstration in MO24 and MO25 CDs were displayed in open Court.

102. For appreciating the evidence, this Court has viewed the above referred video clippings. The contents of video footage is described hereinafter.

It appears that the scene is re enacted with a dummy placed in a cot. A Cobra kept in a plastic jar similar to MO1 is dropped on top of the dummy 2-3 times, but it crawls away without inflicting bites on the dummy. (The fact that it was kept in a plastic jar similar to MO1 is relevant, which will be discussed later on.). Then the Cobra which is in the floor is provoked with a detached arm of the dummy tied with a chicken piece and it is seen displaying hooding, hissing and making false bites. Only when it is cornered and extremely provoked by prodding it, two natural bites are made in the chicken piece. The fang width of both the natural bites are seen measured with a scale and both of them are uniform at 1.7 cms. Then the Cobra is held by it's head and two bites are induced to be inflicted on the chicken piece, by pressing against the same. On measurement of the fang width, with a scale it is seen to have enlarged and varying widths at 2 cm and 2.4 cm. Then the Cobra is held by it's head and

pressure is applied and it is seen that the fangs move wide open and the maximum fang width is 2.5 cm. It is also seen that the Cobra raises it's head and hood only to a height of about one third of it's body length. On no occasion it is seen that the Cobra raises it's head and hood more than a third of it's body length. When the Cobra is released it crawls away to a hideout beneath a steel almirah. This behaviour of the Cobra is also relevant as it was seen similarly hiding beneath an almirah in the room of Uthra in the morning after she sustained fatal Cobra envenomation. When the live Viper is put near the dummy tied with a dead rat tied on it's leg it does not bite it and crawls away. However, when it is put near the leg of the dummy tied with a live rat and the rat moves, the Viper, with lightning speed strikes and bites the rat without any provocation.

103. On viewing the video footage of the live demonstration using the Cobra, it is evident that Cobra strikes and bites only on extreme provocation, that natural bites would have uniform fang width, and in case of induced bites there will be increase and variation of fang width. The viper would bite live animals in it's striking range without any provocation. This may be due to thermal radiation as stated by PW51.

104. PW19 and PW51 were Members of the Team which carried out live demonstration using Cobra and Viper. The video of the live demonstration using Cobra was displayed in the Court while PW19 and PW51 were examined. The fact that a Cobra bites only on extreme provocation is discernible from the said video clipping. It is also evident that the fang width of the natural bite of Cobra is same, but when induced bites are made the fang width is more and it varies every time. In the video when pressure is applied to the head of the Cobra and a bite is induced, it is evident that its fang width increases. The above said live demonstration is an experiment coming within the purview of Sec. 51 of the Indian Evidence Act and it forms the grounds of the opinion expressed by PW19 and PW51 regarding the variation in fang width of a Cobra in the case of induced bite and that the Cobra is able to raise only the one-third of its height without external support.

105. Though the defence counsel vehemently attacked the theory that a cobra cannot rise more than one third of its height, without external support, all the experts who deposed about the said theory reiterated the same. The defence counsel relied on text book of Herpetology by American authors and challenged the testimonies of the experts by quoting the method of locomotion of snakes. However the said theory that cobra cannot rise more than one third of its height as deposed by the experts appears to be scientific and logical and validated by

the live demonstration using cobra and video footage contained in MO24. It is common knowledge that snakes can only crawl and cannot rise on their tails upwards vertically, without external support. The contentions of the defence reminds of the cross examination made by the eminent defence counsel, Clarence Darrow in the famous Scopes trial (the monkey trial) in U.S.A. In that case, challenging the theory of Creationism and supporting Darwin's theory of Evolution, questions were put to the witness as to whether before God cursed serpent in the garden of Eden, as punishment for revealing the forbidden fruit, that hereafter he would crawl, serpents used to move around vertically by pitching on their tails. PW52 has stated that in flood like situations vipers would climb trees. That is only for self protection in extreme circumstances. Of course, some snakes including Cobra are arboreal. However, while climbing trees there would be support from branches. Here, the window of the eastern wall of Uthra's room is at a height of 122 cm from the ground and the Cobra found inside the room was having a length of 150 cm. At the risk of repetition, the relevant portion in Ext P21 is again extracted as follows-*The two windows in the bedroom on the eastern side wall is at a height of 122 cm from the ground when measured from outside. Scientifically it is known that any snake can raise its body without any support for a maximum of its one third of the body length. **In this case, length of Cobra is 152 cm. A Cobra of body length***

152 cm cannot raise its head to a height beyond 50 cm. A natural entry of a 152 cm length Cobra through any window is not possible. Moreover, Cobra cannot climb a flat surface vertically without support. Natural entry through any of the 3 windows can be ruled out. Moreover, the skirting in the wall is not having sufficient width for the cobra to coil and climb. It is also deposed by experts and stated in Ext. P21 that natural entry to the said room through other means is impossible. The said opinion is acceptable.

106. The evidence of PW76 Ureka proves that the blood of deceased Uthra contained 30 mg per 100 ml of Cetirizine which is a sedative. PW64, the Professor of Pharmacology has testified that such quantity of Cetirizine is a non therapeutic dose. From the scientific and expert evidence it is proved that Uthra had a non therapeutic dose of cetirizine in her body and it would result in sedation and she sustained Cobra envenomation. PW65 testified that the time of death of Uthra could be approximately 2.30 a.m., and the last meal was taken approximately 6 hours prior to death. PW52, Vava Suresh, who had suffered venomous snake bites in the past, had testified that on being bitten by Cobra, a person will suffer excruciating pain even if it is caused while asleep. Uthra was found dead in the early morning, which implies that she was bitten by Cobra late in the night after she slept. The dress worn by Uthra had urine stains. The fact that Uthra who was bitten by Cobra twice did not feel pain, which is

evidenced by the fact that she was not woken up from the slumber, would conclusively prove the fact that she was sedated at the time of sustaining the bites by the Cobra. Moreover, the evidence of PW63 and PW52 establishes that snakes use their venom when biting, only to escape from enemies for self preservation or to capture prey for food. The experts have opined that variation and enlargement in the fang width on the bite marks which were found in close proximity in the left arm of Uthra is suggestive of induced bites being inflicted on Uthra. It is also to be noted that going by Exts. P158 and P159 chemical analysis report and final post-mortem report, Uthra was heavily sedated with Cetirizine and in that circumstance, it is highly improbable for a Cobra to bite a person who is on the verge of unconsciousness due to the reason that it is not a potential threat to it and Cobras are very frugal in expending their venom.

107. Moreover, in the live demonstration conducted with Cobra, the natural fang width of two bites had a uniform width and much lesser dimension of 1.7 cms each. The opinion of PW19, PW51 and PW52, that in the case of natural bite of a Cobra, the fang width would be same and it would not vary is based on valid grounds as is demonstrated by the experiment conducted with a Cobra at the Arippa Forest Training Institute. The live demonstration is an experiment as mentioned in the illustration to section 51 of the Evidence Act

and it validates the grounds of the opinion of experts regarding variation and enlargement of fang width, in induced bites by Cobra, that Cobra can rise only to one third of its height, and by applying pressure on the head of the cobra, its fang width increases. The above referred expert opinion tendered by PW19, PW51 and PW52 is supported by valid grounds and is accepted. Cobra bite can be induced only by applying external pressure on its head. When the cobra strikes on provocation it inflicts a natural bite. It is not possible to induce a Cobra to bite a person without applying pressure on its head. The fang width of the two bites found on the body of Uthra as per the post-mortem report is 2.3 cms and 2.8 cms, which are of abnormally large width and variation and are not possible in the case of natural bites. Uthra had sustained two bites in close proximity with varying and abnormally large fang widths, which proves that the bites were induced. **Therefore, it is found that the prosecution has proved conclusively that Uthra had sustained induced Cobra bites which resulted in fatal envenomation and caused her death.**

108. The defence counsel placed reliance on Exts. D22 and D23 series, the certified copies of FIR, FIS, inquest report and post mortem certificates in Crime No. 24/2021 of Sooranadu Police Station, and Crime No. 584/2009 of Kottiyam Police Station, in which death was caused to two ladies by a snake

bites sustained inside their houses and contented that it is natural for Cobras to enter the house and inflict natural or accidental fatal bites.

109. The prosecution has fairly admitted the genuineness of these documents which can be termed as public documents. Therefore, without formally proving the same by examining the persons who prepared, signed and registered the same, it can be admitted in evidence and the court can go through the contents. I have gone through Ext. P22 series. In the said case, it is stated that an old lady sustained Cobra bite while opening an almirah and died due to envenomation. In Ext. P23 series it is stated that, a lady sustained un-known bite while sleeping in the night and died due to envenomation in the morning. Based on the above referred incidents revealed by Ext. D22 and Ext. D23 series, the defence contented that, it is probable that the natural entry of Cobra into room of Uthra is probable.

110. It is needs to be noticed that the facts and circumstances are entirely different. The admitted facts in Ext. D22 and Ext. D23 would reveal only the fact of death of two ladies by envenomation. The structural conditions, means of access, geographical location and other factors like ventilation of houses are entirely different. Merely because reptiles/snakes could gain natural entry to some houses, it cannot be applied as a universal fact that in all cases reptiles/snakes have naturally entered the house. The facts in this case are

entirely different. In this case the fact that Uthra sustained fatal induced cobra bites late at night is proved. Moreover, the team experts have given opinion that, it was not possible for a Cobra to naturally enter the house through the eastern window or through other entry points. The experts have testified that Cobras are crepuscular in nature which means that their normal activity time is in the evening and early night hours. The experts have testified that, snakes are very frugal in expending their venom. Snakes usually inject venom only on prey or enemies. There is no possibility that a heavily sedated lady sleeping under sedation would be considered as a prey or enemy by a Cobra. Moreover, in answer to the defence suggestion, PW52 Vava Suresh stated that, even if a Cobra bites a sleeping person, if the person moves her hand there is no likelihood of the second bite being inflicted very proximate to the first bite. In the said circumstances, it is held that Ext. D22 and D23 series are not at all helpful to the defence to probabalise the contentions that the Cobra which bit Uthra gained natural access to her house.

111. PW2, PW4 and PW75 had given evidence that during the period of her death, Uthra was non ambulant due to surgery and skin grafting done on her legs. It is obvious that a non ambulant lady under sedation, would be unable to self inflict two induced Cobra bites on her person. **In the said circumstances, it is found that the Cobra bites sustained by Uthra, while she was sedated,**

were definitely not natural or accidental and those were homicidal. Thus, on evaluating the evidence on record, it is held that induced Cobra bites on the body of Uthra were homicidal in nature. The prosecution has proved beyond a reasonable doubt that the Cobra envenomation sustained by Uthra, which caused her death was due to infliction of induced homicidal Cobra bites. Point numbers (1) and (2) are thus found in favour of the prosecution.

112. **Point numbers (3) to (9).**

(3). Whether the accused intentionally caused to inflict homicidal, induced Cobra bites on Uthra in the night of 6/05/20 inside the bedroom of her residence and caused her death and thereby committed culpable homicide ?

(4). Whether the accused committed murder of Uthra, the deceased in this case ?

(5). Whether on 3.3.2020 at the residence of the accused at Parakkodu, Uthra sustained Viper envenomation ?

(6). Whether on 3.3.2020 the accused attempted to murder Uthra by causing to inflict venomous Viper bite on her person ?

- (7). Whether the accused administered stupefying drugs and snake venom to Uthra, in the night of 2.3.2020 and in the night of 6.5.2020 and thereby caused bodily hurt to her ?
- (8). Whether the accused caused destruction of evidence in a murder case ?
- (9). What, if any, are the offences committed by the accused ?

113. Since the facts and law involved in these issues are interlinked, it would be advantageous to consider these points together. Before advertent to discuss and render finding on the the above points, it would be expedient to consider the preliminary arguments advanced by the Learned Special Public Prosecutor and the Learned Defence Counsel.

114. According to the Special Public Prosecutor, the evidence adduced in this case can be analysed and acted upon in different ways.

(1) To prove the guilt of the accused by placing the circumstances as an unbroken chain in chronological order.

(2) To prove all the ingredients of offence alleged viz. motive, preparation attempt and commission by arranging circumstances in that order.

(3) To prove how Uthra died, if it is homicide, who did it, and why she was done away by the assailant.

115. The attempt of the prosecution is to prove the guilt of the accused in the third mentioned way among these submissions whereas the other two ways are inherently embodied in the said scheme.

116. The defence counsel contended that, at the threshold, the Court has to consider two important legal points, viz., (i) Is the non-registration of the F.I.R for the alleged incident on the night of 2.3.20 at Parakkodu, when Uthra had sustained Viper bite, fatal to the prosecution, in as much as it has caused prejudice to the accused. (ii) Whether the tendering of pardon to PW1 and extracting evidence from him as a witness by detaining him in prison, has vitiated the proceedings, in as much as he did not have the same alleged intent or knowledge with the accused in inflicting the snake bites on Uthra and he was not privy to the alleged design of the accused to murder Uthra.

As it is obvious that these preliminary points raised by defence counsel are mixed questions of facts and law, it is expedient to consider the same after discussion of the evidence on the points.

117. The prosecution seeks to prove the case alleged against the accused by circumstantial evidence. It is settled law that in a case of circumstantial evidence, the prosecution has to prove the complete chain of circumstances without any missing link. All the circumstances proved should point out only to

the guilt of the accused and not to a hypothesis which points to his innocence. Since the prosecution evidence is solely based on circumstances, it is apposite to note the circumstances relied by the prosecution as a prelude to the discussion on the next points.

The 29 circumstances relied on by the prosecution are as follows :-

1. Uthra died due to unnatural and homicidal Cobra envenomation.
2. In January, 2020, parents of Uthra decided to take her back to Anchal as cruelty towards Uthra meted out to an unbearable extent and they asked Suraj to return all assets he had received on account of the marriage. Hearing this demand, accused interfered and redeemed the confidence of Uthra and her parents and managed to keep Uthra to stay in his home.
3. Accused searched about snakes and snake handlers frequently from January, 2020 onwards and contacted PW1, a snake handler and met him in person on 18.2.2020 at Chathannoor.
4. After the meeting dated 18.2.2020, accused requested PW1 for a demonstration of snakes at his house at Parakkodu with venomous snakes. When he came to know about catching of a viper by PW1 on 24.2.2020, he requested PW1 for demonstration on the very next day and offered an amount of Rs.10,000/- as consideration.

5. On 26.2.2020 at 5.20 a.m., PW1 handed over a Russell's Viper to the accused for money in the presence of PW7 Premjith.

6. On the same day after one hour, searches of snakes in his house premises and a demonstration with snake were conducted at the instance of accused. The accused handled a snake without any fear and with skills in that demonstration.

7. On 27.2.2020 Uthra confronted with a snake on the landing space of the staircase when she went to upstairs bed room for taking mobile phone of Suraj as instructed by him. Uthra screamed on watching the snake and then Suraj took away the snake in a sack.

8. Uthra sustained an unnatural and lethal hemotoxic envenomation on 3.3.2020 when she was in upstairs bed room with the accused.

9. There was unexplained and long delay for taking Uthra to hospital even after identifying the bite.

10. The history offered by the accused regarding snake bites to doctors and relatives were false and unbelievable.

11. While Uthra was undergoing treatment at Pushpagiri Medical College, Suraj searched for Cobra and contacted PW1 for venomous Cobra for consideration. PW1 reciprocated the demand after catching a Cobra on 23.4.2020.

12. On 24.4.2020 PW1 proceeded to Eenath wherein he met Suraj and after paying Rs.7,000/- Suraj purchased the Cobra caught by PW1 on 23.04.2020.

13. On 6.5.2020 Suraj came to the house of Uthra with MO2 shoulder bag after creating evidence that he was coming due to compulsion of Uthra.

14. On 6.5.2020 Suraj slept in the room of Uthra and unusually woke up in the early morning and went out of the room without even caring the abnormal lie of Uthra.

15. Though the fact of snake bite was not known to any one when Uthra was brought to the hospital, Suraj disclosed the site of bites to doctor and gave false information to his in-laws that doctor mentioned about a snake bite on her hand.

16. The conduct of accused in connection with the detection of snake in the room.

17. Uthra was last seen with the accused on both the occasions of snake bites and the accused failed to explain as to the transaction underwent in that room and to discharge his burden U/S 106 of Evidence Act.

18. False plea of alibi.

19. On both the occasions of snake bites, Uthra was stupefied with drugs without her knowledge.

20. Extra judicial confession made by Suraj to PW1 on 9.5.2020 by using the mobile phone of PW8 Eldose.

21. Accused searched Viper just before Viper bite and Cobra and cobra venom extraction just before Cobra bite.

22. In proximity to Viper bite and Cobra bite he was in possession of respective snakes and the need basis communication between PW1 and the accused.

23. Unexplained image of a snake kept in the gallery of MO31 mobile phone of accused which was retrieved in Cyber Forensic examination.

24. Recovery of MO1 plastic jar which was used for keeping Cobra by PW1 while handing it over to the accused.

25. Conduct of accused at each stage of transactions.

26. Extra judicial confession before the Forest officials under the Wild Life (Protection) Act.

27. Non explanation or false explanation of entire proved circumstances.

28. Uthra was a differently abled girl and the accused married her knowing the same. After the marriage accused catered an ill will towards her on account of her mental condition.

29. Motive of accused to retain assets he received and being received on account of the marriage and to project the murder as natural and serpentine curse.

118. Before advertng to the evidence on these points, it should be borne in mind that the accusation against the accused is that he caused to inflict induced venomous snake bites on Uthra and caused her death due to envenomation. **As discussed above, venom is a type of poison. Stripped to the bare essentials, in essence the charge against the accused is that he administered a type of poison on Uthra and caused her death.** The Supreme Court in Ananth Chintaman Lagu's case AIR 1960 SC 500 laid down three fundamental facts to be proved to sustain a conviction in a case of causing death by poisoning as follows -- **Three propositions which the prosecution must establish in a case of poisoning: (a) that death took place by poisoning; (b) that the accused had the poison in his possession; and (c) that the accused had an opportunity to administer the poison to the deceased.**

While answering Point numbers 1 and 2, this court has found that Uthra had died due to homicidal induced Cobra envenomation. So it is held that the prosecution has proved the first circumstance that the cause of death of Uthra was due to unnatural and homicidal cobra envenomation. In this case the source of poison with which the offences were committed are venomous

snakes like Cobra and Viper. So, the prosecution has to necessarily prove that the accused had conscious possession of these venomous snakes and an opportunity to inflict venomous bites by the same on the person of Uthra and he had motive. With these aspects in mind the circumstances and evidence on record on these points are analysed. The facts and circumstances of this case fall in a very subtle compass and certain circumstances which may appear to be innocuous have a great bearing on the facts in issue. In the said circumstances, the evidence is meticulously analysed at the risk of prolixity.

119. PW2 Vijayasenan, the father of deceased Uthra testified that the marriage between Uthra and the accused was solemnised in the year 2018. Uthra was differentially abled. He had instructed marriage brokers to find out a bridegroom in accordance with her ability. Pursuant to the marriage proposal the accused and his family members came and saw Uthra and since he liked her, an engagement ceremony was conducted. Thereafter, the accused took advantage of the disability of Uthra and made a demand, pursuant to which himself and his wife went to the residence of the accused at Parakkodu and negotiated. It was agreed that Uthra will be given 90 sovereigns of gold ornaments, a Baleno car and Rs. 5 lakhs, though the accused demanded an Innova car, more than 100 sovereigns of gold ornaments and Rs. 6 lakhs. However, the accused and family members were agreeable for the articles and

cash suggested by him. Before the marriage of Uthra on 25.3.2018, the accused was entrusted Rs. 3 lakhs. On the the wedding day Uthra was adorned with 96 sovereigns of gold ornaments and the balance Rs. 2 lakhs in cash and the Baleno car were entrusted to the accused. The initial two, three months of the marriage life of the spouses were uneventful. Thereafter, the accused and his family made several demands like household appliances, auto car, furniture, cash for constructing car shed in their house, cash for furnishing the upstairs bedroom of their house, cash for doing maintenance work of the house, the admission fees for M.B.A course for the sister of the accused, cash for going on a tour for her etc., and he met all those demands. Apart from that, he used to transfer Rs.8,000/- per month to the account maintained by the accused in Federal Bank from his account in Gramin Bank. When Uthra delivered a son on 16.4.2019, he paid the entire hospital expenses. After that, he purchased a goat, gave it to the accused so as to provide the infant with goat milk and paid cash for constructing a goat shed. By the month of January, 2020 Uthra was unable to reside in the house of the accused and she informed that to him. Accordingly, himself, PW6 Syamdev and his wife PW4 went to the residence of the accused. On that occasion the parents and sister of the accused behaved in a very cruel manner to Uthra and the accused was a passive spectator. Thereupon they prepared to leave the said house with Uthra and her child. When they

were leaving, PW6 told the accused that the marriage can be divorced and demanded the accused to return the cash, motor car and gold. Immediately, the accused who was a mute spectator came and took the child and promised that there won't be any problems in future. Considering the well being of Uthra, they left her and the child at that house and returned. On 29.2.2020, the festival day of the nearby Ezhamkulam temple, himself and PW4 were invited to the accused's house for lunch. On that day while he was sitting in the accused's house after lunch, ***Uthra came to him and stated that a snake rescuer had come to the said house and the accused had taken a snake from him and handled it.*** All the family members, except Uthra had touched the said snake. ***Uthra had also informed him that two days prior to their visit the accused had asked her to take his mobile phone from the bedroom in the first floor and when she was climbing upstairs she saw a snake in the stair case landing. Uthra cried aloud and at that time the accused came, caught the snake, put it in a sack and took it away. Thereupon he asked the accused about the snake and he replied in an evasive manner that it was a rat snake snakelet.*** On 3.3.2020 at about 3 a.m., PW6 Syamdev called him and informed that Uthra was lying motionless and they have to go to the residence of the accused. Accordingly, himself and PW4 proceeded to the house of the accused. On the way he tried to call the accused 3, 4 times, but the accused did not pick up the

phone. Thereafter, the father of the accused informed him that Uthra was referred from Taluk Hospital, Adoor and Holy Cross Hospital Adoor to the Tiruvalla Pushpagiri Medical College Hospital. Accordingly, from Tiruvalla they accompanied the ambulance carrying Uthra to Pushpagiri Medical College Hospital. Uthra was admitted to the I.C.U. **When they were sitting outside the I.C.U he enquired with the accused as to what had transpired and thereupon the accused stated that at about 9 p.m., when Uthra got out for washing the spoiled baby clothes she was bitten by something and she had pain and so she was taken to the hospital.** The accused stated that the thing which may have bitten Uthra was not found inside the house. On the next day, Dr. Mathew Pulikkan (PW 74) stated that a Viper had bitten Uthra. Uthra was admitted in the I.C.U for 16 days. When she was discharged from the I.C.U she told his wife that she had not got out of the house on that day. **After 52 days treatment Uthra was discharged from Pushpagiri Hospital and since skin grafting surgery was done on her right leg, she was non ambulant.** At the time of discharge, Uthra was not prescribed any medicines, but she had to dress the wound twice every week. Uthra was taken to his house at Anchal and the dressing was promptly done by taking her to Pushpagiri Hospital. He had paid the entire hospital bill for treating Uthra amounting to Rs. 10 lakhs. To take Uthra for wound dressing to Pushpagiri Medical College Hospital, the

accused also used to come. *The last wound dressing of Uthra was on 5.5.2020 and on that day after Uthra was taken back from the hospital after dressing the wound the accused left in a hurry to his house. On the next day (6.5.2020) at about 6.30 p.m., the accused came to his house and went to Uthra's room in the ground floor.* Thereafter, his wife gave tea to the accused. *After sometime the accused returned the tea glass to the kitchen and took a glass of juice to Uthra's room. After sometime the accused went out and returned with a black shoulder bag and entered the room of Uthra.* By about 9 p.m., himself and the accused had supper together and he went to the upstairs room and fell asleep. *When he woke up on the next day morning and was preparing tea in the kitchen the accused came there and washed a glass brought by him. Usually the accused gets up only at 8 a.m.* The accused told him that he could not sleep in the night and so he got up early. After a short while he heard alarm calls made by his wife (PW4) from the room of Uthra. Himself, PW4, and his son (PW3) rushed to the said room. They found Uthra lying motionless with her left arm outside the cot. Thereupon, the accused came there and all of them took Uthra to the Anchal Mission Hospital. Due to the Covid-19 pandemic protocol, only the accused had interacted with the doctor. *Immediately thereafter, the accused came back and told him that Uthra was bitten by a snake and the doctor had instructed him to search the*

house. Accordingly, PW3 and the accused went to their house. **Thereupon, the doctor called him and declared the death of Uthra. She showed him the bite marks on the left hand of Uthra.** Thereafter the accused called him in the mobile phone and told that it was a Cobra and he informed the accused that Uthra had died. PW3 and the accused returned to the hospital after killing the snake. After post-mortem examination on 7.5.2020 at 6 p.m., the corpse of Uthra was cremated. **When he enquired with the accused on the next day, the accused stated that in the night he got up and closed the windows. This aroused a suspicion since every evening PW4 would clean Uthra's room with dettol and close the windows. The accused repeatedly told him that it was due to serpent curse (സർപ്പദോഷം) that Uthra was bitten twice by snakes. This aroused a strong suspicion. Thereafter, on the eve of the customary ritual after cremation ('സഞ്ചയനം'), the accused came near him and stated that he would look after the child, but the financial aid given to him should continue.**

For more clarity the exact words used by the accused is reproduced in vernacular as follows-

'അച്ഛാ, കുഞ്ഞിനെ ഞങ്ങൾ പൊന്നു പോലെ നോക്കിക്കൊള്ളാം. പക്ഷേ അച്ഛൻ തന്നെ കൊണ്ടിരിക്കുന്ന സഹായങ്ങളെല്ലാം അതു പോലെ തരണം.'

He was disturbed by this statement of the accused and he discussed the matters with PW3 and PW4 and engaged PW6 to talk with accused. PW6 told the

accused to sell the car and gold ornaments of Uthra and deposit the cash in the name of child as fixed deposit so as to enable the accused to withdraw interest. The accused did not respond to the said suggestion. On the next day the accused told him that he was reluctant to sell the car. But, he insisted that the car and gold ornaments should be sold and the cash should be deposited as Fixed Deposit. The accused was enraged and he demanded to sell the immovable property promised to be assigned to Uthra and deposit the cash in the name of the child or to transfer the said property in the name of the child. On 14.5.2020 evening these matters were discussed with the accused. At that time the witness named Suresh was also present. Suresh told the accused that it was better to sell the gold ornaments and he would accompany him to the bank. On that day after dusk the mother of the accused brought the child and behaved abnormally. She pushed the child to the ground and played a drama by falling on the ground and stated that though a lady was dead the love for assets and immovable properties is not extinguished. Thereafter, the accused's mother was taken to Anchal Mission Hospital. The doctor examined her and certified that she was alright. However, the accused and his mother obtained admission in the hospital by their own request. Thereafter, his wife called him and informed that the Sub Inspector of Police, Anchal has come to their residence and informed that the sister of the accused had given a complaint to the Adoor

Police stating that the accused and his mother were being manhandled. Due to the said false complaint he got convinced that the death of Uthra was an unnatural death. Thereafter, he gave Ext. P6 complaint to the Superintendent of Police (Rural), Kottarakkara. Though he had 99% faith in the accused, his son-in-law, due to the false complaint made on 14.5.2020 he lost the entire faith in the accused and that is why there arose delay in lodging the complaint. On 6.5.2020, himself, his wife and his son were sleeping in separate rooms in the upstairs and the accused and Uthra were sleeping in the bedroom at ground floor. He produced MO5 night gown and MO6 skirt worn by Uthra when she was taken to Pushpagiri Hospital. MO2 is the shoulder bag brought by the accused. He had identified the gold ornaments of Uthra at the Dy.SP office.

120. He admitted in cross-examination that in the night of 6.5.2020 there was rain. There was Rs. 27 lakhs in cash from the pensionary benefits of his wife in his SBI, Anchal branch account. He admitted that after Uthra was bitten by the snake, more than Rs.22 lakhs in cash was transferred as fixed deposit. The suggestion that he had expended only Rs. 1 lakh for the treatment of Uthra at Pushpagiri Medical College Hospital and the remaining cash was paid by the accused and his family was denied. The accused had taken his wife for treatment to Thodupuzha on one or two occasions. The C.C.T.V in his house

was brought by the friend of the accused and payment was made by him. He admitted that there is a store room and veranda on the western side of the room where Uthra had slept. On 6.5.2020 when the accused came, he was sitting in the sofa of the dining hall. The accused came by about 6.30 p.m and he had taken the juice to the room of Uthra. The accused had taken the juice for making his daughter to drink the same. Uthra used to watch T.V. On 6.5.2020 Uthra did not come to the room where T.V was kept. On one or two occasions, by video call at the residence of the accused, he saw the child of Uthra. Exts. D3 and D4 contradictions in his 161 Cr.PC statement were marked, subject to proof, since he denied those portions. When the accused is absent, his wife sleeps in Uthra's room. The suggestion that on 6.5.2020, the accused had slept in the room where fridge was kept was denied. On 7.5.2020 he did not go for morning walk. On that day at 6 a.m., the accused came to the kitchen. He does not know whether the accused got out of the house to brush his teeth. On 18.5.2020 pursuant to the order of the Child Welfare Committee, the accused took back the child. He had not inspected MO2 bag. He had pointed out MO2 bag which was kept very near the cot of the accused, to the police on 7.5.2020 and 8.5.2020. At the time when the scene mahazar was prepared, the bag was in the said room. After the police took the bag into custody he is seeing it for the first time in this Court. The C.C.T.V in his house was under repair.

Though, he requested the accused to repair the C.C.T.V, the accused prolonged it and failed to repair it. Now he has installed two more new C.C.T.V cameras. On 6.5.2020 and 7.5.2020, the C.C.T.V cameras were not working. The suggestion that to avoid proof of the accused coming at his residence without MO2 bag, the facts of the installation of C.C.T.V was suppressed, was denied. Uthra passed 10th standard in the second chance. The suggestion that Uthra had higher marks in Information Technology etc., were denied. Uthra had a bank account and she used to operate the bank account. Uthra used to look after her child. She used to cook food, wash clothes etc. The suggestion that Uthra was not having any mental or physical disability was denied. According to him, Uthra was slow in doing things. However, she was not mentally retarded. He had obtained a Government Order enabling Uthra to take more time in the examinations. Uthra used to call him and his family regularly. However, she had not mentioned any cruelty suffered by her. The suggestion that Uthra was not differentially abled was denied. Uthra had told him about the snake in the landing on 29.2.2020. Uthra had told his wife about the snake, two days prior to 29.2.2020. He had demanded the accused to sell the car and gold ornaments and make fixed deposit. **The suggestion that the accused had sought some time to redeem the pledged gold ornaments and give equivalent cash of the sold gold ornaments was denied.** A complaint was lodged to the

Adoor police to the effect that on account of the dispute relating to gold ornaments of Uthra, he had wrongfully restrained the accused and his mother. He was ready and willing to give custody of the child to the accused. He reiterated that MO2 bag belongs to the accused. He had lodged an application to the Child Welfare Committee and obtained custody of the child. The accused was present on all days in Pushpagiri Hospital, except for 5 days.

121. PW3 is the brother of deceased Uthra. He testified that after the marriage of Uthra with the accused, while the spouses were residing in the matrimonial house at Parakkodu, he took advantage of the disability of Uthra and financially exploited her parents. He had purchased a washing machine as demanded by the accused. On 3.3.2020 his mother called him while he was at Bangalore and informed about the fact that Uthra was admitted in Pushpagiri Hospital consequent to a bite injury. When he went to the Pushpagiri Hospital and enquired about the matter, the accused told him that on the previous night at about 9 p.m., when Uthra went outside to wash the spoiled clothes of their child, she was bitten by something. He specifically asked whether Uthra sustained the bite outside the house and the accused categorically stated that she sustained bite outside the house and no animal could be found inside the house. After about two months of in patient treatment, Uthra was discharged and taken to his house at Anchal. She had to

be taken for dressing twice every week. On 6.5.2020 evening, the accused came to the house. The accused had parked the car on the northern side and entered the house through the kitchen. The accused was fond of juice and when his mother asked whether he needs some juice, the accused replied that he needs only tea. Thereafter, the accused went to Uthra's room. His mother served tea in the said room. After having tea, the accused came and took the glass of juice and went inside Uthra's room. Thereafter, his father and the accused had dinner together. His mother gave food to Uthra and cleaned her room. The accused locked the said room. On the next day morning, he heard the shrieks of his mother and went to Uthra's room. He found his parents shaking Uthra who was motionless. All the 3 of them prepared to take Uthra to the hospital and at that time, the accused rushed into the room. Since the accused was reluctant to drive the vehicle, he drove the vehicle and took Uthra to the St. Joseph's Mission Hospital, Anchal. **When Uthra was taken to the casualty, due to the pandemic only the accused entered the room. When he returned after parking the vehicle, the accused came rushing out and told that the doctor informed him that Uthra was bitten by a snake and they should conduct a search in the house.** Accordingly, himself and the accused came to his house at about 7 a.m and searched the bedroom where Uthra had slept. **The accused told him that a snake was lying inside the dressing room**

adjoining the bedroom and went out of the room. When he looked he saw a snake beneath the almirah of the dressing room. He fetched kerosene and stick and poured kerosene as a result of which the snake moved down. Then he killed the snake by beating it. It looked like a Cobra. He informed the accused that it was a Cobra and asked him to tell his father. When the accused called his father, it was learned that Uthra had died. Thereafter, they returned to the hospital. After that, he gave Ext. P7 statement to the police. He had stated that he had suspicion about the death of Uthra. Uthra was cremated in the evening of that day. The day after customary rituals after cremation, (‘സമ്മേധനം’), they told the accused through PW6 Syamdev to sell the car and gold ornaments and deposit cash as fixed deposit in the child’s name. The accused refused to do accordingly and he demanded that the assets promised to Uthra should be conveyed in the name of the child or else it should be sold and cash deposited in the name of the child. On 14.5.2020 evening while they were discussing the said matter, Suresh (PW5) also told the accused to sell the car and gold ornaments and deposit cash in the name of the child and he also would accompany for retrieving the gold. Thereafter, the mother of the accused came there and created a drama. She was taken to the hospital. The doctor told that she did not have any ailment, but she obtained admission on request. At that time, his mother informed that police officers from Anchal Police Station had

came to their house pursuant to a complaint lodged by the sister of the accused at Adoor Police Station stating that the accused and his mother were wrongfully restrained and attacked by them. Since the above said complaint was fake, he was convinced that the accused had involvement in the death of Uthra. Thereafter, his father lodged a complaint with the Superintendent of Police (Rural), Kottarakkara. During investigation, he produced MO2 bag brought by the accused to the police. MO7 stick used to kill the snake, MO8 bed sheet in which Uthra was found lying, MO9 series, mobile phone, sim card and battery of the mobile phone used by Uthra were also handed over by him to the police. On 18.5.2020 the accused took custody of the child pursuant to the order of the Child Welfare Committee. The file number Q8 in annexure 3 pen drive in the Cyber Forensic Science Laboratory report was displayed in the monitor of the Court and the image of the dead snake in a room and a stick lying near it was shown to PW3. He identified the said snake and stick as the snake which was killed by him with MO7 stick in his house. In the said file the image of a dead snake lying outdoors was also displayed and he identified it as the same snake which he had killed. He further stated that he had resigned his job as Asst. Manager, Kotak Mahindra Bank, Bangalore after the incident.

122. In cross-examination, he admitted that the photo which he had identified in Court was not taken by him. However, he identified the saree seen

in the photograph as that of his mother. He had not seen the accused coming with MO2 bag on prior occasions. MO2 bag was produced by him to the police on their request. He admitted that after the death of Uthra the accused and his parents were staying in the same room where the snake was found. He stated that he had not looked inside MO2 bag and it might have been produced by him to the police on 20.5.2020. He does not know whether Estrona forte bolus tablets were inside MO2 bag. He also does not know whether any of his family members takes the said tablets. He stated that on 6.5.2020 he last saw Uthra before the accused closed the door of the room. To a pertinent question as to whether he had seen Uthra for the last time when he left for upstairs, he replied that, before that when the accused closed the door of the room he had seen Uthra for the last time.

'ഞാൻ 10.30, 11 മണിക്കാണ് രാത്രിയിൽ മുകളിലത്തെ നിലയിൽ പോയത്.

അന്നേരമാണ് ഉത്രയെ അവസാനമായി കാണുന്നത്. അതിനു മുന്നേ പ്രതി ടി മുറിയുടെ

കതകടച്ചപ്പോഴാണ് അന്നേ ദിവസം ഉത്രയെ അവസാനമായി കണ്ടത്."

He stated that usually his mother closes the windows of Uthra's room after cleaning the said room with dettol. He categorically denied the suggestion that on the date of death of Uthra the accused had slept in another room where the fridge was kept. Uthra had passed the S.S.L.C examination on the first chance. He reiterated that he saw the accused going with juice to the room of Uthra.

The suggestion that pursuant to a dispute with regard to the property and custody of the child, he was deposing falsehood against the accused was denied.

123. PW4 Manimekhala, is the wife of PW2 and mother of deceased Uthra and PW3. She is suffering from Cancer and kidney related ailment. She has superannuated as Headmistress from a Government Upper Primary School. She identified the accused as her daughter Uthra's husband. She deposed in tune with the testimony of PW2 that Uthra was differentially abled and affirmed the circumstances of the marriage of Uthra and accused as deposed by PW2. She also reiterated that after the engagement, the accused and his family demanded a lot of cash and gold ornaments as dowry for Uthra. Since Uthra liked the accused they decided to accede to the demands. After their marriage on 25.3.2018, the spouses resided at the residence of the accused and also her residence. She affirmed the testimony of PW2 regarding the demands made by the accused and his family members after the marriage. After the birth of the child the accused and his family members deliberately avoided Uthra coming in contact with the child. In the month of January, 2020 Uthra could not endure the circumstances in the residence of the accused which hampered the making food to the child and cooking in the kitchen and she informed the matter to her. The parents of the accused and his sister obstructed Uthra from doing these chores. Accordingly, herself, PW2 and PW6 went to the residence

of the accused. The behaviour of the family members of the accused towards Uthra and them was very bad and they decided to take Uthra and her child to their home. When they were about to leave the said house with Uthra and her child, PW6 told the accused that he should return the articles given from Uthra's family, if he does not like her. Immediately, the accused took the child from her arms and undertook that no further problems will be created and Uthra need not be taken away. Accordingly, they left Uthra in the house of the accused and returned. On 29.2.2020 when she had went to the residence of the accused Uthra told her that two days back the accused told her to fetch his mobile phone from the upstairs and when she was climbing the stairs she saw a snake lying in the stairs and she cried aloud. Immediately, the accused came there with a sack, caught the snake and put it inside the sack. Uthra also told her that 2, 3 days prior to the incident a snake rescuer came there with a snake and took a class with a snake. The accused had handled and petted the said snake. All the family members of the accused also touched the snake. Thereafter, the premises were searched for snakes. For more clarity, the portion is extarcted in vernacular as follows-

'ഉത്ര കഴിഞ്ഞ രണ്ട് ദിവസം മുൻപ് പ്രതിയുടെ ഫോൺ മുകളിലത്തെ നിലയിൽ നിന്നെടുത്ത കൊണ്ടുവരാൻ ടിയാൻ പറഞ്ഞുവെന്നും ഉത്ര phone എടുക്കാനായി മുകളിലേക്ക് പോയപ്പോൾ ടിയാൻ stair ൽ ഒരു പാമ്പ് കിടക്കുന്നതായി കണ്ടുവെന്നും ഉത്ര

നിലവിളിച്ച് കരഞ്ഞുവെന്നും അപ്പോൾ പ്രതി ഒരു ചാക്കുമായി വന്നു കൈകൊണ്ട് ആ പാമ്പിനെയടുത്തു ചാക്കിൽ കയറ്റിയെന്നും പറഞ്ഞു. അതിന് 2-3 ദിവസം മുൻപ് ഒരു പാമ്പ് പിടുത്തക്കാരൻ വന്നുവെന്നും അയാൾ ഒരു പാമ്പിനെ കൊണ്ടു വന്നുവെന്നും, അയാൾ അവിടെ ഒരു ക്ലാസ്സ് എടുത്തുവെന്നും ആ പാമ്പിനെ പ്രതിയും ടിയാന്റെ വീട്ടിലുള്ള എല്ലാപേരും തൊട്ടുകയും പിടിക്കുകയും ചെയ്തുവെന്നും ഉത്ര പേടി കൊണ്ട് അതിനെ തൊട്ടില്ല എന്നും അയാൾ പറഞ്ഞ കാര്യങ്ങളൊന്നും മനസ്സിലായില്ല എന്നും പിന്നീട് അവിടൊക്കെ പാവുണ്ടോ എന്ന് നോക്കിച്ചുവെന്നും പിന്നീട് പ്രതി ആ പാമ്പിനെ പിടിക്കുകയും ലാളിക്കുകയും ചെയ്തുവെന്നും ഉത്ര പറഞ്ഞു.

When she asked the accused about the incident, he gave an evasive reply stating that it was a rat snake. She also affirmed the incident on 3.3.2020 early morning wherein Uthra was bitten by some animal in the house of the accused and that they had also accompanied Uthra to the Pushpagiri Hospital. Uthra was admitted in the I.C.U. She affirmed the testimony of PW2 regarding the enquiry made to the accused about the circumstances of the bite injury of Uthra and the reply given by the accused. She became suspicious about the said incident as Uthra was not having the endurance to sustain even an ant bite. Therefore, she again enquired the matter with the accused and he reiterated that when Uthra went to the courtyard of the house she was bitten by something. After about 16 days of admission in the I.C.U, Uthra was shifted to the room. When she asked Uthra about the incident Uthra told her that on

that night sweet porridge (പായസം) was made in the house and the accused took a glass of porridge to her room and gave it to her and when she drunk it she became drowsy. In the night she felt something biting on her leg and she cried. The accused told her that it might be her delusion and she should go to sleep. Only after she cried aloud due to the extreme pain to the leg she was taken to the hospital.

"16 ദിവസത്തെ ചികിത്സക്ക് ശേഷം ഉത്രയെ I.C.U വിൽ നിന്നും റൂമിലേക്ക് കൊണ്ടു വന്നു അപ്പോൾ ഞാൻ ഉത്രയോട് വിവരം അന്വേഷിച്ചു. അപ്പോൾ ഉത്ര അന്ന് രാത്രി വീട്ടിൽ പായസം ഉണ്ടാക്കിയെന്നും 'നീയെന്താ പായസം കുടിക്കാതെ പോയത് എന്ന്' ചോദിച്ചു പ്രതി ഉത്രക്ക് മുറിയിലേക്ക് പായസം കൊണ്ടു ചെന്നു കൊടുത്തുവെന്നും, ആ പായസം കുടിച്ചപ്പോൾ ഉത്രക്ക് ഉറക്കം വരുന്നതുപോലെ തോന്നിയെന്നും ഉത്ര കിടന്നുവെന്നും രാത്രിയിൽ കാലിൽ എന്തോ കുടിക്കുന്നതായി തോന്നിയെന്നും അങ്ങനെ വിളിച്ചപ്പോൾ നിനക്ക് തോന്നിയതായിരിക്കും കിടന്നുറങ്ങിക്കൊള്ളൂ എന്ന് പ്രതി പറഞ്ഞുവെന്നും പറഞ്ഞു. ഉടൻ തന്നെ കാൽ ഭയങ്കരമായി വേദനയെടുത്ത് നിലവിളിച്ചപ്പോഴാണ് ആശുപത്രിയിൽ കൊണ്ടു പോയത് എന്ന് ഉത്ര പറഞ്ഞു."

When she informed Uthra about the statement made by the accused that Uthra was bitten by something in the courtyard, she refuted it and told that the accused might have made a mistaken statement. Uthra told her that she had not went outside the house after dusk, on that day and she never washes clothes after dusk. After 52 days treatment in Pushpagiri Hospital, Uthra was discharged. At that time, she was non ambulant due to surgery and skin

grafting done on her legs. When the wound was dressed Uthra used to cry aloud and the accused used to watch the pain and agony of Uthra. At the time of discharge Uthra was not prescribed any medicines and she had to dress the wound twice every week. Uthra was taken to her house at Anchal and herself and the accused used to take Uthra for dressing to the Pushpagiri Hospital. On 5.5.2020 Uthra was taken for dressing and they returned by about 2 p.m.

ഉത്രയെ ICU വിൽ കൊണ്ടു പോയായിരുന്നു മുറിവ് ഡ്രസ്സ് ചെയ്തിരുന്നത്. അപ്പോൾ ഉത്ര വലിയ നിലവിളി ആയിരുന്നു. വേദന സഹിക്കാൻ കഴിയാത്തതിനാലായിരുന്നു നിലവിളി. ഉത്രയുടെ ഈ വേദനയെല്ലാം പ്രതി കണ്ടുകൊണ്ടിരിക്കുമായിരുന്നു.

Thereafter, the accused left the house in hurry and went to his house at Adoor by stating that he would return on the next day. On 6.5.2020 the accused called Uthra and told her that he would not come on that day. However, after 6.30 p.m., on that day (6.5.2020), the accused came there. When she gave juice to the accused he refused it and requested for tea. Therefore, she served tea and snacks to the accused in Uthra's room. Uthra and the accused were present in that room. There are two cots on the eastern side and western side of the said room. Uthra sleeps on the bed put on the western side. The accused was sitting in Uthra's bed and he had the tea. After a short while when she was in

the kitchen, the accused came there and asked for the juice by saying that he would serve it to Uthra. When she stated that Uthra had already drunk juice and she would not again have it, the accused told that he would make Uthra drink the juice. The accused took the juice to Uthra's room. After sometime the accused got out of the house through the kitchen door and returned with a black shoulder bag. Thereafter, all of them had food. Uthra was served food in her room and after Uthra lay down on the bed, she cleaned the floor with dettol. After about 2 minutes after wiping the floor with dettol she opened the window to eliminate odour. Thereafter, she closed the window and got out of the room. Then the accused closed the door. Even when she got out of the room the juice taken by the accused was kept in the said room. Thereafter, she did her office work through her mobile phone by sending mails etc. After 12 O' Clock she went to her room. In the morning she heard the accused and her husband talking and came down intending to make tea. At that time the door of Uthra's room was ajar. When she entered the room Uthra was lying abnormally in a supine position by opening her mouth and her left hand was hanging out of the cot. Though she shook her, Uthra was motionless. When she cried aloud, PW2 and PW3 came and after sometime the accused also came. When she asked the accused why he did not care for the patient along with whom he had slept, the accused replied that to enable Uthra to

sleep he left the room without calling her. The accused told that he is not able to drive the vehicle and thereupon PW3 drove the vehicle and they took Uthra to Anchal St. Joseph's Hospital. The accused accompanied Uthra to the casualty and immediately he returned and told that the doctor informed him that Uthra was bitten by a snake and that the house should be searched. PW3 and the accused left for their house. Thereafter the doctor called PW2 and informed that Uthra was no more and the cause of death was snake bite. The cremation of Uthra was conducted on the same day. On the next day of the customary ritual after cremation ('സഞ്ചയനം') the accused told PW2 that he would look after the child and the financial aid given to him should be continued. She reiterated the version of PW2 regarding the direction given to the accused to sell gold ornaments and the car and deposit it in the child's name. She supported the version of PW2 regarding the version made by PW6 to the accused regarding this aspect. On 14.5.2020 when a conversation in this regard was going on, the mother of the accused fainted and she was taken to the hospital. At that time, police officials from Anchal Police Station came there and on her enquiry they informed that the sister of the accused had lodged a complaint in Adoor Police Station, that the accused and his mother were wrongfully restrained and assaulted by them. Thereupon, she was convinced that the death of Uthra was unnatural and it was a murder. She has also signed

Ext. P6 complaint given to the Superintendent of Police. The delay occurred in lodging the complaint was so as to avoid prejudice against her son-in-law and on the hope that the police would conduct investigation and find the truth.

124. In cross-examination she denied the suggestion that since she did not have any suspicion about the cause of Uthra's death, the body of Uthra was cremated before receipt of the post-mortem report. A copy of the complaint lodged with the Superintendent of Police on 18.5.2020 was also given to the Anchal Police Station. She stated that the complaint was not filed because the accused had obtained custody of the child from the Child Welfare Committee. She affirmed that she had stated to the police that on 7.5.2020 she questioned the accused as to why he had left the room without caring for the patient. To a question as to whether she had stated to the police that the accused replied to her that he left the room so as to not disturb Uthra, she replied that she had answered all the questions asked by the police. She admitted her statement in Ext. P6 that PW2 came to Uthra's room, saw the eastern window ajar, directed to close it and accordingly she closed the window. She further stated that Uthra could wear only very thin dresses and she could not wear inner wear and so the window of the room would not be open. She stated when the accused used to come, she does not sleep in Uthra's room. She denied the suggestion that Uthra was lying on the eastern double cot and stated that Uthra lay on the

western cot. She denied the suggestion that since Uthra had requested the accused to come on 6.5.2020, he came to their house. She admitted that except for 2-3 days, on all days the accused was available in Pushpagiri Hospital. On those occasions the accused used to browse his mobile and he did not involve in the affairs of Uthra. She admitted that the C.C.T.V cameras in her house were not working and it was repaired only one month back from the date of her testimony. The suggestion that on 6.5.2020 the accused had slept in another room was denied by her. She denied the suggestion that she was having the tablet Estrona forte bolus. She categorically stated that on 6.5.2021 the child of Uthra was in the residence of the accused. According to her on 5.5.2020 her husband had purchased and brought home a walker. She stated that the accused used to bring clothes in a plastic cover. **On 6.5.2020 the accused brought a black shoulder bag.** She had last entered Uthra's room at about 9-10 p.m. She does not know the exact time. She reiterated that she opened the window in Uthra's room and closed it after 2 minutes. According to her, Uthra was slow in doing things and she had shivering in both her arms. She stated that Uthra was given sanction to use Scribe for writing the plus two final examination. She also reiterated that in the night, when she got out of Uthra's room, the accused closed it and she does not exactly remember the time. Ext. D5 portion in her 161 Cr.PC statement (marked subject to proof) which is to the effect that

she had demanded the accused to return the gold ornaments of the accused was denied.

125. PW5 Suresh is conducting business of construction of temporary sheds in the shop room of PW2 at Anchal. He testified that he is acquainted with the accused who used come to his shop. Both of them used to discuss family matters. On 7.5.2020 at about 7 a.m., he knew about the death of Uthra due to snake bite and arrived at the house of PW2. Thereafter, he put up a temporary shed in the premises of the house. When he went to the house of Uthra at 6 p.m., he saw the accused and his sister crying aloud. After about one hour, he saw the accused and his friends in a joyful mood near the parked vehicles. On seeing this and recollecting the fact that the accused had mentioned several flaws of Uthra to him Previously, he suspected that the crying of the accused was a drama. The accused and his friends were in a joyful mood after cremation of Uthra. On 14.5.2020 when he went to the house of Uthra to collect cash for the temporary shed, he found the accused, his mother, PW2 and PW4 engaged in a conversation about the future of the child. He also instructed the accused to heed to the demand of Uthra's family and the accused accepted it. The accused told him that the gold was kept in the locker and requested him also to accompany him to the bank to take the gold

ornaments, sell and deposit it in the name of the child. After he left the house, he knew that the mother of the accused was in hospital and a false case was filed by the sister of the accused before Adoor Police stating that himself and parents of Uthra had assaulted the accused and his mother. MO10 is his mobile phone in which he took the photograph of the snake and he had produced it before the police. The still photos in Q8 folder of annexure pen drive attached to Cyber F.S.L report was displayed in the monitor of the Court and he identified the same as the photos of the snake taken by him.

126. In cross-examination, he stated that he had mentioned to the Crime Branch police that the accused and his friends were found in a joyful mood after the cremation of Uthra. According to him, a lot of onlookers and media persons took the photos of the carcass of the snake. On 14.5.2020, PW2 had demanded the accused to sell the gold ornaments of Uthra and he also supported the said demand.

127. PW6 Syamdev is a cousin brother of deceased Uthra. He testified that he had closely participated in the engagement and marriage of Uthra with the accused. Uthra was having some physical disability. PW3 Vishu was not in station and he was looking after the affairs of the family. After the marriage of Uthra he became very much intimate with the accused. The accused used to

telephone him and visit his house whenever he came to Uthra's house. The marital relationship of Uthra and the accused was not that much smooth. Himself and the accused had consumed liquor together on about two or three occasions. On one occasion, he advised the accused to behave with love and affection to Uthra and enquired about their strained relationship. **The accused replied that though a child was born in the wedlock he could not take Uthra to any outing due to shame. The accused also asked him whether he would tolerate such a mentally retarded girl, if he was given her weight in gold at the wedding.**

'ഒരു കുഞ്ഞുണ്ടായി എന്നല്ലാതെ ഒരു സ്ഥലത്തും കൊണ്ടു പോകാൻ പറ്റില്ല നാണക്കേടാണ്. സാർണ്ണം കൊണ്ടു തുലാഭാരം നടത്തിയാലും ഇങ്ങനെയൊരു മനുഷ്യശി ശാധനത്തിനെ അണ്ണനാണെങ്കിൽ സഹിക്കുമോ എന്നു ചോദിച്ചു.'

PW2 had used to give financial aid and other articles to the family of the accused. In January, 2020 the matters worsened and the accused called him. Thereafter, as requested by PW2, he accompanied parents of Uthra to the residence of the accused. However, on the basis of the behaviour and nature of conversation of the family members of the accused, it was found that the continuation of the relationship was difficult. Therefore, they decided to take Uthra and child to her parental house. **He told the accused that the divorce is the next option and directed the accused to return all the articles obtained by**

him. Immediately, the accused took back the child and undertook that he would not create any further problems. They also thought of ensuring a smooth family life. **On 2.3.2020 at 9.30 p.m., the accused called him. When he asked the accused about the whereabouts of Uthra and her child, the accused replied that Uthra was watching the T.V.** At about 3 a.m., on 3.3.2020, the sister of the accused called him over telephone and since his phone was in silent mode she called his father and informed that Uthra was unconscious consequent of being bitten by something. Thereafter, he informed PW2 and PW4 and all of them went to Adoor. On the way it was learned that Uthra was being taken to Pushpagiri Hospital in an ambulance and they accompanied the ambulance to Pushpagiri Hospital. Uthra was admitted in the said hospital for 52 days. Even after the discharge Uthra was bedridden. The accused used to come and take Uthra to the hospital for dressing her wounds. On 6.5.2020 the accused came to the house of Uthra at Eram and called him by about 7 p.m. When he enquired about the purpose of his visit, the accused replied that Uthra had to be taken for dressing only after two days. On the next day PW2 informed him over telephone after about 6 a.m., that Uthra was dead. Thereafter, at the time of the funeral rites of Uthra, the accused and his sister were found wailing aloud. After the cremation, he found the accused engaged in conversation with his friends. On 20.5.2020 the Sub Inspector of Police,

Anchal and party came to the house of Uthra and recovered MO2 bag after preparing Ext. P8 mahazar which was signed by him. From the bag, MO11 series Estrona forte bolus tablets were recovered. After the funeral rites of Uthra, as directed by PW2, he requested the accused to sell the gold ornaments of Uthra and the car and deposit the cash in fixed deposit, in the name of the child to meet the educational expenses. The accused was reluctant to the said request and he conveyed it to PW2.

128. In cross-examination, PW6 denied the suggestion that on 6.5.2020 at 9.30 p.m., he called the accused and enquired whether he had brought liquor and the accused had replied that he had brought liquor and it is kept in the fridge in the room, wherein he was staying. He categorically stated that the accused never brings liquor to the said house. He does not exactly remember the date in January, 2020 on which date they went to the residence of the accused. He also denied a suggestion that the accused had never spoken badly about Uthra. Himself and his father are not the persons who are conducting the 'Kuttankara Chitties'. The suggestion that he owes Rs. 1 lakh to the accused in the chitty transaction was denied. He admitted that himself and the accused had gone together to Attappady to purchase medicine for PW4. On 15.5.2020 himself, the accused and two police constables of Anchal police station had gone to Adoor to take back the gold ornaments of Uthra. According to him, the

accused and police persons went inside the Federal Bank, but he does not know whether they were able to take the gold ornaments from the locker.

129. PW54 Dr. D. Vasantha Das, the Superintendent of District Hospital, Kollam and who is also the Chairman of the Disability Assessment Board testified that he produced the disability register of the hospital before the Investigating Officer. He produced the original register along with the certified copy of page number 206 which was compared with the original, found correct and marked as Ext. P140. **As per the entry number 165 in Ext. P140, Uthra the deceased in this case had 20% disability.** Certified copy of the application submitted by Uthra is Ext. P141. Ext. P142 is the disability certificate issued to Uthra and Ext. P142 (a) is the office copy. For the purpose of assessing disability, the IQ assessment of Uthra was conducted by clinical Psychologist and Ext. P143 is the photocopy of the IQ assessment report. Ext. P144 is the receipt executed by him on receiving the original certificate from the police. According to him, the Medical Board which issued Ext. P142 disability certificate on 24.1.12, which assessed 20% disability for Uthra was comprised of a Psychologist, Orthopaedician, Psychiatrist, E.N.T surgeon and Ophthalmologist. He admitted that in the application and assessment record, Uthra has signed. He also admitted that the nature of disability is shivering of hands in column no. 6 of Ext. P141. The IQ assessment report marked as Ext.

P143 was prepared by Dr. Chithra of the institution 'Spectrum' and the said institution is not functioning at the District Hospital. In re-examination, it was clarified that only in the recent past the services of a clinical Psychologist was made available in the District Hospital.

130. PW14 Baiju is an Advocate clerk, who is residing in Adoor. He identified Ext. P15 petition which was prepared under the instruction of the accused on 15.5.2020 and stated that he was the scribe of the same. He categorically stated that Ext. P15 was prepared on the basis of the facts stated by the accused for the purpose of giving it to the DYSP, Adoor. Likewise, Ext. P16 is a complaint prepared under the instruction of the accused for the purpose of giving it to the Superintendent of Police (Rural), Kottarakkara and he is the scribe of the same. He stated that after completion of writing, both the petitions were read over to the accused and thereafter he signed the same. **He identified the complaint and stated that in Ext. P16 at page 2, it is written that on 3.3.2020 at about 1 a.m., his wife had dizziness and pain in the leg as stated by the accused. He also deposed that as stated by the accused it is written Ext. P16 complaint that on 2.3.2020 Uthra washed the clothes of the baby by about 9 p.m., and came inside the house and while watching T.V, she had headache. When he gave her tablets the pain was told to be subsided.** He also stated that the facts narrated in Ext. P16 were stated to him by the

accused. The annexure 4 contained in pen drive attached to Cyber Forensic Science Laboratory report wherein Ext. P16 complaint was forwarded to the e-mail of the Chief Minister was also identified and marked through PW14 as Exts. P16 (a) to (f). It is pertinent to quote exact wordings in Ext. P16 in vernacular.

“2.3.2020 ൽ എൻ്റെ ഭാര്യയായ ഉത്ര രാത്രി 9 മണിയോടുകൂടി എൻ്റെ കഞ്ഞിൻ്റെ മലമുത്ര വിസർജ്ജനങ്ങൾ പറ്റിയ തുണികൾ എൻ്റെ വീടുമുറ്റത്തു നിന്നും കഴുകി വിരിച്ചതിനു ശേഷം എൻ്റെ ഭാര്യ മുറിക്കകത്തു വന്നു. ഞങ്ങൾ ടിവി കണ്ടുകൊണ്ടിരുന്നു. തുടർന്ന് 15 മിനിറ്റ് കഴിഞ്ഞപ്പോൾ എൻ്റെ ഭാര്യയ്ക്ക് തലവേദന ഉള്ളതായി പറയുകയും തലവേദനയ്ക്കുള്ള ഗുളിക എൻ്റെ ഭാര്യ കഴിച്ചപ്പോൾ തലവേദന കുറയുകയും ചെയ്തിട്ടുള്ളതും തുടർന്ന് ഞാനും ഭാര്യയും ആഹാരം കഴിച്ച് ഉറങ്ങാൻ കിടന്നു. തുടർന്ന് 03.03.2020 ൽ വെളുപ്പിനെ ഒരു മണിയോടു കൂടി എൻ്റെ ഭാര്യയ്ക്ക് തലച്ചുറ്റലും വലതു കാലിനു വേദന ഉള്ളതായി പറയുകയും തുടർന്ന് 08.05.2020 എൻ്റെ ഭാര്യയെ ടി ആശുപത്രിയിൽ ചെക്കപ്പിന് കൊണ്ടു പോകുന്നതിനായി 06.05.2020 ൽ വൈകിട്ട് 7 മണിയോടുകൂടി ഞാൻ എന്തുകക്ഷിയുടെ വീട്ടിൽ ചെന്നു. തുടർന്ന് എൻ്റെ ഭാര്യമാതാവും ഭാര്യസഹോദരനും ഞാനും എൻ്റെ ഭാര്യയും എൻ്റെ ഭാര്യ കിടന്നിരുന്ന മുറി യിൽ ഇരുന്നു കാര്യം പറഞ്ഞു. ടി സമയം എൻ്റെ ഭാര്യ സഹോദരൻ ആയ വിഷു ചൂട് കാരണം ടി മുറിയുടെ ജനൽ തുറന്ന് ഇട്ടു. ആയതിനുശേഷം ഞങ്ങൾ എല്ലാപേരും ആഹാരം കഴിച്ചതിനു ശേഷം ഞാനും ഭാര്യയും കൂടി ഭാര്യ കിടന്നിരുന്ന മുറിയിൽ ഉറങ്ങാൻ കിടന്നു. ആയതിനു ശേഷം 07.05.2020 ന് വെളുപ്പിന് ഒരു മണിയോടു കൂടി എൻ്റെ ഭാര്യ ബാത്ത്റൂമിൽ പോകുന്നതിന് എന്നെ വിളിച്ചു. ഞാൻ ഭാര്യയെ

ബാത്തൂമിൽ കൊണ്ടു പോയതിനു ശേഷം തിരികെവന്നു ഉറങ്ങാൻ കിടന്നു. ഉറങ്ങി വെളുപ്പിന് ഞാൻ തണുപ്പു കാരണം ജനൽ ഞാൻ അടച്ചു.”

131. He admitted in cross-examination that it was not mentioned by him to the police that a copy of Ext. P16 was forwarded to the Chief Minister. In Ext. P16 it is initialled by the District Police Chief that it was received on 20.3.2020. He denied the date 20.3.2020 in his statement recorded U/S 161 Cr.PC and it was marked as Ext. D7 contradiction, subject to proof.

132. PW70 Anaswara, who is working as Assistant Director in Documents division of State Forensic Science Laboratory, Thiruvananthapuram testified that she examined the questioned signature, specimens and admitted signatures of the accused and issued Exts. P165 and 166 reports. According to her opinion, the person who wrote the standard signatures also wrote the questioned signatures marked as Q1 contained in Ext. P16. In cross-examination, she stated that only the upward slant from basement is mentioned in her report and the degree of slant is not mentioned. As there is no such practice to send the enlarged photographs of all items along with the report, though she had taken such photographs it is not appended to the report.

133. PW49 Sajinath, who was working as Child Welfare Committee Chairman, Kollam testified that on 18.5.2020 the accused had submitted Ext. P130 complaint to the Child Welfare Committee stating that his infant son Dhruv was illegally confined by his in-laws and they are not permitting him to visit the child. He issued Ext. P131 direction to the Station House Officer, Anchal to rescue the infant and entrust it to the accused. The order was executed and custody of the child was entrusted to the accused. Thereafter, the parents of deceased Uthra submitted an application before the Child Welfare Committee on 25.5.2020 stating that the accused is involved in the homicide of his wife and since he is in police custody the child may be entrusted to their custody. He passed Ext. P132 order directing the infant to be entrusted to the custody of the parents of Uthra and pursuant to that the infant was taken by them. In cross-examination, PW49 admitted that in the complaint given by PW2 before the Child Welfare Committee it is stated that when Uthra was bitten by the snake for the second time, the child was in his (PW2's) custody

134. PW9, Sujith testified that he is a childhood friend of the accused. After the marriage of the accused he had never visited his house with Uthra. The accused had also not attended his marriage with his wife. His house is situated about 2 kms away from the house of the accused. **On the last day of the Ezhamkulam Temple festival of the year 2020 the accused called him at**

about 2.30 a.m., in the night. Since he was asleep he could not attend the call and he called back the accused. The accused informed him that Uthra was bitten by something and requested him to come to his house.

Accordingly, he went to the residence of the accused in his car. The mother of the accused was standing in the ground floor and she stated that the accused and Uthra are in the upstairs. Uthra was lying in the bed and telling the accused

that her leg is having pain. When he enquired, the accused told him that she was bitten by something. Thereafter, he took Uthra in his hands and took

her downstairs and put her in the rear seat of his car. At first, they went to

the Government Hospital, Adoor. The accused had Uthra in his lap and when he enquired, the accused told him that when Uthra had gone out for washing

the clothes of the child, something might have bitten her. From Adoor

Government Hospital, Uthra was referred to the Holy Cross Hospital, Adoor.

Thereafter, Uthra was taken to the Pushpagiri Medical College Hospital in an

I.C.U ambulance. He had accompanied Uthra and the accused and a male nurse

was in the ambulance. The accused was sitting with a bowed head in the

ambulance. During that period there were Baleno car and an Alto car in the

house of the accused. On the date of death of Uthra the sister of the accused

called him and informed that Uthra had died due to snake bite. Due to a

function in connection with his infant nephew, he reached Uthra's house at

11 a.m. At the time of cremation of Uthra, the accused was wailing. On the next day also he visited the residence of Uthra and on enquiry the accused told him that when he was brushing his teeth in the morning he heard an alarm call raised by the mother of Uthra and saw Uthra lying unconscious. On the next day also, himself, PW8 Eldhose and Gireesh visited the residence of the accused. As it was informed that the accused had gone to the police station they also proceeded there. In front of the Anchal Police Station the accused saw their vehicle and returned with them. Though the accused requested his mobile phone, as he was playing a game he refused to give it and thereupon, the accused obtained the mobile phone of Eldhose. When they reached the residence of Uthra the accused was seen walking with the mobile. **After two days, the sister of the accused called him and stated that the accused was assaulted at Uthra's house and accordingly himself and his friends proceeded to the residence of Uthra.** Accused's mother was admitted in the hospital. Thereafter, he had accompanied the accused for filing complaint to the Superintendent of Police, Kottarakkara. On the previous day of his arrest, the accused took him to an Advocate clerk's house at Puthumala. While they were returning the accused was found very tensed. On enquiry the accused stated that he had purchased a rat snake snakelet to put it in the agricultural field on the impression that it would prey on rats. He had given Ext. P11 164 Cr.PC

statement to the Magistrate. **The accused had also told him that on the date when Uthra sustained the fatal snake bite, both of them had slept together and he had taken her to the bathroom in the night.**

135. In cross-examination to a pertinent question that he had omitted to state to the police that the accused had told to him that himself and Uthra had stayed together in the night, PW9 replied that the accused had stated that he had taken her in the night to the bathroom. According to him, Uthra might have been convalescing after delivery on the date of his marriage. He admitted that he was a better driver than the accused. During the temple festival the accused and his father used to consume liquor. He had seen the accused at the Ezhamkulam temple compound on the last date of the festival. When Uthra was taken to the Adoor Taluk Hospital she was crying by stating that her leg was having pain. The suggestion that for 4 days commencing from 7.5.2020 the mobile phone of the accused was in the custody of the police was denied by PW9. He denied the suggestion that the accused had not gone to the S.P office to lodge a complaint. The suggestion that due to the threat made by the police, to array him as a co-accused, he was deposing falsehood was denied.

136. PW13 Anuraj is the Emergency Medical Technician of the ambulance of Holy Cross Hospital, Adoor. He identified the accused and

testified that on 3.3.2020 by about 4 a.m., he shifted a patient, who was the wife of the accused from the Holy Cross Hospital to Tiruvalla Pushpagiri Hospital. The accused and his friend accompanied the patient in the ambulance. The patient was semi conscious and was restless on the way. Usually the patient would be pacified by their bye-standers, but the accused was not seen pacifying the patient. When he enquired, the accused told that in the night by about 9 p.m., when the patient went outside the house for taking clothes she was bitten by something.

In cross-examination he stated that the patient was not given anti-venom from Holy Cross Hospital.

137. PW60 Dr. Jariya Haneef who was working as night duty doctor in Casualty, General Hospital, Adoor on 2.3.2020 testified that after 12 O' Clock in the night (early morning of 3.3.2020) she attended a patient named Uthra who was brought to the hospital with history of being bitten by something in her leg. When she enquired about the history with the accused who introduced as the husband of Uthra, the accused stated that at about 9 p.m., when Uthra got out of the house she was bitten by something. When she interacted with Uthra, Uthra stated that she had pain in her right leg and she cried by holding her right leg. On examination of the right leg of Uthra bite marks were seen in between her knee and ankle. When she asked the accused about the delay in bringing Uthra to the hospital, he did not give any conclusive

and definite answer. As per the usual practice in the case of unknown bites, to rule out snake bite, she conducted blood test of Uthra. Before the result came, she administered Avil and Efcoril injections to Uthra. The lab technician informed her that even after 7 minutes the blood was not clotting and the clotting time is getting prolonged. When the bleeding time and clotting time test was conducted, the bite mark and test result favoured the conclusion that it was a snake bite. Thereafter, she informed the bye-standers about the necessity of administering anti snake venom and to admit the patient in the I.C.U and that there are possibilities of reaction and complication. On that day there was no Physician in the said hospital. She explained the risk factors to the bye-standers and they consented to take Uthra to a higher centre. Thereafter, she referred Uthra to the higher centre. Ext. P148 is the Casualty Report and Ext. P148 (a) is the relevant portion relating to Uthra. In cross-examination, she testified that Uthra might have been referred by about 3.25 a.m., after checking the blood pressure at 3.20 a.m. Blood sample was collected to conduct the 20 minutes whole blood clotting time test. Normally within 5 minutes, the blood will clot. Since the clotting time of Uthra was taking more than 7 minutes, she diagnosed that it might be a haemotoxic venom. Thereafter, the 20 minutes test was conducted. The Elisa test for snake bite was not conducted at the casualty. She wrote the reference letter in the O.P. ticket. **According to her, Uthra was**

drowsy and the test to count 1 to 25 was conducted to verify whether there is respiratory depression. She does not exactly remember the time of referring Uthra.

138. PW61 Dr. Chaithanya Sidhartha who was working as Casualty Medical Officer in Holy Cross Hospital, Adoor on 3.3.20 at 3.45 a.m., testified that he had examined Uthra at that time. Uthra was referred from Government Hospital, Adoor for sustaining an unknown bite on the previous day at 9 p.m. The by-standers of the patient Uthra had mentioned the history. Uthra was drowsy and giving irrelevant answers. She was kicking her legs due to pain and had low blood pressure. Though he started I.V fluids her vitals did not stabilize and due to lack of ventilator support in the said hospital on that day, he referred her to a higher centre in the high tech ambulance. He testified that the bite mark on the right leg of Uthra was vertically placed and there was mild oozing of blood. Ext. P152 is the case sheet. In cross-examination he stated that he had not given a statement to the police that there was no oozing of blood and the said portion in his 161 Cr.PC statement was marked as Ext. D8. He has not mentioned in the case sheet that there was mild oozing of blood. According to him he conducted the 20 minutes test and referred the patient before its result came, since the vitals of the patient were not stable. If the vitals were stable he would have administered anti snake

venom. He admitted that in Ext. P152 it is mentioned as unknown bite and not as a snake bite. According to him, the reference letter was written by him in the O.P slip produced along with the patient.

139. PW73 is Dr. Bhuvaneswari, who was working as Post-Graduate Resident in Emergency Medicine Department in Pushpagiri Medical College Hospital, Tiruvalla on 3.3.2020. She testified that on 3.3.2020 by around 4.50 a.m., a 25 year old female by name Uthra was brought to Emergency Medicine Department of the said hospital. On arrival her triage indicated priority one. Triage means categorisation of patients based on their vitals and clinical status. Uthra's condition was unstable. On her examination she was conscious. But she was confused. She was referred from local hospital in view of elevated clotting time. As she was unstable, she started her on I.V fluids and then she went to get history from her husband Mr. Suraj. **The history narrated by Suraj was "Uthra was complaining of pain on the right leg since 9 p.m.** But her complaints were ignored. **Then at around 12 in the night Uthra was complaining of severe pain over the right leg and headache. Then the relatives and her husband noticed blood stains of clothes over her right leg. Then she was taken to nearby hospital.** She was treated with Avil and Efcorlin and they had noticed bite marks over right leg and then referred to Higher Centre around 2.50 a.m. But they have arrived at 4.50 a.m. When she

had asked about the delay, Suraj said that there was delay in transport. She identified the husband of Uthra as the accused, who was present in the dock, when his mask was lowered. Initially, she had started I.V fluids on Uthra and then she had done whole blood clotting time. It was found to be greater than 20 minutes (clotting time). Then she had started Uthra on 10 vials of Polyvalent anti snake venom. Local examination of her right leg was done. Then she had noticed two puncture wounds on the lateral aspect of right leg, about 20 cm above ankle. Pinpoint active bleeding was present. Then her vitals were maintaining till 6.30 a.m. Again her blood pressure became not recordable (it means there was B.P fall). Then, she started her on noradrenaline infusion and again her B.P became 90-60 and then she was shifted to Critical Care Medicine Department. Thereafter, she was managed in the Critical Care Department. When the patient Uthra was brought to the hospital she was critically ill and her life was saved only due to timely intervention. She identified the reference letter issued from Adoor Government Hospital. O.P. ticket is marked as Ext. P170. The reverse side of Ext. P170, wherein the reference from Holy Cross Hosital is noted, is marked as Ext. P170(a). The Case Sheet of O.P department of Pushpagiri Hospital relating to the treatment done to Uthra is marked as Ext. P171 series. She had photographed the bite marks on the right leg of Uthra with her Redmi make mobile phone camera, which is still saved in her mobile

phone. The said photographs were copied in a C.D, and given by her to the Investigating Officer. The certificate U/S 65 (B) of Evidence Act was also given, which is shown to her and marked as Ext. P172. MO28 C.D shown and identified. Permission was granted to exhibit MO28 C.D and the still photos of bite marks are displayed in the monitor of the Court. She testified that the said photos show the bleeding bite marks on the right leg of Uthra. She had wiped the blood. **The bite marks were on the lateral aspect, obliquely placed and around 20 cm above the ankle.**

140. PW73 stated in cross-examination that there were 3 bleeding lines which are curved abrasions below the bite mark. The approximate length of the middle line may be around 3 mm. She has not measured the distance between the bite marks. She categorically denied the suggestion that the alleged bite mark referred by her appears to be contusions and bruises and stated that those are like puncture wounds. In puncture wound the depth would be greater than length and breadth. The depth is not discernible externally. It should be dissected to find out the depth. She has not edited the photograph taken by her. There is no photograph attached to the case sheet of Uthra. However, she had drawn the position of bite marks. The abrasions in Ext. P121 can also be by snake bite. If the blood clotting time exceeds 20 minutes, it is coagulopathy. The clotting time noted in Ext. P170 as 7 minutes is not whole blood clotting

time. However, it is written in Ext. P170 that the whole blood clotting time was conducted. Dr. Shama was not the doctor who examined Uthra at first in the Pushpagiri Hospital. Dr. Shama is referred in the nurses register. She took her own decision as per A.S.V guidelines and administered anti snake venom. The wounds in the photo are superficial wounds. She has not edited or cropped the said photographs. In re-examination she stated that the external wounds showed in the photos are superficial, but those are puncture wounds.

141. PW74 is Dr. Mathew Pulikkan, the Head of Department of Critical Care, Pushpagiri Medical College Hospital, Tiruvalla. He testified that he had treated Uthra who was brought to the emergency department of the hospital on 3.3.2020 as an inpatient. Ext. P173 series is the Case Sheet of Uthra. The Case Sheet contains treatment protocols of all the departments, wherein Uthra underwent treatment at Pushpagiri Medical College Hospital. The patient Uthra was found to be in shock with low blood pressure. She was admitted in the Emergency department and given anti snake venom from there. Since, Uthra remained extremely sick she was shifted to Critical Care department. He saw Uthra at about 8 a.m on 3.3.20. Her blood pressure was very low even on medication. **She had bleeding from the bite marks in her right leg. She was very drowsy.** Further resuscitation was carried out in the I.C.U. Blood products like plasma and platelets were infused. Antibiotics were started. A

surgery consultation was also given because of the compartment syndrome on the area at the bite marks on right leg. Compartment syndrome means there will be heavy oedema near the area of the bite, which will decrease the blood flow to that area and it causes damages to the muscle to that area. It causes necrosis of the muscles. Uthra's kidney function was also affected and nephrology consultation was done. Blood transfusion was also given by evening that day. Antibiotics were also administered. On next day fasciatomy was done on the anterior aspect of the leg having snake bite to release blood pressure of that area to relieve the compartment syndrome. It was done by Dr. P.T. Thomas. The patient slowly improved over the next three days. There was also signs of myocarditis (dysfunction of the heart a complication of snake bite). It improved slowly. After patient became stable further consultation of plastic surgeon was also done. *At the time of admission Uthra was very critical. Only due to timely and excellent medical care her life was saved. He had taken the history from Uthra after 2-3 days after she became more conscious. Normally the snake bite patients would be clear as to when and how the snake bite occurred. But Uthra was not clear about how and when the bite occurred. Uthra said that she woke up at night because of pain in her leg and she complained to her husband about the pain. At first her husband told her not to worry and when the pain increased she was brought*

to the hospital. Uthra was shifted to Medicine Unit from Critical Care Unit and from there she was shifted to Plastic Surgery Unit. She was discharged from Plastic Surgery Unit on 22.4.20.

142. In cross-examination, PW74 stated that 20 minutes clotting time test was done at the bedside and not at the Laboratory. When specific question was put that ELISA test is the authoritative test for detection of snake venom in blood, he categorically stated that, Uthra had all the signs of envenomation, she had problem with blood coagulation, local swelling because of the bite, kidney dysfunction and bite marks of the snake, it was self evident that the patient was suffering from envenomation.

143. PW75, Dr. Cyril Joseph, the Head of Department of Plastic Surgery, Pushpagiri Medical College Hospital, Tiruvalla testified as follows :-

He saw the patient on 6.3.20 and found that she had fasciotomy wound of the right leg and there was lot of dead muscle in the wound. She needed surgery for removal of all dead muscles in the right leg. The surgery is called debridement and once stable for anesthesia she was taken for surgery on 7.3.20. She had removal of all the anterior compartment muscles of the right leg. After that she had further surgeries on 11.3.20, 23.3.20 and 15.4.20. Finally, the wound was skin grafted and she was discharged on 22.4.20. The discharge

summary prepared from his unit was marked as Ext. P174. At the time of discharge the right leg wound of Uthra was almost healed. **She was advised follow up in the O.P. department for dressings and no medications were given at the time of discharge. At the time of discharge, Uthra was not able to walk.** At the next O.P consultation they were planning to make her walk once the wounds healed completely. But she could not attend the O.P department on the next consultation. Ext. P.173 includes the consolidated case sheet including his department.

144. The approver, PW1 Suresh Kumar, who accepted the tender of pardon by the Chief Judicial Magistrate, Kollam, testified that he is working as driver and snake rescuer. He has published his mobile phone numbers in the Facebook, Police and Forest departments and the 'YouTube' channel 'S.K. Media 2255' conducted by Syam, a resident of Kalluvathukkal. When snakes are found in the human habitation areas, people contact him and he proceeds to the spot, rescues the snakes and hands it over to the Forest Department. He showed his right hand while in the witness box and stated that the deformity in his right middle finger was caused by the bite of Russell's Viper in the year 2012. He identified the accused who was present in Court and stated that on 12.2.2020 the accused called him in his mobile phone number 9446907317 and introduced himself. The accused told him that he is an official of H.D.F.C

Bank; that he is a fan of PW1 and another snake rescuer by name Vava Suresh after viewing their 'YouTube' videos. Thereafter, on 18.2.2020 the accused met him at Chathannoor and he gave the accused his Whatsapp phone number. The accused and himself had conversation about snake rescuing by Vava Suresh and himself. The accused told him that both of them rescue snakes in an exemplary manner and requested him to forward videos of snakes rescued by him. Thereafter, he used to forward videos to the accused in WhatsApp and used to chat with him regarding the snakes. He has saved the WhatsApp number of the accused as H.D.F.C Bank, Adoor and the accused used to reply to his videos. By interacting with him the accused used to clear his doubts regarding the manner of rescuing snakes, the sensation on touching snakes, the position of the venom glands in the body of the snakes etc. Prior to 26.2.2020 the accused called him in the mobile phone and requested him to conduct an awareness class near his house as people are killing several snakes in the locality. He replied that he was not having any snake in his possession and will call back when he gets hold of a snake. Thereafter, he happened to rescue a Russell's Viper from near the building owned by Oozhayikkodu Ayappa Temple Trust and enclosed it in a plastic jar. The act of his rescuing the snake was live streamed by people in the Facebook then and there. It was a 4 feet long female Russell's Viper and he forwarded the video to the accused. Thereafter, the

accused called him back and requested to take an awareness class on the next day. The accused again called him and enquired whether he was coming alone. He informed his driver Raju, Ligin and PW7 about the awareness class. Then he called the accused and told him as a matter of fact and in a lighter vein that he needs cash for expenses. He demanded Rs.10,000/- from the accused. At that time also the accused asked him whether he was coming alone, but he did not inform the accused about the people who would accompany him. **The accused requested him to bring a highly venomous snake and promised to pay Rs.10,000/-.** (In this judgement, for more clarity and emphasis, certain relevant portions of testimony would be quoted in vernacular, and relevant circumstances would be underlined) The accused informed him that he should come in the early morning as lot of people would come to watch the awareness class. Accordingly, on 26.2.2020 by about 5.30 a.m., himself, his driver Raju, Lijin and PW7 reached near the house of the accused at Karakkadu junction in Parakkodu. The accused was waiting for them in the road side. During the journey the accused was informing him the routes in his mobile phone. He introduced PW7 to the accused and took the jar containing Russell's Viper from the car. While all of them were walking on the way leading to the residence of the accused, near an electric post he handed over the jar containing snake to the accused and at that time, the accused gave him Rs.10,000/- in 5 currency notes

of two thousand rupees denomination. Then the accused told him to go and have tea and return at 7 a.m., and tell everyone who asked the purpose of their visit, that they came on seeing a big Russell's Viper. Thereafter, they went to a tea shop suggested by the accused near the KSRTC bus stop and had tea. Then the accused called him and instructed to return by 7 a.m. As instructed by the accused they proceeded near the house of the accused in the car. On conducting a search near the premises of the house they could not find any Russell's Viper or any other snakes. When people enquired, the accused told them that he had invited him (PW1) on seeing a Russell's Viper. Thereafter, he took a non venomous snake which was kept in the car and conducted an awareness class. PW7 captured the video of the awareness class which was attended by the family members of the accused. When he gave the said snake to the accused he handled it very easily. The accused was not at all afraid of the snake. Thereafter, he took back the said non venomous snake. The accused told that due to the menace of large rats in their agricultural field he had purchased the Russell's Viper. While returning he (PW1) gave all his friends cash. After this incident the accused neglected to see the WhatsApp 'and YouTube' links forwarded by him. After some months, the accused called him on 20th or 21st in April, 2020 in mobile phone. The accused told him that the Russell's Viper handed over to him had delivered several snakelets. He

cautioned the accused not to touch them. Then the accused requested him that he needs a big Cobra and stated that he knows to handle and food for the Cobra is available in the locality. As he (PW1) was hospitalised for sometime, he was in financial difficulty so he demanded price for the Cobra. The accused promised to pay the price. Thereafter, he rescued a Cobra which was roosting over 12 eggs, from Vanchiyoor in Aalamkodu. The visuals of the said snake capture were also recorded. It was a 5 feet long female Cobra. He put the Cobra in a P.V.C pipe, locked it and kept it in his house. Then he came to Chathannoor junction in the night and obtained a plastic jar from the shop named 'Daily Fresh'. MO1 is the said jar and its lid is of red colour. He put air holes in MO1 and transferred the Cobra from the P.V.C pipe to the same. Then he informed the accused that he was in possession of a venomous Cobra and the accused requested him to come to Adoor. He replied that he would reach, till Kottarakkara. Thereafter, on 24.4.2020 he proceeded to Kottarakkara in his Activa scooter with the plastic jar containing the Cobra. From Kottarakkara he called the accused and the accused asked him to come to Enathu. After about 11.30 a.m, he reached the place after the Enathu bridge, near the grotto and stopped the bike near a pan shop and called the accused. The accused replied that he was standing in an A.T.M and would come immediately. After about 5 minutes the accused came there in a **Bullet Motor**

Cycle. After a brief conversation with the accused he handed over the plastic jar containing Cobra kept in a white plastic cover to the accused. The accused kept the same in his bag and gave him Rs.7,000/- in 14 currency notes of five hundred rupees denomination. Thereafter, both of them parted ways. Though he had forwarded his videos of rescuing snakes after this incident, the accused omitted to view the same. The accused also failed to respond. On 8.5.2020 he saw the news item in Malayala Manorama daily that the wife of the accused had sustained snake bites in her matrimonial house and her own house at Anchal Eram and she succumbed due to envenomation. He made his daughter to read the news clipping once more. The accused failed to respond when he called in his mobile. Thereafter, on 9.5.2020 at about 11 a.m., while he was riding the motor bike with his son in the pillion, his son told him that the mobile was ringing. However, he did not pick up the phone as he was riding the bike. There were two more missed calls. When the third time the mobile rang, he stopped the bike and attended the call. **The accused had called from another mobile number and told him that he should not tell the fact of sale of snake to him to anyone else. The accused also told him that his wife was no more. Then he asked the accused as to why he purchased a mute animal from him and committed a grave sin.**

"എന്നിൽ നിന്നും പാമ്പിനെ വാങ്ങിയിട്ട് മിണ്ടാപ്രാണിയെക്കൊണ്ട് നീ ഈ മഹാപാപം എന്തിനാണ് ചെയ്തത്?"

At this point, the witness became emotional and wept and his demeanor was noted by this Court. *Thereupon, the accused replied that since he was unable to live together with a mentally retarded wife he committed the act and if he (PW1) did not disclose it to anyone it would pass of as a case of serpent curse. Otherwise, both of them would be implicated in a murder case.*

"ചേട്ടാ ഒന്ന് ആലോചിക്കണം മന്ദബുദ്ധിയായ ഭാര്യയെയുമായി എനിക്ക് ജീവിക്കാൻ പറ്റാത്തതു കൊണ്ട് ഞാൻ ഇത് ചെയ്തതാണ്, ചേട്ടൻ ഇത് ആരോടും പറഞ്ഞില്ലെങ്കിൽ സർപ്പദോഷം ആയിട്ട് ഇതങ്ങട് തീരും അല്ലെങ്കിൽ ചേട്ടൻ എന്നോട് ഒപ്പം കൊലക്കേസ്സ് പ്രതിയാകും"

He informed this matter to his wife, daughter and friend. Though, his daughter asked him to inform the police, due to his nervousness he did not do so. Thereafter, he was arrested by the police. While he was an under trial prisoner, on seeing him weeping, the co-prisoners prompted him to divulge the truth and pursuant to that he submitted Ext. P1 letter to Punalur Magistrate Court. Thereafter, he was called to the Chief Judicial Magistrate Court, Kollam and he gave Ext. P2 statement recorded U/S 164 Cr.PC. On 24.7.2020 also he gave a statement as Ext. P3 before the Chief Judicial Magistrate, Kollam. He has also

given Ext. P4 statement before the Magistrate Court, Punalur U/S 306 (4) Cr.PC. Ext. P5 is the confession statement made by him to the forest officials. His mobile phone is having number 9446907317. He also has another mobile phone. He does not remember that number. He stated that he was bitten by Cobra and viper in the past and the bites cause excruciating pain. On being bitten by the Cobra, due to the pain, uncontrolled urination will occur. There would be breathlessness after the bite. On being bitten by the Viper the bite site would become swollen and with passage of time the body would become swollen. There would be severe headache. He identified MO1 jar and stated that the air holes were put by him with a heated iron rod. He also identified MO2 bag brought by the accused and his mobile phones marked as MO3 and MO4. The Compact disc (C.D) produced, vide TR 278/20 - list 3 was played with the aid of the T.V monitor of the Court. A video clipping of PW1 catching a Viper and interacting to others by holding it by its tail and putting it inside a P.V.C pipe was displayed. PW1 identified that he was the person catching the Viper in the video clipping. The Viper was caught from the property owned by Oozhayikkodu Ayappa Temple Trust. He had given the said snake to the accused. Another video clipping and image contained in pen drive produced as TR 264/20 – list 3 was displayed in the Court. The still image of PW1 holding a Cobra by its tail was shown. PW1 identified that the person holding Cobra is

himself. Another video clipping of PW1 catching a big Cobra by its tail and attempting to put it inside a P.V.C pipe and taking its eggs laid at nearby place was also played in Court and PW1 identified himself as the person in the video clipping. He stated that the female Cobra which was roosting over the eggs was caught by him from Aalamkodu, Vanchiyoor. According to him, the said snake was given by him to the accused. The folder marked as Q8 in annexure-2 pen drive of Cyber Forensic Science Laboratory report having the images of a dead Cobra inside a room and outside in the premises was also displayed. PW1 identified the said snake as the female Cobra which he had given to the accused. According to him, he is able to identify this snake by the shape of its belly and head and distinguished that it has laid eggs. Thereafter, the folder marked as Q9 in the same annexure was displayed in Court. In the image PW1 and a person purported to be the accused are seen. The person other than PW1 is holding a snake in his hand. PW1 identified that himself and the accused are the persons in the images and it was a non venomous snake held by the accused. He also identified the image of accused holding the snake with the driver of PW1 in the background. Another video clipping in which PW1 and the accused were found standing together and the accused holding a non venomous snake which was seen crawling in his hand was also identified by PW1. According to

him, the above said video of himself and the accused were taken by PW7 Premjith, at the residence of the accused at Parakkodu.

145. When cross-examined, PW1 stated that though in the video clipping he had stated that the Viper which he had caught would be handed over to the Forest Department, the said Viper was handed over by him to the accused. Sujith Parayil, the owner of the Temple Trust, the inmate of the house from where the Viper was caught and other people have seen him catching the Viper. In the video clipping he can be heard saying to live stream the event in the Facebook. Sujith Parayil had informed him about the necessity to rescue the Viper in his mobile phone. He admitted that in both the videos of catching the Viper and Cobra, the exact act of capturing the snakes are not recorded. The Cobra was caught by him from the place in between the bathroom and the house. When the defence counsel handed over MO1 jar to him and suggested that it was a flimsy jar and there is likelihood of it being broken, if snakes are enclosed in the same, PW1 denied it and stated that the jars like MO1 would not break, if snakes are enclosed in the same. He had stated to the police that he had put holes in the jar. He does not remember whether he had told to the police that he could identify the belly of a snake which had laid eggs. According to him, in the video clipping of the non venomous snake, he can be heard saying that he came to search for a viper found there as per the direction

of the accused. He does not remember whether he has stated so to the police. To a suggestion that the videos and photos displayed in Court were edited and fabricated, he answered that he does not know about that. According to him, the date 18.2.2020 on which the accused met him for the first time in Chathannoor was recollected by him while he was in judicial custody. He could not state the said date in Exts. P2 to P5 statements, since he was unable to recollect the same. He had filed Ext. P1 application on the suggestion of his co-prisoners. The date 14.2.2020 stated in Ext. P2 as the first date on which the accused met him at Chathannoor is mistakenly stated. He stated that it was on 14.2.2020 the accused had first called him. However, since he could not recollect the said date he did not mention it to the police or before the Magistrate. He does not remember whether he had stated to the police that his driver Raju was present when he met the accused and the accused asked him about the position of the venom gland in the snake's body. He admitted that he had not stated in his previous statement that the accused had told him that snakes are being killed in his locality by people. He does not remember whether he had forwarded the video of catching the viper to the accused or whether he had stated that fact to the police. He does not remember the fact that whether he stated to the police that he had called his driver Raju and Premjith. He also does not remember whether he had stated in his previous

statements that he demanded expenses from the accused. If the fact that the accused demanded venomous snake was also not seen mentioned in his previous statements, he does not remember the same. He does not remember whether he had stated in his previous statements that the accused had told him that there would be several people to watch the awareness class and that the accused asked him to have tea from a shop near the KSRTC bus stand. He also does not remember whether he had stated to the police in his previous statement that the viper which he had handed over to the accused could not be traced from that place. He did not know the exact motive of the accused. He also does not remember whether he had stated to the police that he asked the accused what happened to the viper. He also does not remember whether he had asked the accused, if he had opened the jar containing the viper. He does not also remember whether he had stated in his previous statements that the accused purchased the viper by stating that there were rats in his agricultural field. He was hearing for the first time from Adoor about a practice of using vipers to catch rats to protect the crops. He also does not remember whether he had stated to the police that he had informed the accused immediately after he caught the Cobra. According to him, the accused asked him to come with the Cobra to Puthoor at first. He stated that the accused told him to call him after reaching Kottarakkara. He believes that he had stated in his previous statements

that the accused asked him to come to Eenathu. On the way to Eenathu he had stopped the scooter only once after Kottarakkara to pass urine and thereafter, he stopped only at the place in Eenathu where the snake was handed over to the accused. To a suggestion that in the month of April, 2020 due to Covid Lock down there was police check post near Eenathu bridge and that for inter district travelling a travel pass from the police was mandatory, he answered that he was not stopped by anyone. He did not take any inter district travel pass. The explanation given by him was that since he was a snake rescuer, while travelling if he was stopped, he would answer that he was going to rescue a snake and that matter would be confirmed by the Forest Station. He has two sim cards and two mobile phones. The number of his B.S.N.L sim card is 9188834317. He does not remember whether he had called the accused from the said number. The said sim cards were inserted in his ITEL phone. He has not gone with the said phone along the Kaithaparambu, Parakkoodu, Ezhamkulam areas on the day on which he handed over the Cobra to the accused. Immediately after he handed over the Cobra he returned home. The fact that a Cobra was found at Aalamkodu was informed to him by one Nizam. The Cobra was caught by him from Aalamkodu, Vanchiyoor on 23.4.2020. On that day at 8.30 p.m., he had also caught a Cobra from near the Amrita School, Parippally and the statement to that effect in Ext. P2 is correct. On the same

day, he caught two snakes, one from Aalamkodu and the other from Parippally. The videos of the snake being caught by him from near the Amrita School, Parippally might have been recorded and he does not know whether he forwarded the said videos to the accused. He had kept the said Cobra in a P.V.C pipe. Ext. D1 contradiction statement in his 161 Cr.PC statement was marked subject to proof when he denied that the Cobra was caught in mid April and only the month April was mentioned by him. Ext. D2 contradiction in his 161 Cr.PC statement to the effect that he stated to the police that after one week of the capture of the Cobra he informed the accused, was marked subject to proof as he denied the said statement. He had not mentioned to the police that he caught two Cobras on one day. After he caught the Cobra from Parippally, he called Lijin and went to Aalamkodu to catch the Cobra. When he was arrested on 24.5.2020 a Cobra was kept in a plastic bottle in his house. Since the police informed the forest department, the said snake was rescued by the Forest Department. He had given a statement to the forest officials that he released the Cobra hatch lings caught from Parippally, at the Ithikkara river bank. **To a pertinent question that he has not committed any offence in this case, he replied that it was with the snake provided by him that the accused has committed the offence and hence, he is also a culprit and he is also an accused in this case.** The suggestion that he was threatened to be implicated in

a murder case and coerced to give statement against the accused was denied. He also denied the suggestions that MO1 jar was produced by the police and that he had never handed over a viper and cobra to the accused.

146. PW7 Premjith testified that he is acquainted with PW1 Suresh. According to him both PW2 and himself are persons who rescue snakes and wild animals and are connected with the Forest Department. His friendship with PW1 commenced after he saw videos of PW1 in a YouTube channel, named 'Vismaya'. He identified the accused and deposed that on 26.2.2020 as requested by PW1, he went to the residence of the accused to conduct an awareness class about snakes. They went in a white Ambassador car, owned by PW1, which was driven by Raju and another person named Lijin was also there. He joined PW1 at about 4.30 a.m., on 26.2.2020 from Kottarakkara. On the way the person who had engaged PW1 was informing him about the route over telephone. They met the accused about 2 kms after the place Parakkodu. The accused was standing by the road side and PW1 conversed with him. He was introduced to the accused by PW1. **Then PW1 took a plastic jar containing a Russell's Viper from the car and handed it over to the accused. PW1 instructed the accused to handle it with care and stated that it was a Russell's Viper. Then the accused handed over cash to PW1.** Then the accused instructed PW1 to return by 7 a.m., and to search the premises. When

he asked PW1 as to why he had given the snake to the accused, he told that the accused knows to handle snakes and it was handed over to take the awareness class. Then they went to Adoor for having tea. At about 6.30 a.m., the accused called in the mobile phone. By about 7 a.m., they went near the house of the accused. As instructed by the accused, PW1 and the accused searched the premises for snakes. After sometime, he asked PW1 as to what he was looking and then PW1 stopped the search. When they reached the courtyard of the residence of the accused, PW1 took a non venomous trinket snake kept in another jar and handed over the snake to the accused. The accused handled the snake properly. He took video clippings and photos of the accused handling the snakes in his mobile phone. He had send the said photos to the mobile phone of the sister of the accused. Thereafter, they returned with the above said snake. When he alighted at Kottarakkara, PW1 gave him Rs.200/-. In the month of May, 2020, he knew from the newspaper that a lady died of snake bite at Anchal. After about 2, 3 days of the incident as requested by PW1 he met him at Kollam. PW1 was very much frantic and nervous at that time. On enquiry, PW1 stated that the lady in the house at Adoor, where they had gone was dead due to snake bite. PW1 also stated that the snake used for inducing the bite was the one handed over by him.

"PW1 കൊടുത്ത പാമ്പിനെ കൊണ്ടാണ് ആ മഹാപാപി ആ പെൺകൊച്ചിനെ കൊന്നത് എന്നും പറഞ്ഞു."

PW1 also told him that he had sold a Cobra also to the accused, other than the Russell's Viper and the accused used the said Cobra to kill his wife. PW1 also stated that he knew about these facts when the accused called him and threatened not to mention these facts to anyone. The accused threatened that if PW1 tells about the sale of the snake to anyone he would be also an accused in this case. If he kept silence this would pass of as a case of serpent curse (സർപ്പദോഷം). When PW1 challenged the accused as to why he had killed his wife, the accused threatened PW1.

"പാമ്പിനെ കൊടുത്ത കാര്യം ആരോടുകിലും പറഞ്ഞാൽ പ്രതിയോടൊപ്പം PW1 ഉം കേസിൽ പ്രതിയാകും എന്നും അല്ലെങ്കിലിതൊരു സർപ്പദോഷമായി പൊയ്ക്കാളും എന്നും പ്രതി PW1 നോട് പറഞ്ഞു."

When he requested PW1 to inform this matter to the authorities, PW1 was afraid to do so, since the accused was a character who would not hesitate to kill them. He pacified PW1 and they parted on that day. When he contacted PW1 over telephone he was tense and he repented that a lady was killed due to him. Thereafter, he knew that PW1 was arrested by the police. He produced his

mobile phone in which he took photos of the accused handling the snakes to the police. He identified the said mobile and stated that his petition to get back the phone was allowed. The photo and video of the accused handling the snake with PW1 found in the mobile phone was displayed in open Court and the mobile phone was marked as MO12. He admitted that he gave a statement to the Magistrate. The images contained in file Q9 in annexure pen drive attached to the Cyber Forensic Report was displayed through the T.V monitor in Court. PW7 identified the images and stated that the accused was the person who was found handling snakes and PW1 was standing beside him. The person in the background was Raju, the driver of PW1. The car, owned by PW1 is also to be seen in the background. He identified the video clippings, which was also displayed in Court and stated that both the photos and video clippings were recorded by him vide MO12 mobile. Ext. P9 is the 164 Cr.PC statement given by him to the Magistrate.

147. In Cross-examination, he denied the portion of his statement recorded under 161 Cr.PC to the effect that the accused had told that there was Russell's Viper in the compound and the contradiction was marked as Ext. D6 subject to proof. He told that since PW1 was more experienced than him in rescuing snakes for the Forest Department and that the accused was also adept in handling snakes, he did not oppose PW1 handing over the snake to the

accused. The suggestion that he had given 164 Cr.PC statement due to the coercion and threat of the police was denied by him.

148. PW86, Rajeev, who was working as Regional Transport Officer, Kollam testified that he issued **Ext. P 282 R. C particulars of the Honda Activa Scooter, bearing registration number KL/02/BE/2823. According to him, the registered owner of the said vehicle is Suresh Kumar. R, R.S. Bhavan, Kulathoorkonam, Chirakkara P.O (PW1).** The mobile number of the owner is recorded as 9446907317 and Ext. P283 is the original R.C book of the said vehicle.

149. PW87 Manu Krishnan who is working in the Rural Police Command Centre Monitoring Room, Kollam in the C.C.T.V Section, testified that his duty is to verify the surveillance cameras at the command centre and detect traffic offences. The automatic number plate recognition camera (A.N.P.R) would detect the registration number of the vehicles. **On the request of the Investigating Officer in this case, he verified the A.N.P.R camera and detected that the vehicle bearing registration number KL/02/BE/2823 has passed the Eanathu bridge at 11.42 hours on 24.4.20.** He has given the print out of the said visual to the Investigating Officer and also issued the certificate U/S 65 B of the Evidence Act. He saved the said image. He copied the said

visuals of the vehicle bearing registration number KL/02/BE/2823 in MO40 pen drive. Exts. P84 (a) and P84 (b) are the print outs of the said image and Exts. P285 and P286 are the certificates U/S 65 (B) of the Evidence Act. **The image from the pen drive was displayed through the monitor of the Court and the rear side of the rider of the scooter with registration number KL/02/BE/2823 was seen displayed.(image of scooter owned by PW1 proceeding to Enathu around the time when the cobra was handed over by PW1 to the accused)**

According to him, the said image was the exact computer image of Ext. P284 (a). According to him, in the A.N.P.R camera, only the still photos are recorded. Only one image of the above referred vehicle was obtained and the image of the vehicle returning was not obtained. The reasons may be because the said vehicle had taken an alternate route or the vehicle had passed by the side of an H.M.V when it passed near the camera. DMO1 visuals depicting Eanathu bridge and A.N.P.R cameras installed in the cross bar were displayed through the monitor of the Court. The cameras on the left hand side are A.N.P.R cameras focused towards Adoor and the cameras on the right hand side are focused towards Kottarakkara.

150. In cross-examination, he denied the suggestion that the images do not depict the Eanathu bridge. He clarified that the front portion of the vehicle could not be captured in the A.N.P.R camera. According to him, in the month

of June, 2020 he was the custodian of the above referred electronic equipment. The Inspector, S.H.O of Cyber Police Station during that period was Alias John. The system has a backup period of 6 to 8 months. The software installed in A.N.P.R camera to capture photos is the Atems software. There are five surveillance cameras in Kottarakkara Pulamon junction, out of which, four are Bullet cameras and one is the rotating P.P.Z camera.

151. PW8, Eldhose Jose testified that he was acquainted with the accused while both of them were working in the Adoor branch of L & T Financial Services. During the period 2020 he was using the mobile numbers 8281754239 and 9745016178, which are his personal and official mobile numbers. He has attended the wedding ceremony of Uthra and the accused and his car was used as the vehicle by the accused for going to and fro to the wedding auditorium on the date of marriage. He stated that he had never seen the accused taking Uthra to the temple or to visit his friends. He has produced his mobile phone handset having number 9745016178 which is marked as MO13 series (Redmi mobile and sim). On the date of death of Uthra he could not attend the funeral. On 9.5.2020 himself and his friends Sujith and Gireesh went to the residence of the accused and as the accused had gone to the police station, they also went to the Anchal Police Station. The accused returned from

the police station in their car. When the car reached near the residence of Uthra the accused requested the phone of Sujith and Gireesh to make a call. Both of them refused to give their mobile phone and as requested by the accused he had given him MO13 mobile bearing number 9745016178 which he uses for official purposes. **By that time they had reached near the residence of Uthra, then the accused made a call to someone and returned the mobile phone to him. Thereafter, he was called to the Crime Branch office and it was revealed that the accused had called PW1 Suresh from his MO13 mobile phone.** He had given Ext. P10 statement U/S 164 Cr.PC before the Magistrate. **He categorically stated that he does not have any acquaintance with PW1 and he had never met or called PW1.**

152. In Cross-examination he stated that his residence is situated about 4 kms away from the house of the accused. He was present by about 2.30 p.m on 9.5.2020 in the residence of Uthra. **He categorically stated that, other than the accused no other person had called from his mobile phone after the mobile was entrusted to the accused.** Immediately after the accused made the call he returned the mobile phone.

153. PW10 Sona Suresh is the daughter of PW1, the approver in this case. She corroborated the version of PW1 to the effect that he is engaged as a

snake rescuer. The accused had requested PW1 to conduct an awareness class about snakes and on one day in February 2020, her mother informed that PW1 had gone to the residence of the accused. On that day PW1 called her mother in his mobile phone and stated that the class is over and he got some cash to meet his expenses. On 8.5.2020, in the morning PW1 asked her to read a news item in the newspaper. She read the news which stated that the lady who had been bitten by a snake at her matrimonial house and was undergoing treatment was again bitten by snake. **PW1 was depressed after reading the news and when she enquired he replied that he was suspicious that the dead lady was the wife of the accused.** On the next day, i.e, 9.5.2020 when PW1 and her brother returned home after a trip, PW1 was found in a depressed condition. **When she enquired, PW1 replied that the accused had called him and told that he had used the snake given by PW1 to murder his wife and that he threatened him that if he disclosed the said fact to anyone he would also be an accused in a criminal case. PW1 told her that he had also given a Cobra to the accused during lock down.** Though she requested PW1 to inform the police, he was afraid to do so. On 23.5.2020 PW1 was arrested by the police. He admitted that PW1 had two mobile phones and three mobile phone numbers. She used to upload YouTube videos from the mobile phone of PW1 and save the phone numbers in the same. She has stated in cross-examination that the

offence committed by PW1 was that he had illegally sold a snake. The suggestion that her statement, that the accused had called and threatened PW1 was false, was denied .

154. PW11 Aneesh, who is a resident of Kalluvathukkal testified that he is acquainted with PW1. On 24.2.20 one Abhilash informed him that he saw a snake in the shed adjoining his house. Accordingly, his friend Sujith informed PW1 about the matter. At 9 p.m., on 24.2.20 PW1 came to the said place, caught the snake and put it in a plastic pipe. The event was recorded in mobile phone. In the month of August, 2020 he was called to the Crime Branch office, Kottarakkara and his statement was recorded. He gave the video clippings of PW1 catching the snake stored in his miobile copied in a C.D to the Crime Branch. The said video clipping was posted in a WhatsApp group and it was recorded by him in a C.D. The said C.D is MO14. The C.D was played in a laptop connected to the monitor of the Court and displayed in open Court. Ext. P12 is the section 65 B certificate. PW11 identified that PW1 was the person catching the snake by its tail at the house of Karthikeyan.

155. In Cross-examination PW11 admitted that he had not directly recorded the video clipping in his mobile phone. The clipping was forwarded from a WhatsApp group, named 'Parayil Chunks'. He clarified that the snake,

which was a Viper was rescued from a rented house in the ownership of the Oozhayikkodu Ayyappa Temple.

156. PW12 Shibu is a resident of Vanchiyoor in Aalamkodu. He testified that on 23.4.2020, a snake was found in the premises of his house and through a friend the matter was informed to PW1. PW1 came to his house by about 10 p.m., on 23.4.2020 and rescued the snake which was a Cobra. The Cobra was roosting over eggs. PW1 put the Cobra inside a P.V.C pipe and the eggs in a cardboard box and took it away. He recorded the event in his mobile phone. During the investigation the said video clippings were copied into MO16 pen drive and given to the Crime Branch. The video clippings in pen drive marked as MO15 were displayed through the monitor of the Court. PW12 identified that the said video clippings were recorded in his mobile phone and it was PW1 who was holding a Cobra in the premises of his house. Ext. P13 is the 65 B certificate. He has also signed in Ext. P14 mahazar prepared at the spot.

157. PW15, Daimudeen is conducting the Daily Fresh Bakery and shopping mall at Tirumukku in Chathannoor. He testified that he is acquainted with the accused, who is engaged as a snake rescuer. **In April, 2020 at the night, during the lock down period, he gave MO1 plastic jar to PW1 from his**

shop. Later on PW1 was brought to his shop in connection with the said plastic jar. The plastic jar is a container of the 'magic ball candy' brand. In cross-examination he admitted that the magic ball candy is available in the open market.

158. PW35 Aji Sankar is the State Nodal Officer of Reliance Infocom. She has provided the details of the Reliance Jio mobile phone connection having number 7907934909 issued in favour of the accused and the mobile phone connection number 8075801910 issued in favour of Eldhose Jose. Ext. P62 is the customer application form (CAF) submitted by the accused and Ext. P63 is the certified copy of the call detail records of the phone of the accused having number 7907934909. According to her, as per Ext. P63 series it can be seen that on 12.2.20, 15.2.20, 17.2.20, 18.2.20, 26.2.20 and 24.4.20 there were outgoing calls from the phone of the accused to the mobile phone number 9446907317 (phone number of PW1). On 12.2.20 from the mobile phone number 9061419459, (mobile phone ofPW1) a message was sent to the accused's mobile phone. On 24.4.20 from 9.14 a.m to 12.54 p.m., there were multiple incoming and outgoing calls in between these two mobile numbers. As per Ext. P63 series the tower location with identity of the towers mentioning the latitude and longitude positions is separately furnished. The internet protocol data usage record of the accused's phone having number 7907934909

is produced as Ext. P64. The Internet protocol data record (I.P.D.R) along with the tower location showing the tower location at which the data signals were received in the accused's phone handset is also produced and marked as Ext. P64 (a). As per Ext. P64 (a) (i) on 18.2.20 from 10.01 a.m., the tower location of data usage is S.B.T, Chathannoor. As per the same on 24.4.20 at 11.46 a.m., and 11.47 a.m., the above said mobile phone received data signals at the Enathu tower location and the said entries are marked as Ext. P64 (a) (ii). On 26.2.2020 there were multiple incoming and outgoing calls from the accused's phone to mobile phone number 9446907317 (phone of PW1) in between 4.47 a.m and 7.04 a.m.

159. Ext. P65 is the customer application form of Eldhose Jose with regard to the mobile phone connection number 8075801910. Ext. P66 is the call detail record of the said phone along with the tower location on 9.5.20. As per Ext. P66 the tower location of the phone of Eldhose Jose on 9.5.20 at 13.32 hours is at Eram South. Exts. P67, 68 and 69 are the Section 65 B Evidence Act certificates of these records.

160. In cross-examination, she stated that the call detail records are downloaded as per DOT Regulation by using the analytical portal of Jio. She does not know whether there would be a date and time stamp when the report is

generated. According to her it would depend on the basis of the software used. She admitted that a report like Ext. P64 would display its generating time when it is printed. However, there is no generating time in Ext. P64. According to her, as per Ext. P64 (a) the activity at the time 11.42 a.m., is in the area of a tower in the property owned by a person Soman Daniel in his address at Ezhamkulam. She is able to mention the location of the said tower by verifying its latitude and longitude. The activity at 11.44 a.m., is in the range of a mobile tower installed in the property of Saji Thomas, Mavadi Village. The latitude and longitude of the tower is also mentioned. **She also stated that the call at 11.40 a.m., is within the tower range of a tower erected in the plot of a person having Eanathu address.** The latitude and longitude of the said tower is also mentioned. The suggestion that the CDR and IPDR were falsely manipulated was denied. **She further stated that by checking the latitude details the exact tower location can be deciphered.** According to her, from 7.20 a.m., on 7.5.20, till 11.45 a.m., on 9.5.20, no calls were made or received from the said phone of the accused. In re-examination she admitted that the address of the owners of the plot, where towers are erected are mentioned in Ext. P64 (a). The tower location is exactly found with the aid of latitude and longitude.

161. PW36 Sajeev. P. K, Nodal Officer of B.S.N.L testified that he has furnished the customer application form (C.A.F) and C.D.R of mobile phone number 9446907317 issued to Suresh Kumar(PW1) and phone number 8281754239 issued to Eldhose jose which are marked as Exts. P70, P71 and P74 respectively. The 65 (B) Evidence Act certificates are marked as Exts. P72 and P75 respectively. He was recalled by the prosecution for the purpose of marking the 65 (B) certificates of C.A.F and C.D.R and those certificates were marked as Exts. P72 (c), P77 and P78. According to him in Ext. P71 call detail records of Suresh,(PW1) the tower decoding details are mentioned. On 12.2.20, 15.2.20, 17.2.20, 18.2.20, 20.2.20, 21.2.20, 23.2.20, 24.2.20, 25.2.20 and 26.2.20 there are multiple incoming and outgoing calls from the mobile number of PW1 Suresh (9446907117) to the mobile phone number 7907934909 (Jio phone of accused). On 23.2.20, 25.2.20, 21.4.20. 22.4.20 and 26.2.20 there are incoming and outgoing calls from the said mobile phone of PW1 to mobile phone number 9207720666 (Vodafone-idea phone of accused). **He testified that on 26.2.20 from 4.04 a.m to 7.04 a.m., there were multiple incoming and outgoing calls from the mobile number of PW1 Suresh (9446907117) to mobile phone number 7907934909 (Jio phone of accused). (CDR issued by BSNL has decoded cell ID address) On that day at 5.28 a.m., the tower location of phone of PW1 (9446907117) was Parakkodu, at 6.34 a.m., the**

tower location was Adoor KSRTC stand and from 7.03 a.m to 7.44 a.m., the tower location was at Puthumala tower. (26/2/2020 is the day on which PW1 proceeded to the house of accused and handed over the viper to him and held awareness class) The relevant page in Ext. P71 was marked as Ext. P71

(a). It was also elicited that as per Ext. P71, in page 148 on 23.4.20 at 22.56 hours the said mobile phone of PW1 is in the location of Aalamkodu tower. (from Alamkodu PW1 caught the cobra on 23/4/20) On 24.4.20 at 11.42 and 11.43 while the mobile phone was at Eanathu tower location a message and call were received in the said mobile phone. (on 24/4/20 PW1 handed over the cobra to the accused) On 9.5.20 at 11.20 a.m., a call was received in the said mobile from mobile phone number 9745016178 (Eldose Jose's mobile phone) while the phone was within the tower location of Kalluvathukkal. (the accused threatened PW1 by calling from the phone of Eldhose) On that day at 13.06 hours, 13.14 hours and 13.23 hours, the tower location of the said mobile phone is at Sanker's junction, Asramam and Chinnakkada.(PW1 proceeded to Kollam to meet PW7) He testified that as per Ext. P73 C.A.F, the mobile phone number 8281754239 was issued in the name of Eldhose Jose and as per Ext. P74 call detail records on 9.5.20 from 10.47 to 11 and from 11.27 to 15.07 the mobile phone tower location of Eldhose Jose was under Eram tower and from 11.07 it was within the location of Anchal tower.

162. PW37 who is the alternate Nodal Officer of Vodafone Idea Ltd testified that he produced Ext. P76 certified copy of customer application form of mobile phone number 9207720666 and Ext. P77, the call detail records of the same (it is the mobile phone of accused). Ext. P78 is the certificate issued U/S 65 (B) of the Evidence Act. According to him, on 3.3.2020 at about 2.54 a.m., from the mobile number 9207689666 an incoming call was received in the said mobile (Phone call of Sujith on the night when Uthra sustained bite to her leg at the residence of accused). On 24.4.20 at 11.31.11 hours an incoming S.M.S was received from the H.D.F.C Bank in the said mobile number (when accused withdrew cash from A.T.M.). On 21.4.20 and 22.4.20 there are incoming and outgoing calls between the said number and the mobile phone number 9446907317 (Phone of PW1) at 11.11.52 hours and 10.45.33 hours. As per Ext. P79 tower decoding details on 21.4.20 the said mobile phone was in the tower location of Pushpagiri Medical College when the outgoing call was made. On 22.4.2020 also the said mobile phone was within the Pushpagiri Medical College tower location. He has produced Ext. P80 CAF of the mobile phone number 8589800970, issued in the name of Suraj. S. Kumar. (the accused, phone was used by Uthra). Ext. P81 is the call details record and Ext. P83 is the certificate issued U/S 65 (B) of the Evidence Act. He also produced Ext. P84 customer application form, Ext. P85 call details record and Ext. P86

certificate issued U/S 65 B of the Evidence Act pertaining to mobile phone number 9061419459 (phone of PW1). Ext. P87 is the tower decoding list. According to him as per Ext. P85 call details record on 24.4.20 at 11.41.21 hours, a 40 seconds duration call was made to the mobile phone number 7907934909. (Jio mobile phone of accused) At that time and at 11.42.05 a.m., when an incoming S.M.S was received in the said mobile, it was within the Enathu tower location. He also stated that there were incoming calls to this mobile from the mobile number 7907934909 at 9.14.29 hours, 9.54.32 hours and 12.54.14 hours on 24.4.20. There were outgoing calls from the said mobile number 9061419459 to the mobile number 7907934909 at 11.05.29 hours, 11.33.59 hours and 10.33.23 hours on the same day. **(24.4.20, was the day on which PW1 proceeded to Enathu and handed over cobra to accused)** The relevant extract of the calls contained in pages 39 and 40 of Ext. P85 was marked as Ext. P85 (a). Ext. P88 is the CAF for the mobile phone connection 9745016178 issued in the name of Eldhose Jose, Ext. P89 is its call details record and Ext. P90 is the certificate issued U/S 65 B of the Evidence Act. Ext. P91 is the tower decoding list as per which it could be seen that on 9.5.20 at 11.20.21 hours when an outgoing call was made from the said mobile to mobile phone number 9446907317 (mobile phone of PW1 Suresh), the said mobile of Eldose Jose was in the tower location of the place Eram. He stated

that before or after the said call, no calls were made between the said mobile phone numbers of Eldose Jose or PW1 Suresh and it is evident from Ext.

P89. Ext. P92 is the CAF with respect to the mobile phone number 9207689666 issued in the name of Sujith. Ext. P93 is its call detail records and Ext. P94 is the certificate issued U/S 65 B of Evidence Act. He stated that as per Ext. P95 tower decoding list, on 9.5.20 at 11 a.m, the said mobile phone was within the tower location of Anchal Eram. He also stated that on 3.3.20 at 2.54.15 hours and 2.59.43 hours there were outgoing and incoming calls from this mobile to mobile phone number 9207720666. Ext. P96 is the CAF for the mobile phone issued with number 8943125527. Ext. P97 is its call details record from 18.2.20 to 27.2.20 and Ext. P98 is the certificate issued U/S 65 B of the Evidence Act. The said mobile phone is issued in favour of one Raju. Ext. P99 is the tower decoding list. In cross-examination he admitted that the tower decoding list of the call mentioned in Ext. P85 (a) having time 11.41 is not furnished. At 11.42.05 hours when an S.M.S was received the said phone was within the Enathu tower location. He further admitted that on 24.4.20 at 12.02 hours, as per Ext. P81 the phone is within the Mankodu tower location and thereafter at 12.04 hours it is within the Ezhamkulam tower location.

163. PW50 Vasudevan who was working as the Nodal Officer, Bharati Airtel, Kerala Circle testified that he has furnished Ext. P133 copy of the CAF, Ext. P134 call details record and Ext. P135 decoded tower location pertaining to the mobile phone number 9895492625 issued in favour of Premjith (PW7). Ext. P136 is the certification U/S 65(B) of Evidence Act. **As per Ext. P134 C.D.R on 26.2.20 at 3.34.53 a.m and 4.33.38 a.m., there were incoming calls to this phone from the mobile phone number 9446907317 (Phone of PW1; on that day they went to the house of the accused at parakkodu and handed over the viper).** That day at 7.41.58 a.m., the said mobile phone of Premjith (PW7) was at Puthumala location. The C.D.R of the said phone dated 9.5.20 is marked as Ext. P137 and Ext. P138 is its 65 (B) Evidence Act certificate. According to him, as per Ext. P137 C.D.R, on 9.5.20 at 12.25.45 hours, 12.40.25 hours, 12.43.14 hours, 15.39.27 hours and 15.41.14 hours, there were multiple incoming and outgoing calls with mobile phone number 9188847317. There was an incoming call from the mobile phone number 9188847317 at 12.03.34 a.m., on 9.5.20. In cross-examination, he submitted that the data was downloaded and printed directly from the system.

164. PW21 who is the Branch Manager of the H.D.F.C Bank, Adoor branch testified that the accused is an account holder of the said bank and he maintained a salary account therein. He produced the account opening form of

the account number 50100244082203 and it is marked as Ext. P27 series. The scanned print out of the identity proof is also appended along with it. Ext. P28 is the certified copy of the account extract of the accused from 16.7.2018 to 18.6.2020. As per Ext. P28 the accused had withdrawn Rs.5,000/- on 24.4.2020. The certified copy of the details of the said transaction is marked as Ext. P29. As per Ext. P29 at 11.31 a.m., the accused used his Debit Card No. 541019XXXXXX8706 and had withdrawn the said amount of Rs.5,000/- from the Ezhamkulam ATM of South Indian Bank. The Code number of South Indian Bank, Ezhamkulam ATM 03820001 is reflected in the transaction dated 24.4.2020. The basic document of Ext. P29 is a mail, issued from their Mumbai ATM Central Unit and it is marked as Ext. P30 (subject to want of certification U/S 65 B Evidence Act).

165. PW25 is the Manager of the South Indian Bank, Ezhamkulam Branch. He testified that there is an A.T.M counter for the said bank adjoining the Ezhamkulam branch which is about 150 metres away from the Ezhamkulam junction by the side of the K.P. road. There are C.C.T.V cameras inside and outside the A.T.M counter. As per the direction of the Investigating Officer he handed over the C.C.T.V footage on 24.4.2020 with respect to the said A.T.M counter. The C.C.T.V footage contained in pen drive produced as TR 231/20 was displayed through the monitor of the Court. Image of a person coming

in motor bike with shoulder bag hung in his back entering into the A.T.M counter after stopping the bike at 11.30.23 a.m., on 24.4.20 is seen. The person is seen withdrawing money from the A.T.M machine. The colour of his shoulder bag is black. (As per the evidence of PW72 and the Cyber forensic report Ext P168 cyber forensic report, the man in the A.T.M is the accused). PW25 deposed that the said visuals relates to the A.T.M counter No. atm 10382 of South Indian Bank, Ezhamkulam branch and it was copied by him in a pen drive from the C.C.T.V footage of the said A.T.M counter and given it to the Investigating Officer. The said pen drive was marked as MO17 and certificate U/S 65 B of Evidence Act was marked as Ext. P42. PW25 identified the A.T.M counter in the visuals as that of the South Indian Bank, Ezhamkulam branch A.T.M. No. 10382.

166. PW83 Mahesh Mohan who is working as Civil Police Officer in Kollam Rural Cyber Cell, testified that he had passed Hardware and Networking course and Microsoft certified System Engineer course and had secured first rank in the entrance examination conducted by Kerala Police to select personnel who were having computer awareness under the auspices of C-DAC. Thereafter, he had completed the advanced course of Cyber Crime investigation conducted by C-DAC. He has also attended several courses and workshops conducted by Kerala Police in Cyber Forensics. As per the orders

of the Kollam Rural Police Chief he was included in the team constituted to investigate this case. On 25.5.20 he guided the Investigating Officer to seize the 'Realme' mobile phone (MO31) from the accused. He inspected the IMEI Number and the e-mail ID in which the Play Store, mail etc in the said phone were registered and it was revealed that the e-mail ID which was synced with the applications in the phone was surajskumar1993@gmail.com (the accused). On inspection of Google Chrome and Google search applications it was found that, searches were made for Viper, Cobra and 'Kuzhimandali' snakes. In the 'YouTube' search history, searches were seen made for Chavarukavu Suresh, Snake Master new episode and other snake videos. He switched off the mobile phone, retrieved the sim cards and entrusted it to the Investigating Officer. The said phone was switched on in open Court when the witness was examined and the following facts were noticed. The Google account of accused Suraj.S.Kumar, is shown as Surajskumar1993@gmail.com in the memory of the said phone, when 'Play Store' application is opened. The recent searches in Google search application is opened in the mobile phone. In it the last search shown is 'Kuzhimandali' snake images. He stated that if the search history is deleted the search will not be displayed. He had also helped the Investigating Officer while MO3 Nokia smart phone and MO4 Itel feature phone of PW1 were seized

by the Investigating Officer. **There were photos of PW1 and snakes in the gallery of MO3 and WhatsApp chat history reveals that PW1 and the accused had chatted with regard to snakes.** However, at the time of examination in court, since the WhatsApp application was out of date, the WhatsApp could not be accessed from the said phone. On 3.6.20 he helped the Investigating Officer to seize MO10 mobile phone produced by PW5 before the Investigating Officer. In the said mobile phone's image gallery the photos of a dead Cobra were found. He had also aided the Investigating Officer to seize MO12 mobile phone produced by PW7. **On inspecting the camera gallery of MO12, three images and a video of PW1 and the accused standing together and the accused handling a snake were found.** **On 26.6.20 he hashed the pen drive containing images of the accused withdrawing cash from the Ezhamkulam South Indian Bank which was produced by the Bank Manager by using the hashing tool, named 'True Imager' and handed over the pen drive to the Investigating Officer.** The 'True Imager' is a digital device developed by C-DAC, Thiruvananthapuram and on connecting the device to the input instrument to be hashed the True Imager will show its hash value and issue a hard copy and soft copy of the said value. Thus, the said report also has a hash value and hence it could not be edited. If the input device is subsequently edited or manipulated, the hash value would change. The mobile phones are

not compatible with True Imager. On 8.7.20 and 15.7.20 he retrieved the hard disc containing billing data of J.J. Medicals, Adoor and the pen drive containing the alleged confession made by the accused to media persons from the office of the Mathrubhoomi Channel at Thiruvananthapuram respectively and verified its hash value. As per the request of the Investigating Officer he prepared the route map of PW1, PW7, CW17, CW16 Raju and the route map of PW1 and the accused dated 24.4.20. The route maps were prepared by coordinating the latitude and longitude of mobile tower situated nearby the route of the accused. The latitude and longitude were analysed by using the I 9 C.D.R Analyser software and also the call details and I.P.D.R (Internet Protocol Device Details Record) and route maps were prepared. Ext. P187 series is the route map of PW1 from 3.31 a.m to 7.44 a.m on 26.2.2020; Ext. P187 (a) series is the route map of PW7 on that date and Exts. P187 (b) and (c) are the route maps of CW16 Raju, CW17 Ligin respectively. The combined route maps of PW1, PW7, PW16 and PW17 is marked as Ext. P187 (b) series. He analysed the C.D.R and I.P.D.R of the mobile phone of the accused having number 7907934909 and prepared Ext. P188 route map of the accused from 9.14 hours to 11.47 hours on 24.4.20. Ext. P189 is the route map of the mobile phone number of PW1 having number 9061419459 from 10.31 a.m., till 11.42 a.m., on 24.4.20. He has signed in the route map and issued Ext. P190 certificate U/S 65

(B) of Evidence Act. He has also submitted Ext. P191 C.D.R analysis report as per the request of the Investigating Officer.

167. In cross-examination, he stated that on 18.2.20 at 9.55 a.m., the mobile phone having number 7907934909 was in the range of the mobile tower, near Chathannoor K.S.R.T.C bus stand as per its latitude and longitude. The mobile phone company has mentioned the said tower location as Kollam K.S.R.T.C. At 10.01 hours and 10.02 hours the said mobile phone was in transit and it was in the Chathannoor location while the call was commenced. As per the C.D.R on 24.4.20 the said phone has come within the Kaithaparambu tower location, situated near Eenathu. The said Kaithaparambu area is in between Ezhamkulam and Eenathu. As per the location of the latitude and longitude also the Kaithaparambu area is the place where the mobile tower was situated. Even if the phone transits along the nearby road, its activity will be tracked in the Kaithaparambu tower. As per the I.P.D.R, the location of the mobile phone having number 7907934909 in between 11.42.32 hours, till 11.55.06 hours was in the Kaithaparambu tower location. The activity of the said mobile phone between 11.41.14 hours, till 11.42.00 hours is also within the Kaithaparambu location. The mobile phone was within the tower location of a tower having address Saji Thomas, Mavadi Village, in between 11.44.01 hours, till 11.44.35 hours. According to him, the said place is near Eenathu. On the said date from

11.12.32 hours to 11.42.32 hours, the said phone was in Puthumala tower location as per its Internet activity. The residence of the accused is situated in the Puthumala tower location. According to him, the S.M.S from the bank was sent to the mobile phone number 9207720666. On 24.4.2020 at 11.31.11 hours, the location of the said mobile phone, when the message from the A.T.M of South Indian Bank was send, was within Parakkodu tower location. He stated that the accused was using the Jio mobile number ending with the numbers 4909 for browsing the Internet and hence, as per the direction of the Investigating Officer he has collected the I.P.D.R details of the said mobile only. According to him, WhatsApp can be accessed from any mobile phone handset. The accused had used both SIM cards in MO31 mobile phone. The registered WhatsApp number of the accused is 9207720666 and he used the Jio connection to browse the Internet. The I.P.D.R of the said mobile number is not collected. According to him, on 26.2.2020 at 5.28.31 hours, the mobile phone of PW1 was within the Parakkodu tower location and at 7.03 hours it was within the Puthumala tower location. At the time of the seizure of the phone, only preliminary examination would be conducted by the police and detailed examination and location history will be analysed at the Forensic Science Laboratory. According to him, at the time of seizure of the MOs, they have only recorded the hash value and not the images. In the C.D True Image -

Version 2 device, the image and hash value could be retrieved contemporaneously.

168. PW72, Dr. Sunil. S.P., the Joint Director (Research), State Forensic Science Laboratory, Thiruvananthapuram testified that he had examined the hard disc, pen drives, CD, mobile phone, photographs and documents and issued Ext. P167 series, P168 series and P169 series Cyber Forensic Analysis reports with annexures. He testified that he examined the Questioned hard disc and extracted the purchase details of Monty L.C tablets with date in batch number T 8121 along with supplier invoice number and also extracted details of purchase of Okacet tablets with batch number N 390148 along with supplier and invoice number. On examination, the purchase details of Monty L.C tablet having batch no. T 8121 for the period 1.1.2019 to 7.5.2020 from the Questioned hard disc were retrieved and purchase details showing invoice number, invoice date, item name, batch number, supplier name, expiry date and price are enclosed in Annexure-2. The retrieved data from the hard disc is appended as hard copy and it is stated that the Monty L.C tablets having batch number T 8121 was having expiry date of June, 2020 and its supplier name was J.S. Pharma. At page number 8 of Ext. P167 series, the annexure marked as Ext. P167 (a) would reveal that Okacet tablet having batch no. N 390148

having expiry date February, 2022 and the supplier name is Leo Drugs and Chemicals.

169. After examining the material objects which are four pen drives, one CD, one mobile phone, five photographs and eight sheets of documents he issued Ext. 168 Cyber Forensic Report. The Questioned item numbers 1 to 7 with its corresponding serial numbers are as follows :-

Q1 is a pen drive having capacity 16 GB corresponding to MO18.

Q2 is a C.D of make Verbatim marked as MO28.

Q3 is an 8 GB capacity pen drive corresponding to MO15.

Q4 is a 16 GB capacity pen drive Kingston make marked as MO29.

Q5 is a Shaomi make mobile phone corresponding to MO13.

Q6 is a Vodafone Sim Card corresponding to MO13 series.

Q7 is a 16 GB capacity Sand Disc make pen drive, which corresponds to MO17.

Ext. P16 series are all the standard photographs marked as S1(a) to S1(e). On examination the following results were obtained :-

(1). The C.C.T.V recordings recorded on 2.3.2020 were retrieved from Questioned pen drive marked as Q1 and soft copy of the same is enclosed in a folder name 'video recordings from Q1' in annexure-6 pen drive.

(2). Two picture files named proof 1 and proof 2 were retrieved from Questioned C.D marked as Q2 and the retrieved picture files are enclosed in the report.

(3). The C.C.T.V recordings recorded on 20.5.2020 were retrieved from the Questioned pen drive marked as Q4 and soft copy of the same is enclosed in a folder named 'video recordings from Q4' in annexure 6 pen drive.

(4). The C.C.T.V recordings recorded on 24.4.2020 were retrieved from the Questioned pen drive marked as Q7 and soft copy of the same is enclosed in a folder name 'video recordings from Q7' in annexure 6. **The retrieved visuals were found to be genuine in all these items and no signs of morphing or forgery could be detected.**

(5). **The man exposed in the standard photographs marked as S1(a) to S1(e) and the man exposed in the C.C.T.V recordings in 1, 3 & 4 (results) are found to be the same.**

(6). The picture files mentioned above in result no. 2 as proof 1 & proof 2 are enclosed in the report as figures which are marked as Ext. P168 (a) & (b). The call log details and G.P.S locations were retrieved from the Questioned mobile phones marked as Q5 (MO13) and soft copy of the same is enclosed in folders named Call log from 2.5 and G.P.S location from 2/5 respectively in

annexure 6 pen drive. The call log on 9.5.2020 to the number 97450016178 could not be retrieved from the Questioned mobile phone marked as Q5. The data present in Q5 was extracted by logical and file system method. Thus most of the deleted data could not be retrieved. Annexure 6 is a 16 G.B pen drive in which soft copy of all the data retrieved by PW72 was marked as MO30.

Report number D.D 118/2020 dated 30.7.2020 is prepared after examination from 18.6.2020 to 29.7.2020. The items examined were nine Questioned mobile phones, nine Questioned sim cards, one Questioned memory card, four mobile phone batteries, one mobile charger, one data cable and three standard photographs were supplied. The MO's were examined and the report was prepared. It bears his signature and his office seal, and marked as Ext. P169.

Q1 is a Realme mobile phone shown to PW72 which is marked as MO31.

Q2 is a Nokia make mobile phone corresponding to MO3.

Q3 is an ITEL mobile phone corresponding to MO4

Q4 is a Lava make mobile phone corresponding to MO9

Q5 is a Samsung make mobile phone.

Q6 is a Xaomi make mobile phone shown to PW72 which is marked as MO32.

Q8 is a Lava make mobile phone corresponding to MO10.

Q9 is an Oppo make mobile phone corresponding to MO12.

The standard photographs supplied for comparison and marked as S1 to S3 are item numbers 26 to 28. That photographs are separately shown in page number 5 which is marked as Ext. P169 (a).

The results of examination are :-

(1) Image files named I.M.G 20200226, 073600 to I.M.G. 20200226073603 abd I.M.G 20200226073607 showing the man exposed in the standard photographs marked as S1 to S3 with a snake were retrieved from the phone memory of the Questioned mobile phone marked as Q1 (MO31). The images were captured On 26.2.20 7.36 a.m by Oppo make mobile phone. The retrieved image files and file properties are enclosed in the report. Photographs were marked as Ext. P169(b) (page no. 6).

The image files exposing snakes kept in a transparent bottle were retrieved from the Questioned mobile phone marked as Q1 and are enclosed in the report. Photographs in page 7 is marked as Ext. P169(c).

Internet activities present in the Questioned mobile phone marked as Q1 (MO31, the mobile phone of accused) were analysed and it reveals the following information :-

The screen display of mobile phone showing internet activities were captured and are enclosed in annexure (2), in 29 pages which is marked as Ext. P169

(d). On analysis of internet activity on 31.10.19, 19.12.19, 27.1.20, 15.2.20,

26.2.20, 28.2.20, 1.3.20, 2.3.20, 4.3.20, 5.3.20 searches are made regarding Viper. On 10.2.20, 14.2.20, 17.2.20, 18.2.20 and 13.3.20 searches were made regarding Suresh Chavarcavu. On 27.2.20 the mobile phone is used for searching Kuzhimandali Snake images. On 27.1.20, 10.3.20, 28.3.20 and 2.5.20, internet searches were made from the above mobile phone regarding Cobra. On 10.3.20 Cobra venom extraction was searched in the internet by this mobile phone. On 12.5.2020, the mobile phone was used for watching karma news snake bite. The time of searches are mentioned in the mobile phone.

Image files exposing a written complaint submitted by Sri. Suraj S. Kumar (the accused) to the Hon'ble Chief Minister of Kerala and screen shot of an e-mail send by Deputy Secretary, Chief Minister's Computer Cell about the complaint were retrieved from the Questioned mobile phone marked as Q1 and hard copy of the retrieved files are enclosed in annexure-4. Annexure-4 contains nine pages, 8 pages of written complaint and one page of receipt which is marked as Ext. P169 (e). Image files showing the men exposed in the standard photographs marked as S1 & S2 with a snake were retrieved from the phone memory of Questioned mobile phone (Q7) (MO32). The retrieved images are enclosed in page number 15 of the report, which is marked as Ext. P169 (f). The Questioned mobile phone marked as Q7 was used for

searching Anali snake and viewing image file of viper on 3.3.2020 at 10.49

a.m & 10.50 a.m. The retrieved images are enclosed in page number 29 of annexure 2.

Image files named I.M.G 20200507085747, I.M.G 20200507085749, I.M.H 20200507101344 and I.M.G and I.M.G 20200507101345, exposing a snake were retrieved from the phone memory of the Questioned mobile marked as Q8. The retrieved images are enclosed in page number 16 of the report which is marked as Ext. P169(g).

The image files named I.M.G 20200226073600, I.M.G 20200226073603 and I.M.G 20200226073607, retrieved from the phone memory of mobile phone marked as Q9 were captured on 26.2.2020 at 7.37 a.m, using Oppo make mobile phone. The retrieved image file and its file properties are enclosed in the report. Soft copy of the image files is enclosed in a folder named data from Q9 in annexure 3 pen drive.

The video file named VID 2020026073644, retried from the phone memory of the Questioned mobile phone marked as Q9 was captured on 26.2.2020 at 7.37 a.m, using Oppo make mobile phone. The retrieved video file and its file properties are enclosed in the report. Soft copy of the video file is enclosed in a folder named data from Q9 in annexure 3 pen drive. Annexure 3 pen drive shown and marked as MO33. Soft copy of all the data retrieved is enclosed in

annexure 3 pen drive. The I.M.E.I number of Questioned mobile phone marked as Q1 (MO31) is 868734040459310. Phone details, phone contacts, text messages, call details, chat details, G.P.S location, image files, audio files, video files etc., were retrieved from the phone memory of the Questioned mobile marked as Q1 and soft copy of the retrieved data is enclosed in a folder named data from Q1 in annexure 3 pen drive.

MO33 pen drive permitted to be displayed by laptop in the monitor of the court.

Data from Q1 page 83 onwards of call details displayed. In page 84 of Q1 call log serial number 1082 shown. It is an outgoing call to a number 9061419459 named Suresh. black. This call was made on 24.4.2020 at 11.31.50 hours. It was not attended. Page 83 call number 1080 shown. This call log serial 1080 is an incoming call from mobile number 9061419459 named Suresh.black.1 on 24.4.2020 at 11.40.11 hours. It is a missed call. Call log serial number 1079 in Q1 in page number 83 is an outgoing call to 9061419459 Suresh.black.1 made on 24.4.2020 at 11.40.49 hours. It was also not attended. The call log serial number 1078 in Q1 is an incoming call from Suresh.black.1 on 24.4.2020 at 11.41.14 hours – 30 seconds duration. Serial number 1073 to 1077 are all missed calls from Suresh.black.1 on 24.4.2020 from 11.44.01 hours, 11.45.05 hours, 11.46.08 hours, 11.46.52 hours and 11.47.24 hours. Serial number 1071 and 1072 are

incoming calls from Suresh.black.1 on 24.4.2020 at 12.52.12 hours and 12.53.19 hours and both are missed calls. In Q1 page number 7010 regarding S.M.S is displayed. Serial number 75 of S.M.S message shown. It is from V.O.Hdf.cvk an incoming message on 24.4.2020 at 11.31.13 hours. The message was read by user. The message content was 'you have withdrawn Rs.5000/- via debit card XX8706 at S.I.B, Ezhamkulam on 24/04/2020 at 11.31.05 hours. Available balance Rs.9975.26/- Not you ? Call 18002586161. (it was on 24.04.2020, that the accused and PW1 met at Enathu, and PW1 handed over the Cobra to the accused. These calls denote their communication on that day.)

The report of Q1 mobile phone details contains one lakh thirty nine thousand two hundred and eighty seven pages.

170. This Court issued summons to the Office of the Chief Minister, Government of Kerala to cause the production of hard copy of the e-mail send from, the e-mail address surajskumar1993@gmail.com, the e-mail address of the accused, to the e-mail of the Chief Minister, with the copy of the attachment and those were produced along with the certificate U/S 65 B of the Evidence Act. It was marked as Ext. C1 series. It reveals that the exact copy of Ext. P16 complaint was forwarded by the accused to the Office of the Chief Minister of Kerala, vide e-mail dated 20.5.2020.

171. In cross-examination, PW72 testified that MD5 hash value is the mathematical representation of digital data and is said to be a finger print of digital data. If the digital data is tampered hash value will change. In his report MD5 hash value is specified for each and every device. **If there is any tampering or forgery, it will be reported in the report or annexure. Since, the forgery is not reported, it is not specifically mentioned.** To a suggestion that he has aided in tampering, he has not mentioned the MD5 hash value after extraction of data, he answered that internationally accepted forensic tools are used for extracting data, during extraction the forensic tool will generate hash value of each and every data and it will automatically generate along with a report and he denied that suggestion. He has retrieved data from Q1 hard disc as per request only from 1.1.19 to 7.5.20. For verifying and examining picture video files, the tool 'Forensic Image Analyser' is used. Since the properties of the images in Q2 C.D. were not asked to be retrieved the retrieved data does not reflect the same. **He has not found any forgery or tampering in the images in 'YouTube'.** However, since it was not specifically asked it is not mentioned. **The deleted data from Q5 mobile could not be retrieved since the extraction was made by logical and file system method. For mobile phone extraction, the number one software in the World 'Celebrite Ufed'**

hardware plus software device is used. He stated that the 'YouTube' search history from the mobile is also based on Google account search history. The Google account details can be saved in mobile phone as well as in Cloud. So, even if the mobile phone is destroyed that data can be retrieved. He has examined only those data that were requested in the forwarding letter.

172. This Court has also perused and considered Ext. P167 series to Ext. P169 series Cyber Forensic analysis reports submitted by PW72. Inter alia it is found that the images of accused handling a snake, on 26/2/2020, captured in the MO12 mobile phone of PW7 and found in memory the MO31 mobile phone of accused, the visuals of accused entering the A.T.M counter on 24/4/2020 etc., are genuine and not morphed. The Internet and YouTube searches made by accused By MO31 mobile etc., are also retrieved and those are genuine and the accused had made constant searches for snakes, viper snakes, cobra etc. The details of searches and probative value of these images and visuals and YouTube and Internet searches will be stated at the time when relevant facts are decided.

173. PW80, U. Suresh Kumar, D.N.A. Examiner, Rajeev Gandhi Centre for Bio-Technology, Kariyavattam testified as follows. He received the samples related to Crime No. 1540/20 of Anchal police station for D.N.A

analysis. The samples were 14 in number. Out of which serial numbers 1 to 4 were scales, muscles and bones of naja naja (Cobra). Serial number 5 were fangs of naja naja. Serial number 6 was a transparent bottle. Serial number 7 was a black coloured shoulder bag, serial number 8 was a bed sheet (T.R. No. 183/20 – List 1 item NO. 2), serial number 9 was a sample T.R. 200/20 item No. 1, serial number 10 was a bed sheet (T.R. NO. 203/20 item No. 2), serial number 11 was a night gown (T.R. No. 203/20 Item No. 3), serial number 12 was a skirt (T.R. NO. 203/2- Item No. 4), serial number 13 was blood samples said to be Uthra (T.R. NO. 216/20 List 1 Item No. 1), serial number 14 was skin and soft tissue around the site of the bite in T.R. No. 240/20 Item No. 1. After standard procedure and examination, he prepared Ext. P183 D.N.A analysis report, which bears his signature and office seal. **After the analysis it was concluded that serial numbers 1 to 5 belong to the species naja naja, common name Indian Cobra. Serial number 5 fangs were analysed for human D.N.A., but was not found. D.N.A obtained from serial No. 6 transparent bottle contained D.N.A from naja naja (Indian Cobra).** Swabs were taken from inside the said transparent bottle. The cells of the body parts adhering to the inside of the plastic bottle would be collected in the swab. Those will not be visible through naked eye. But on examination of such swabs they were able to collect D.N.A of naja naja. The swabs were collected

using standard protocol. Swabs were also collected from inside of item number 7 shoulder bag. No suitable D.N.A for analysis was found from swabs taken from item number 7. Serial numbers 8, 9, 10, 11 and 12 portions were removed and were subjected to D.N.A extraction following standard protocol. Human D.N.A profiles were obtained from these samples. D.N.A profiles of blood samples said to be of Uthra was also done and compared with the D.N.A profiles obtained from serial numbers 8 to 12. Serial numbers 8, 9, 11 and 13 was of a female D.N.A profile. Serial number 10 bed sheet yielded mixed D.N.A of male and female. Serial number 12 yielded a male D.N.A. On comparing blood samples said to be of Uthra, it matched with serial numbers 8, 9, 10 and 11. Serial number 14 did not yield sufficient D.N.A for P.C.R amplification and identification of Indian Cobra. Ext. P193 contains details of examination as annexure. It could not be identified whether both the snakes D.N.A contained in item number 6 and item numbers 1 to 5 are of the same snake. It can only be stated that both D.N.A's are of the same species naja naja. They do not have markers for individualization of Indian Cobra. It is possible to get D.N.A from a washed cloth. The possibility of getting snake's D.N.A from the site of the bite is very minimal even if it was tested soon after the bite. The witness identified item number 6 bottle (MO1) shown to him.

174. In cross-examination, he stated that the D.N.A finger print of a living being is specific and unique, except for clones. The D.N.A extracted from serial numbers 6 to 12 are from sources like skin tissue, body fluid, hair and nails. As per Ext. P183 D.N.A was extracted from bed sheet and other items. No human D.N.A was identified from item number 6. To a question that there was no possibility of item numbers 6 & 7 being in the possession of the accused, he stated that it cannot be said so because the possibility of getting D.N.A from a source of sample depends on various factors, like environmental conditions, micro organism, storage etc. So, D.N.A may not be obtained from all the samples.

175. PW26 Usha Nair, who was the Chief Judicial Magistrate of Kollam during the relevant period testified that on 9.7.2020 the Investigating Officer in this case filed a report before her to record the statement of second accused, named Suresh, in Crime Number 1540/2020 of Anchal Police Station, U/S 306 Cr.PC. The copy of the said statement is shown to her and the same is marked as Ext. P46. The original of Ext. P46 is kept in the office of the Chief Judicial Magistrate, Kollam. Pursuant to Ext. P46 report, she had procured the presence of A2 Suresh (PW1) by issuing Production Warrant. A2 Suresh (PW1) was produced before her on 13.7.2020. She had informed him about the consequences of making statement. She had informed him that he is not bound

to state anything and if he gives a statement it would be used against him in evidence. She had ensured that he was making the statement voluntarily. She had put questions to him as mandated in Criminal Rules of Practice and gave him time for reflection till 16.7.20 and remanded him. On 16.7.2020 PW1 was produced before her. She had examined him in the Court hall after closing the door. At that time she had specifically asked whether he was ready to give statement voluntarily. She was satisfied that he was giving the statement voluntarily. She had also given him the necessary warning. Thereafter, he gave the statement which was recorded by her. She identified Ext. P2 statement which bears her signature and seal. At the foot of Ext. P2 she had written memorandum specifically mentioning that PW1 was given warning and that she was satisfied that he was giving the statement voluntarily. Thereafter the Investigating Officer filed a report informing about his satisfaction about the full and true disclosure made by PW1 about the facts of the case. The copies of relevant pages from original file produced by witness was taken after comparison. Copies were furnished to the defence and Prosecutor. The original file regarding the proceedings with respect to PW1 was shown to her. The copy of the proceedings dated 13.7.2020 wherein time for reflection was given to PW1 was produced and the same was marked as Ext. P48 after comparing with original which bears her seal and signature and the signature of PW1. The

copy of the report given by Investigating Officer informing that PW1 has given statement to the satisfaction of Prosecution for proceeding U/S 306 Cr.PC was shown to her and the same was marked as Ext. P49 after comparing with original which was in the office file. On 27.7.2020 she had caused the production of PW1 in her Court. Again he was warned that he is not bound to give statement and even if he is transposed as an approver at anytime he can be made as an accused and tendered him pardon on condition of making a full and true disclosure of the facts of the case. She had ensured that he was giving statement voluntarily. PW1 had accepted the tender of pardon. Thereafter, she again recorded his statement. Ext. P3 bears her signature and office seal and the signature of PW1. Certified copy of proceedings tendering pardon is marked as Ext. P50. In Ext. P50 the reason for tendering pardon and the fact that the accused (PW1) has accepted the pardon is stated. After tendering pardon she had directed the Magistrate taking cognizance to record the statement of PW1. **The tender of pardon was granted after she was satisfied that the statement was given by PW1 voluntarily.**

176. PW48 Ambili Chandran, who was working as Judicial First Class Magistrate-I, Punalur on 4.8.2020 testified that pursuant to the order of the Chief Judicial Magistrate dated 30.7.2020 she has recorded Ext. P4 statement of PW1 U/S 306 (4) Cr.PC. She has complied all the legal formalities before

recording the statement of the Approver and was satisfied that the statement was given voluntarily. She also stated that Ext. P1 application made by PW1 was forwarded to her with covering letter by the Superintendent of Special Sub Jail, Mavelikkara.

177. PW16, Arun Raj, a resident of Eram in Anchal testified that he is an attester to Ext. P17 mahazar dated 29.5.2020 prepared with respect to a car in the residence of PW2. On inspection of the car, the copy of the R.C book, driving licence and a strip of Monty L.C tablets marked as MO16 was seized by the police. He identified the copy of the R.C book and insurance certificate which were marked as Ext. P18. In cross-examination he stated that the vehicle was examined by a lady and she recovered the articles.

178. PW17, Navas testified that he has signed in Ext. P19 mahazar prepared by the police while recovering MO1 plastic jar from the back side of an old house, situated near the house of Uthra. According to him the accused led the police to the said place and pointed out the jar hidden under the garbage to the police. Thereafter, the police seized the jar and it was examined. Thereafter, MO1 was affixed with a slip and it was sealed. In cross-examination he stated that there is a sacred grove and temple situated nearby in the locality.

179. PW18 Ajeem testified that he is conducting a pan shop near the Enathu old road. He has signed in Ext. P20 prepared by the Investigating Officer in the month of May, 2020. When the police produced the accused near his shop, the accused pointed out a spot and the mahazar was prepared in respect of the said spot. In cross-examination he admitted that the new M.C road is parallel to the old M.C road. He admitted that due to Covid pandemic in May, 2020 there was a police check post in the locality and the identity of the persons passing the district border were verified in the check post.

180. PW20 who is the Secretary of Branch No. 452 of Eram S.N.D.P Union testified that PW2 and his family are members of the said branch. He has produced the marriage register in which the marriage details of Uthra and the accused are recorded and obtained it back on interim custody. He produced the original register along with the photocopy of the relevant page No. 41. The page No. 41 of the marriage register was compared with the original and found correct and the photocopy was marked as Ext. P24. The marriage certificate (‘പത്രീക’) issued from the branch of the accused is also affixed in the marriage register and it’s certified photocopy is Ext. P25. It is recorded in the marriage register that at the time of her marriage Uthra was adorned with 90 sovereigns of gold ornaments (720 grams). The quantity of gold ornaments is recorded on

the basis of the consensus of the parents of the bride and bridegroom and both the parents and bride and groom have signed in Ext. P24.

181. PW27 V. T. Thomas who is conducting Leo Drugs and Chemicals, Kozhencherry testified that he is the distributor of Okacet tablets. He supplies Okacet tablets to Adoor J.J. Medicals and has issued a sales report. Ext. P47 is the print out of the sales register and it was marked subject to proof for want of 65 B certificate. As per Ext. P47 (a) entry, Okacet tablets having batch number N 390148 was supplied to J.J. Medicals, Adoor. In cross-examination he testified that he had purchased Okacet tablets from T. K. Distributors, Aluva. He stated that after the sales register page is closed it cannot be edited in the computer.

182. PW28 George Varghese Mathew who is conducting the J.S Pharmaceutical distribution business at Adoor testified that he has the agency of supplying Monty L.C tablets. He had supplied Monty L.C tablets to J. J Medicals, Adoor from 18.4.19 to 21.9.19. The print out of the said sales report was marked as Ext. P51 subject to proof for want of 65 B certificate. According to him the batch number of the Monty L.C tablets supplied to J. J. Medicals is T 8121.

183. PW29 John Zacharia who conducts J. J. Medicals at Adoor testified that the accused is employed in H.D.F.C bank situated near his shop and he is a customer of the said shop. In his shop allopathic, ayurvedic and veterinary medicines are sold. He purchased Monty L.C tablets from J. S. Pharma conducted by PW28 and Okacet tablets from Leo Drugs and Chemicals conducted by PW27. The Investigating Officer has seized the hard disc containing sales details from his shop. All the sales of medicines from his shop are not billed. The hard disc of the computer contains the details of the supplier company, the batch number and expiry date. Estrona forte bolus, a veterinary tablet is sold from his shop. He had also identified the accused.

184. PW45 Spenser Bose is the photographer of the Kerala Police department in Kollam Rural division. He visited the residence of Uthra on 25.5.2020 along with the Investigating Officer and the accused and participated in the procedures. **The accused led the police party to the back side of an uninhabited house situated near the residence of Uthra and pointed out a spot near the wall where cadjan leaves, coconut husks and some sacks were dumped. When a police officer removed the cadjan leaves and coconut husks, MO1 jar was found.** Ext. P114 series are the photographs relating to the recovery and Ext. 115 is the certificate U/S 65 (B) of Evidence Act. At the time of recovery, the police party was accompanied by the Finger Print Test

Inspector under whose direction a police officer picked up MO1 and handed it over to the Finger Print Inspector. Thereafter, he (PW47) developed finger prints from MO1 jar and photographs were taken. Ext. P116 is the photograph of the finger print taken by him from MO1 jar. Ext. P117 is the photograph of the specimen impression of the finger print of the accused. MO23 is the C.D of the said photographs. On 26.5.2020 he took Ext. P118 series photographs pertaining to the exhumation process of the snake carcass from the premises of the house of the deceased Uthra. Ext. P119 is the certificate U/S 65 B of the Evidence Act. On 29.5.2020 he has taken Ext. P120 series photographs pertaining to the recovery of the tablets from beneath the floor mat of the car and the residence of Uthra. Ext. P121 is the certificate U/S 65 B of the Evidence Act. On 1.6.2020 he has also taken Ext. P122 series photographs when search was conducted in the residence of the accused. Ext. P123 is the certificate issued U/S 65 B of the Evidence Act. On 6.6.2020 also he took Ext. P124 series photographs when evidence was collected from the residence of the accused and Ext. P125 is the certificate issued U/S 65 (B) of the Evidence Act. He has taken Ext. P126 series photographs from different angles of the accused. Thereafter, he video graphed the live demonstration conducted on 28.7.2020 at Arippa Forest Institute. Mavish Kumar who handled the snake, Deputy Director Anwar, the investigating team and Punalur Tahsildar were present at

the time of the said modus operandi test. MO24 is the C.D of the said video which is edited by incorporating only the relevant visuals. He also recorded the video of the modus operandi test using a Viper, conducted at the Arippa Forest Institute on 6.8.2020 and MO25 is the C.D. In cross-examination, he clarified that only the relevant parts of the test are included in the videos. Since the duration of the video is very much, the irrelevant visuals were edited. The relevant visuals were informed to him by the Deputy Director Anwar and Mavish. In cross-examination he admitted that in Ext. P114 (g) photo, mud could be seen attached to the coconut husks which were near MO1 jar. He clarified that the mud could have fallen from a crack in the wall of the building.

185. PW46 Ullas. U.R, a photographer testified that he took Ext. P127 series photographs at the time of inquest of Uthra and Ext. P128 is the certificate issued U/S 65 (B) of the Evidence Act.

186. PW47 Renjith Babu. C, who was working as Tester Inspector in Finger Print Bureau, Kollam deposed that on 25.5.2020 he accompanied the investigating team to the scene of occurrence. The accused pointed out a plastic bottle. He gave direction to a police officer to pick up the bottle by its lid, since it was a corrugated surface. Thereafter, he developed 7 chance prints which were photographed by the police photographer. Out of the 7 chance prints, 5 were unfit for comparison. On search using the auto finger print

identification software, the remaining chance prints were untraced. Thereafter, when the specimen print slips of the accused were verified it was found to conform with the chance prints. One impression was that of the right thumb and the other was that of the right ring finger of the accused. He gave Ext. P129 report mentioning the reasons for the conclusion. The photographs of the finger prints collected by him and the specimen finger print impression of the accused are specifically mentioned in the report. He has mentioned 8 identical ridge characters in the finger prints and identified MO1 jar as the article from which the finger prints were developed. He stated that on 28.5.2020 he had submitted a report before submission of Ext. P129. When cross examined, he admitted that as per the basics of finger print examination principles, at first the cap of MO1 was to be inspected. However, since the cap has corrugated surface he could not develop chance prints from the same. He was sure that no chance prints would be recovered from the cap of MO1 and hence he asked the police officer to take MO1. He admitted that as per the photograph he was holding MO1 without wearing gloves. He also admitted that his assistant Varghese was wearing gloves at the time of examination. When powdering was done, no powder fell inside MO1 jar. According to him, if there is no disturbance even an old finger print can be developed. He does not remember whether there was dust when MO1 was recovered. He denied the suggestion

that after finger prints were developed it had to be imposed in silver transfer sheets.

187. PW22 Pravitha. M, who is the Manager of the Kerala Gramin Urban Bank, Anchal branch (erstwhile North Malabar Gramin Bank) testified that the accounts of PW2 and 'Uthra Agencies', operated by PW2 are maintained in the said branch. Ext. P31 is the attested copy of the account opening form and connected records of the account maintained by PW2 and Ext. P32 is the certified extract of the account statement. Ext. P33 is the account opening form of Uthra Agencies and Ext. P34 is the statement of accounts. The account opening form of Uthra is Ext. P35 series and the certified extract of the account statement of Uthra is Ext. P36. Ext. P37 series is the vehicle loan application submitted by Uthra and Ext. P38 is the certified extract of the said loan account. As per Ext. P33 series on 9.2.2018 Rs. 1 lakh was transferred to the accused and on 17.2.2018 Rs. 2 lakhs was also transferred to him. As per the same Ext. P33 series, almost on every month Rs.8,000/- was credited to the account of the accused. In cross-examination PW22 admitted that it is mentioned in the account opening form that Uthra was a graduate.

188. PW23 Aneesh Joseph, who is the Manager of Adoor branch of Indus Ind Bank testified that he produced Ext. P39 certified extract of account statement of S.K.S Auto Enterprises. As per Ext. P39 on 27.5.2019 an amount of Rs.2,76,300/- was credited to the said account from the Federal Bank account number 10420100286556.

189. PW24 Harish Kumar is the Manager of H.D.B Financial Services, Adoor branch. He testified that the accused was employed as a collection officer in the said branch. H.D.B Financial Services is the non-banking financial company of H.D.F.C Bank. The office hours commences at 9.30 a.m. Even if the accused is late for duty he would be permitted to sign the attendance register and there is no need to sign in the afternoon. He produced the service records of the accused before the Investigating Officer. Exts. P40 and P41 are the certified photocopies of the appointment letter and cumulative pay slip. Ext. P42 is the attendance register of 2020 January & February and Ext. P43 is the attendance register for the months of March to June, 2020. **As per Ext. P43 the accused last came for duty on 4.5.2020.** On that day he requested for two days casual leave on the next days for taking his wife to the hospital. The lock down period is marked as 'other duty' in the attendance register. The accused had submitted an application claiming reimbursement of the medical expenses for the treatment of his wife for snake bite and he authorised the same

for submission to the E.S.I. Ext. P44 series is the said application and Ext. P44 (a) is the medical certificate of the Pushpagiri Hospital appended to the same. The collection agents after signing the attendance go to the field and they need come to the office for remitting the cash only in the evening. According to PW24 the collection agents who go to field need not come in between the day to the office other than the evening. PW24 stated in cross-examination that the accused had signed the attendance register on 14.2.2020 and 18.2.2020.

190. PW30 Jyoti. A, who is working as the Manager of Federal Bank, Adoor identified the accused as a customer and account holder of the said bank. According to her, the accused maintains a Savings Bank account and locker facility in the said branch. Ext. P52 series are the documents pertaining to the account opening form (original), the copies of the KYC records etc. The Savings Bank account number of the accused is 10420100286556. Ext. P53 series is the statement of account from 28.4.2018 to 10.6.2020 certified as per the Bankers Book Evidence Act. **She testified that as per Ext. P53 series, the account of the accused was credited with Rs.1 lakh on 9.2.18 and Rs. 2 lakhs on 17.2.2018 from Uthra Agencies. Almost on all months Rs.8,000/- was credited to the account of the accused from Uthra Agencies vide account transfer. On 11.4.2019 the accused pledged gold and availed a loan of Rs. 1 lakh and after deducting fees, Rs. 99,115/- was disbursed.** Ext. P54 is

the loan application form and Ext. P55 is the pledge token. She produced the safe deposit locker register containing the details of the locker facility of the accused to the Investigating Officer and obtained it in interim custody and thereafter, produced the original register in Court along with the certified copy of page No. 124 containing the locker details of the accused. The said page No. 124 was marked as Ext. P56. The locker was jointly opened by Uthra and the accused on 3.4.2018. The locker was opened four times by the accused alone, on 11.4.2019, 7.5.2019, 18.5.2019 and lastly on 2.3.2020. Thereafter, the accused, a relative of Uthra and a police official came to the branch and sought for permission to open the locker. However, permission was refused. Ext. P57 is the original agreement signed by the accused and Uthra, when the locker facility was availed.

191. In cross-examination she clarified that on 15.5.2020, since a case was pending, the permission to open the locker was not granted from the Head Office and hence, the accused was not allowed to open the locker. She clarified that on contacting the Zonal Legal Manager he advised against opening the locker since a case was pending.

192. PW31 Manu. M.G, the Asst. Manager of Federal Bank, Adoor testified that he had given the C.C.T.V footage copied in a pen drive to the

police pertaining to the visuals of the accused coming to the locker area on 2.3.2020 at 10.15.47 a.m. The visuals of the pen drive were displayed through the monitor of the Court and the witness identified the accused approaching the counter inside the bank and going to the locker section. The pen drive was marked as MO18 and its certified copy U/S 65 B was marked as Ext. P59. He testified that on 2.3.2020 a staff named Deepthy was in charge of the locker section and in the video clipping Deepthy can be seen taking the key of the locker.

193. PW32 Bidin. M. Das, a Reporter of Asianet News, Pathanamthitta testified that on 14.7.2020 he went to the residence of the accused to cover production of the accused at his house by the Forest Department during investigation. He identified the accused and stated that the accused was brought to his house at 11 a.m., on 14.7.2020. After collecting evidence when they were about to return, he asked the accused whether he had committed the offence and the accused replied in the affirmative. Then another media person asked the accused as to whether he committed the crime alone and the accused affirmed the same and stated that no other person was involved in the offence.

194. PW33 Dinsh. R, a Section Forester in the Konni Forest Division testified that the jurisdiction of Konni Wild Life Division extends over

Pathanamthitta and the areas of Neendakara to Oachira in Kollam district. A striking force is maintained in the department to rescue wild animals which enters human habitats and the details of the rescued animals are entered in a Wild Life Register. He has produced the Wild Life Register of the Konni Forest Division for the period 2016 to 2020 and since it was in regular official use he obtained it back on executing Ext. P60 interim custody receipt. He produced the said register in Court and testified that as per the same no venomous snakes were rescued from Parakkodu area. However, pythons were rescued from the said area. He testified that from the Parakkodu area 5 pythons were rescued during the last 3 years. He admitted that in December, 2020, a Cobra was rescued from the residence of one Aravind, Reghu Vilasom at Parakkodu. On 10.12.2020 a Viper was caught from Adoor Malamekkara area.

195. PW34 Ullas. V, a Section Forester of the Forest Department testified that he has worked in the Rapid Response Team of Anchal Range. The details of rescued wild animals is recorded in the Rapid Response Team register. He has produced the said original register to the Investigating Officer and obtained it back on Ext. P61 interim custody receipt. According to him, as per the said Rapid Response Team register, no snakes were rescued from the Anchal Eram area. Only peacocks and civets were rescued from the said area. In cross-examination he admitted that on several days in 2019 and 2018 Cobras

were rescued from other places in Anchal, like Nettayam and Ayilara. In cross-examination he clarified that he has not stated in the register that Cobras were rescued from Anchal Eram locality.

196. PW43 Sister Lilly Thomas is the Director of the St. Joseph's Mission Hospital, Anchal. She has inspected the hospital records and issued Ext. P113 certificate which shows that only one suspected snake bite on 27.11.17 was reported to the said hospital from the place Eram in Anchal for the last five years. The name of the said person who came with suspected snake bite was Sarada and she was discharged since no venom was detected in her blood. In cross-examination she stated that she had verified the casualty registers of the past five years and issued Ext. P113. The hospital records are maintained in the medical records section. The custodian of the hospital records is the medical records officer.

197. PW53 Dr. Habeeb Naseem, the Asst. Professor and Superintendent in-charge of Parippally Govt. Medical College Hospital testified that he perused the hospital records and issued Ext. P139 certificate stating that from the commencement of the Medical College in the year 2016, no person was brought from Anchal Village to the said hospital for treatment of snake bites.

198. PW55 Dr. Shahirsha, the Superintendent, Taluk Hospital, Punalur testified that he verified the casualty register book and snake bite register of the said hospital and issued Ext. P145 certificate stating that from 2018 to 2020 no person was brought to the said hospital for treating snake bite from the place Anchal Eram. He testified that it is seen from the records that during the said period no person had died in the said hospital after sustaining snake bite.

199. PW56 Dr. Rajkafoor, the Superintendent, Taluk Hospital, Kadakkal testified that he verified the hospital records and issued Ext. P146 certificate stating that for the last five years no person was brought to the said hospital from the place Anchal, Eram for treating snake bites.

200. PW57 Dr. Prasanth. T, the Superintendent of Adoor General Hospital testified that he verified the hospital records and issued Ext. P147 certificate regarding the persons who were brought to the hospital for treating snake bite for the period July, 2018 to July, 2020. Ext. P148 is the certified copy of the casualty report dated 2.3.2020, 3.15 a.m., and Ext. P149 is the covering letter. In cross-examination he clarified that only if a patient is brought with a history of definite snake bite it would be entered in the register as snake bite. The details of Uthra are not mentioned in Ext. P147.

201. PW58 Dr. Abraham Varghese, the Medical Superintendent of Pushpagiri Medical College Hospital, Tiruvalla testified that he had collected the details of the patients treated for snake venom toxic effect from 1.12.2014 to 15.7.2020 and issued Ext. P150 list of patients. He clarified that the native places of some patients are not mentioned in the computer data and the said data is written by hand in Ext. P150. He admitted that as per Ext. P150 a person named Sadasivan, a native of Chittar was bitten twice by snake within a span of one month.

202. PW59 Sister Alphiya, the Administrator of Holy Cross Hospital, Adoor testified that the details of patients who were treated for snake bite in the said hospital for the past five years were verified and Ext. P151 certificate was issued. Out of 15 snake bite cases from Parakkodu area which was reported during the past five years, 14 were non venomous bites and the only venomous snake bite was that of Uthra.

203. PW79 Dr. Shemeer Salam, who was a doctor at Anchal C.H.C testified that he inspected the hospital records regarding the details of persons who sought treatment for snake bite from Anchal Eram and issued Ext. P182 certificate. On verification it was revealed that for the last 5 years, no snake bite cases from Anchal Eram was reported to the said hospital.

204. PW38 Syam. C, who was the Sub R.T.O, Adoor testified that he issued registration particulars of the Bajaj motor cab having number KL/26/K/7273 and the Bullet motor cycle bearing number KL/26/K/1470 as Exts. P100 and P101 respectively. According to him the father of the accused Sri. Surendran and the accused are respectively, the registered owners of the motor cab and the motor bike.

205. PW39 Ajithkumar. N.C, the Joint R.T.O., Adoor testified that he issued Ext. P102 extract of driving licence of the accused as per which he was authorized to drive L.M.V and the motor cycle with gear. He has also issued Ext. P103 extract of the driving licence of the father of the accused as per which he is authorized to drive heavy vehicles and the licence is valid, till 22.9.2024.

206. PW40 Kala. S, is the Village officer, Adoor, who prepared Ext. P104 site plan of the Sree Surya house having No. XIII/183 of Adoor Municipality, the residence of the accused. She has also prepared Ext. P105 location sketch showing the distance to the nearby B.S.N.L, Jio and Airtel mobile towers from the said house. On 01.06.2020 she accompanied the police officers for the purpose of searching the said Sree Surya house and had attested Ext. P106 search list. MO19 wedding album of Uthra and the accused, MO20

their marriage C.D, MO21 strip of Okacet tablets and MO22 hammer were recovered in the search. Thereafter, she accompanied the police officers to J. J. Medicals, Adoor and has witnessed the seizure of computer hard disc after verifying the cash entry book and signed in Ext. P107 mahazar. She stated that the residence of the accused is situated at a distance of 200 metres from Karakka junction by the side of the road. According to her there are several roads some of which allow only two wheeler traffic from Parakkodu to Eenathu.

207. In cross-examination, she testified that the roads which allow two wheeler traffic only are narrow. She stated that by proceeding through the canal road from Parakkodu, Eenathu can be reached. The narrow roads from near the Parakkodu Emson Hotel leads to Eenathu. She stated that she has gone in a two wheeler through the narrow road leading from Vadakkadathukavu by the side of the Police Camp and from near the Arukalikkal Temple to Enathu. According to her, MO21 strip of tablet was recovered from the kitchen. She admitted that on the eastern side of the Sreesoorya house a rubber estate is situated and on the western and southern sides there are agricultural fields. She admitted that on the eastern side of the Ezhamkulam – Pathanamthitta road, the area coming within Adoor Village is not situated. She admitted that as per Ext. P105 the location of Airtel and B.S.N.L towers are in Ezhamkulam Village. It

was elicited that on the western side of the Parakkodu and Vadakkadathukavu the entire area is that of Adoor Village. She gave an evasive reply to the question whether the Airtel tower is within the limits of Adoor Village and stated that she does not remember the exact location of the said tower.

208. PW41 Rajanimol, who was working as Village Officer, Enathu testified that she prepared Ext. P108 location sketch showing the positions of mobile towers and the shop of Ajeem, situated near the old M.C. road at Enathu. In cross-examination, she had to admit that the location of Sajan Buildings situated to the west of the old M.C. road is mistakenly shown in Ext. P108. She also stated that the location of the grotto in Ext. P108 is also mistakenly shown. She gave evasive replies as to whether there was High Mast light and police surveillance camera in the road divider. She also was not able to remember the location of the Co-operative Bank and say whether A.T.M counters were working in the Sajan Buildings. She was also not able to state whether a Federal Bank branch accessible from both the old and new M. C. roads was functioning there. She admitted that Enathu is the district border. She is not aware of the existence of surveillance cameras in the Enathu bridge. According to her the place Kaithaparambu is situated in the border of Enathu, Ezhamkulam and Enadimangalam Villages.

209. PW42 Santhosh Kumar. M.R, who as working as the Village Officer, Anchal testified that he visited the scene of occurrence and prepared Ext. P109, the location sketch. The location sketch mentioning the mobile towers nearby to the scene of occurrence is prepared as Ext. P110. He has issued Exts. P111 and P112 detailed property statements of PW2 and PW4. He has witnessed the exhumation of the carcass of the snake from the premises of the said house on 26.5.2020. In cross-examination he admitted that as per Ext. P109 only the north-eastern room in the ground floor of the house was bath attached. The place Panayamcherry shown in Ext. P110 is at a distance of 1 km from the police station.

210. PW82 Pushpakumar. G, who was working as Sub Inspector of Police, Anchal police station on 8.5.2020, testified that as instructed by the Station House Officer, he visited the scene of occurrence and prepared Ext. P186 scene mahazar. On 9.5.2020 he called the accused to the police station and interrogated him. On 10.5.2020 he obtained the opinion of a snake rescuer. Thereafter, on 16.5.2020 he inspected the residence of the accused and the hospital. As per his direction PW81, collected the treatment details of Uthra from the Pushpagiri Medical College Hospital and those were forwarded to the Sub Divisional Magistrate Court. He seized MO2 bag from the residence of deceased Uthra. At the time of seizure a strip of Estrona forte bolus (MO11

series) tablets was found inside MO2. Ext. P88 is the seizure mahazar. Thereafter, the investigation of this case was taken over by the Crime Branch, Kollam. According to him, the scene of occurrence is the room situated on the north-east of the Vishu house. Two cots were seen on the western and eastern sides of the said room. There is a dressing room on the northern side and a bathroom is situated to its west. There are two windows on the eastern wall of the said room which is air conditioned with sealed air holes. In cross-examination PW82 stated that he does not remember whether he saw MO2 bag at the time of preparation of Ext. P186 seizure mahazar. On 15.5.2020 no investigation was conducted in this case. He does not know the officer who deputed two police constables to accompany the accused to the Federal Bank, Adoor on 15.5.2020. He has not specifically mentioned the cot in which Uthra had slept. He saw the dress of the child and a walker. It is not mentioned in Ext. P186 that the dress worn by the accused was found in the room. He had not seized the mobile phone of the accused on 7.5.2020. The call detail records of the accused were received after 10.5.2020. There were grow bags outside the eastern wall of the room in which the scene of occurrence is situated. The C.C.T.V cameras in the said house were not working. The suggestion that on inspecting the C.C.T.V cameras he was convinced that there was no ground to suspect the accused was denied. PW4 has given a statement to him as Ext. D5

contradiction. PW2 had given a statement marked as Ext. D4 contradiction, to him. He admitted that on the western side of the house there were rubber trees and other vegetation. MO2 bag was produced by PW3 from the said house.

211. PW84 Anoop Krishna. R.P, who was a member of the investigation team in this case testified that on 17.7.2020 he prepared the inventory of sales report of Monty L.C tablets having batch number T 8121 from the J. S. Pharma, Adoor to J. J. Medicals, Adoor and prepared Ext. P192 inventory. Ext. P51 is the said sales report.

212. PW78 Jayan. B. R, who was working as Range Officer, Anchal Forest Range stated that he registered O.R. No. 1/2020 on 24.5.2020 against PW1, the accused and PW3 on the allegation that a Cobra, which is included in schedule-II Part 2 of Wild Life (Protection) Act was illegally possessed. Ext. P176 is the certified copy of the said O.R. He recorded Ext. P177 statement of PW3 (Ext. P177 marked subject to objection). Thereafter, he conducted a raid in the house of PW1 at Kalluvathukkal on 24.5.20 and seized a Cobra which was kept inside a jar after preparing the seizure mahazar. On the basis of the said seizure of a wild animal, he registered Ext. P178 O.R. On 17.6.20 he obtained police custody of PW1 and the accused. After giving PW1 and the accused, time for recollection and warning that any confession statement given

by them could be used against them and that they need not give a statement, since they insisted, he recorded their confessional statement. Ext. P5 is the statement given by PW1. According to him, PW1 stated to him that the accused telephoned him and asked for a venomous snake and accordingly, he sold a Russell's Viper for Rs.10,000/- to the accused at his residence at Parakkodu. The Viper was handed over on the pretext of conducting a demonstration. Thereafter, he sold a Cobra which was caught from Aalamcodu for Rs.7,000/- to the accused. PW1 also told him that on 9.5.20 the accused called him and informed him that his wife had died due to snake bite and forbade him from disclosing the purchase of snake to anyone by threatening that if he disclosed that fact he also would be arrayed as an accused. The accused also told PW1 that his wife was mentally retarded and hence, he committed the act. Likewise after giving time for reflection to the accused on the basis of the request of the accused, he recorded his confession statement. Ext. P179 is the confession statement of the accused, which was marked subject to the objection of admissibility made by the defence. He also registered an O.R, as O.R. 3/2020 pertaining to a Viper against the accused and PW1 and Ext. P180 is copy of the O.R. Ext. P181 series is the certified copy of the Rapid Rescue Team movement register which was obtained on interim custody by PW34. In cross-examination it was elicited that he was ignorant of the fact that PW1 was

summoned to appear before the Chief Judicial Magistrate, Kollam to give statement. The suggestion that on the basis of collusion between himself and the Investigating Officer he obtained custody of PW1 who was granted time for reflection by the Chief Judicial Magistrate, for the purpose of pressurizing him to give statement, was denied. He further stated that from 17.6.2020 to 23.6.2020 both the accused and PW1 were in his custody. It was also elicited that on 24.5.2020 the preparation of the mahazar at the residence of PW1 ended at 8 p.m. He stated that the time of commencement of preparation of mahazar on the said date at the residence of Uthra was mentioned as 8.15 is a mistake and the correct time is 8.45 and he had applied to the Court to correct the said mistake. The snake seized from the residence of the accused was produced before the Court and as per the direction of the Court, it was released in its natural habitat at the place Kattilappara. In re-examination he admitted that PW1 Muhammed Anwar has received snakes from the Rapid Rescue Team, as he was the State Co-ordinator and the Master Trainer of the Project 'Sarppa'.

213. PW85 Ashokan. A, who was working as DYSP in District Crime Branch, Kollam Rural testified that he had conducted the investigation in this case as per the order of the Superintendent of Police (Rural), Kollam dated 22.5.2020 (marked as Ext. P276). He forwarded Ext. P193 report to the S.D.M. Court, Punalur and verified the investigation conducted by his

predecessor. On analysing the call detail records it was revealed that the accused had made phone calls to PW1 Suresh. On 23.5.2020 he interrogated PW1. On 24.5.2020 he interrogated the accused and PW1 separately and jointly and was convinced about their involvement in the offence. Thereafter, he incorporated the offences U/Ss 115, 326, 307, 302 and 34 of the Indian Penal Code and forwarded Ext. P194 report to the S.D.M. Court, Punalur. Exts. P195 and 196 are the reports sent by him to the J.F.C.M – I, Punalur regarding the correct names and addresses of the accused and the commencement of investigation in this case. He arrested PW1 and the accused on 24.5.20. Ext. P197 series are the arrest records of the accused. MO1 mobile phone found in the possession of the accused was seized by describing it in the inspection memo. The arrest records of PW1 are Ext. P198 series. At the time of arrest, MO3 Nokia mobile phone and MO4 Itel mobile phone were recovered by conducting body search of PW1. On interrogating the accused he gave a disclosure statement that he had concealed the plastic jar, near the residence of Uthra and he would point out the said place. On the basis of the disclosure statement, on 25.5.20 along with the finger print expert, he took the accused to the residence of Uthra at Anchal, Eram and proceeded to the back side of an uninhabited house situated nearby and the accused pointed out MO1 plastic jar concealed with cadjan leaves. As per the direction of the finger print expert,

the jar was retrieved and chance prints were developed. Thereafter, slips were pasted in the jar and it was seized vide Ext. P19 mahazar. Ext. P19 (a) is the relevant portion of the disclosure statement made by the accused which lead to the recovery. Ext. P199 is the mahazar prepared when MO31 mobile phone was recovered with the aid of Cyber expert from the possession of the accused. Ext.P200 is the mahazar prepared likewise while recovering the mobile phones from PW1. He testified about the twin IMEI numbers of MO31 mobile phone. According to him when the Google App and search menu of MO31 was inspected it was found that searches were made regarding 'Kuzhimandali' snake images, Viper snake images, Moorkhan snake images and PW1 etc. The 'YouTube' search history also reveal searches made to snake related videos. The mail ID of G-mail synced with the MO1 phone is surajskumar1993@gmail.com. On inspection of the WhatsApp history of MO3 mobile phone of PW1, it was found that the mobile number 9207720666 (mobile number of the accused) was saved in the name HDFC Adoor bank and several pictures and chats pertaining to snakes were found send by PW1 to the said mobile phone. He obtained police custody of the accused, till 30.5.2020. The carcass of the snake buried in the premises of the house of Uthra was exhumed and its necropsy was conducted on the spot. The samples produced by the doctor who conducted necropsy were seized by him vide Ext.

P201 mahazar. The accused made a disclosure statement that he would point out the location and spot and on 27.5.2020 at 10.30 a.m., he took the accused to the spot pointed out by the accused near the pan shop of one Ajeem in the tarred road situated near Eenathu old market. He confirmed the said spot by analysing the C.D.R of accused and PW1. Ext. P20 is the mahazar prepared by him regarding the said spot. Ext. P20 (a) is the relevant portion of the disclosure statement made by the accused. He prepared Ext. P202 mahazar pertaining to the room in the residence of the accused where Uthra was bitten by the Viper. Thereafter, he prepared Ext. P203 mahazar pertaining to the spot pointed out by PW1 from where he had captured the Viper. On 29.5.2020 he prepared Ext. P204 observation mahazar pertaining to the residence of Uthra and its premises. The room situated on the north-eastern portion of the house was air conditioned and its air holes were sealed. On the outer side of the room the windows adjacent to the room of Uthra were having a height of 65 cms from the basement and skirting having a height of 55 cms. He seized MO7 stick used by PW3 to kill the snake, MO8 bed sheet used by Uthra and MO9 her mobile phone, vide Ext. P205 seizure mahazar. He testified regarding the WhatsApp chats made by Uthra from her MO9 mobile to the number saved as 'ചെട്ടന' (husband) which was having number 9207720666. On inspecting the profile of the number saved as 'ചെട്ടന' another number 7907934909 was also seen saved.

On 6.5.2020 at 4.21 p.m., there was an incoming call from the number 7907934909 having duration of 6.9 minutes. He got the Baleno car, bearing Regn. No. KL/25/L/3232, examined by PW44, the Scientific Assistant. MO16 strip of Monty L.C tablet was recovered from beneath the floor mat of the driver's seat. He filed Ext. P206 report correcting the batch number of the Monty L.C tablet mentioned in Ext. P17 seizure mahazar. He obtained police custody of the accused, till 4.6.2020. On 1.6.20 at 12.25 p.m., he conducted search of the residence of the accused at Parakkodu and Ext. P106 is the search list. MO19 wedding album, MO20 wedding C.D and MO21 Okacet tablet strip were recovered from the residence of the accused. He had also seized the mobile phones of the parents and sister of the accused, vide Ext. P207 seizure mahazar. He seized Ext. P142 disability certificate of Uthra produced by PW2. The key of the locker facility in the name of the accused and Uthra, maintained at Federal Bank, Adoor branch, was produced by the sister of the accused and he seized it, vide Ext. P209 seizure mahazar. He seized MO10 mobile phone containing the images of the dead snake, vide Ext. P210 seizure mahazar. The locker register of Adoor Federal Bank where Uthra and the accused had availed a locker facility was seized by him. However, it was returned since it was in daily use. Ext. P50 is the relevant extract of the pages of the locker register. Ext. P211 is the mahazar pertaining to the locker register. On 3.6.2020 he

seized Ext. P55 pledge card and Ext. P54 loan application pertaining to the gold loan availed by the accused from the Federal Bank, Adoor. He seized the said documents, vide Exts. P212 mahazar. MO12 mobile phone in which PW7 had recorded the demonstration made by PW1 using snakes in the residence of the accused was seized, vide Ext. P213 mahazar. He prepared mahazars with respect to the motor cycle, bearing Regn. No. KL/26/K/1470 owned by the accused and Ext. P12 Ambassador car, bearing Regn. No. KL/16/B/5171 in which PW1 had transported the Viper. **On inspection of MO12 the images and videos of the accused standing with a snake and PW1 besides him were found.** He seized the Honda Activa scooter, bearing Regn. No. KL/02/BE/2823 in which the accused had transported the Cobra, and its records, vide Ext. P216 mahazar. Ext. P57 is the application submitted by the accused to open a locker at Adoor Federal Bank. He surrendered the accused in Court on 4.6.2020 and again obtained his police custody on 8.6.2020. He took the accused to his residence at Parakkodu and the accused produced MO27 bed sheet in which Uthra was lying when she was bitten by the Viper, which was seized vide Ext. P218 mahazar. He collected Ext. P166 CDs and specimen signature from the accused. MO4 and MO5 night gown and skirt worn by Uthra, when she was bitten by the snake was seized by him, vide Ext. P220 mahazar. The photographs of the accused, PW1 and CW16 were taken by PW45 and he

seized the same, vide Ext. P221 mahazar. Exts. P222 to P224 photos of the accused, PW1 and CW16 and Ext. P225 65 (B) certificate were marked. He seized Ext. P16 complaint filed by the accused before the Kollam Rural District Police Chief, vide Ext. P226 inventory. The photos of the bite marks of the Viper on the person of Uthra which were taken by PW73 was copied into MO28 CD and he seized the same along with Ext. P172 65 (B) certificate, vide Ext. P227 mahazar.. He has also seized MO18 pen drive containing the visuals of the accused visiting Adoor Federal Bank branch, vide Ext. P228 mahazar. Ext. P53 is the account statement of the accused in Federal Bank, Adoor branch which was seized by him, vide Ext. P229 inventory. He has also seized Ext. P152 case sheet and the casualty report book of Adoor Holy Cross Hospital and General Hospital respectively, vide Exts. P230 and P231 mahazars. He identified Ext. P148, the relevant page of the casualty report book. He prepared Ext. P233 mahazar depicting the spot where the Viper was handed over to the accused by PW1. He had also collected the marriage register containing Ext. P25 marriage certificate of the accused and Uthra from the Parakkodu S.N.D.P branch and prepared Ext. P234 mahazar. The marriage register of Eram S.N.D.P branch containing the details of the marriage of the accused and Uthra and the relevant page Ext. P24 was also seized by him. The original registers were returned to their custodians, since those were in regular

use. The visuals of PW1 capturing snakes uploaded in the YouTube channel by S.K. Media were copied into MO37 pen drive by the owner of the channel and he seized it, vide Ext. P237 mahazar. The visuals of the accused approaching the District Police Chief, Kollam Rural on 20.5.2020 to lodge a complaint were captured into MO29 pen drive by CW201 and he seized the same, vide Ext. P238 mahazar. On 19.6.2020 he seized the account statement of the accused at Adoor H.D.F.C bank which were marked as Exts. P27 series and P28, vide Ext. P239 mahazar. He also seized Ext. P30 e-mail and its certificate U/S 65 (B), vide Ext. P240 mahazar. Exts. P31 to P38 account details, account opening form and loan account of PW2, 'Uthra Agencies' and Uthra were seized by him, vide Ext. P241 inventory. On 22.6.2020 he seized Ext. P52 series account opening form submitted by the accused at Federal Bank, Adoor, vide Ext. P242 inventory. On 24.6.2020 he seized MO13 series mobile phone, battery and SIM owned by Eldhose from which the accused had called PW1 on 9.5.2020, vide Ext. P243 scene mahazar. He had also seized the attendance register, pay slip, and appointment letter, marked as Exts. P40 to P43 from the H.D.B Financial Services, Adoor where the accused was employed, vide Ext. P244 inventory. The brought dead register of Anchal St. Joseph's Mission Hospital was seized by him and its relevant extract is Ext. P153. Since the original register was in routine use he released it, vide Ext. P154 receipt. He

had also seized Ext. P247 series case sheet pertaining to the treatment of the mother of the accused in the said hospital, vide Ext. P246 inventory. The visuals of the accused withdrawing cash from South Indian Bank, Ezhamkulam A.T.M on 24.4.20 were copied in MO17 pen drive by PW25 and given along with 65 (B) certificate and he seized it, vide Ext. P248 mahazar. On 29.6.2020 he got the photographs of the accused taken from different angles by PW45. Ext. P126 series are the said photographs and its 65 (B) certificate is Ext. P250. He also seized the Rapid Rescue Team register maintained at the Anchal Forest Station, while wild animals are rescued vide Ext. P251 mahazar. The computer hard disc (MO13) of J.J. Medicals, Adoor was seized by him, vide Ext. P107 mahazar after it was hashed with the help of PW83. He obtained the certified copies of the statements given by PW1 and the accused to PW78. Ext. P14 is the mahazar pertaining to the location from where PW1 had captured the Cobra from the place Aalamcodu. On 13.7.2020 he seized the Striking Force register maintained in the Konni Forest Division showing details of the rescued wild animals, produced by PW33, vide Ext. P252 mahazar and released it on interim custody since it was in regular use as per Ext. P60 receipt. On the same day he also seized Ext. P15 complaint filed by the accused before the Adoor DYSP, vide Ext. P253 mahazar and released the complaint register on interim custody, vide Ext. P254 receipt. On 14.7.2020 he seized Ext. P47 computer print out of

the Leo Drugs evidencing sale of Okacet tablets to J.J. Medicals, Adoor, vide Ext. P255 inventory. On 15.7.2020 he seized MO39 pen drive given by the 'Mathrubhoomi' News Channel, which contains copy of the confession made by the accused to media persons while he was in the custody of Forest officers, vide Ext. P256 mahazar. On 17.7.2020 he seized MO15 pen drive produced by PW12 containing visuals of PW1 capturing a Cobra from the place Aalamcodu after recording its hash value, vide Ext. P258 seizure mahazar. He has also obtained certificates U/S 65 (B) for these electronic records. On 22.7.2020 he visited the District Hospital, Kollam and seized the disability register containing the original of Ext. P140, vide Ext. P259 mahazar. Since the register was in regular use, he released it on interim custody, vide Ext. P145 receipt. He had also took into custody Ext. P127 series photographs taken at the time of inquest of the dead body of Uthra, vide Ext. P260 inventory. On 24.7.2020 he seized Ext. P6 complaint given by PW2 and PW4, to the Kollam Rural District Police Chief, vide Ext. P261 mahazar. On 27.7.2020 he seized Ext. P44, records of the medical reimbursement submitted by the accused, vide Ext. P262 inventory. On 28.7.2020 he seized Exts. P130 to P132 documents filed by the accused before the Child Welfare Committee, Kollam for obtaining custody of his child, vide Ext. P263 inventory. On 28.7.2020 and 5.8.2020 live demonstration using Cobra and Viper were conducted with the permission of

the Chief Wild Life Warden in his presence. *He was convinced that the natural bite of a Cobra would have the same measurements and when an induced bite is made by holding the Cobra, the fang width increases.*

Moreover, the Cobra would not bite otherwise, than on provocation. The Viper is very aggressive in nature and he was convinced that it would bite when it is dropped. Both the live demonstrations were video graphed by PW45. MO24 and MO25 are the CDs in which the live demonstrations are recorded and he has seized the same, vide Ext. P265 inventory. On 7.8.2020 he seized MO23 CDs containing photographs of the finger prints developed from the plastic jar, the expert opinion etc., vide Ext. P264 inventory. He has also seized the photographs taken by PW45, when the exhumation of the dead Cobra was conducted and the Baleno car was recovered, vide Ext. P268 inventory on 8.8.2020. Ext. P269 is the inventory prepared by him while he seized MO14 CD containing visuals of PW1 capturing Viper from the place Oozhayikkodu.

214. While PW1 was undergoing judicial custody, he submitted an application before the J.F.C.M – I, Punalur stating that he is ready to make a disclosure statement. On 9.7.2020 on being convinced that the statement given by PW1 would be advantageous for the prosecution evidence, he filed Ext. P46 application U/S 306 Cr.PC before the Chief Judicial Magistrate, Kollam. On

going through the statement of PW1 recorded by the Chief Judicial Magistrate U/S 164 Cr.PC, he was convinced that it was a vital piece of evidence in this case and he had informed his satisfaction to the Chief Judicial Magistrate, Kollam. On 27.7.2020 the Chief Judicial Magistrate, Kollam tendered pardon to PW1 and he accepted the same. Thereafter, he submitted Ext. P270 report deleting PW1 from the array of the accused and arrayed him as a witness in this case.

215. Ext. P271 series are the forwarding notes submitted by him in the Court, requesting to forward the material objects for expert analysis by various agencies. On verifying the details of persons who had sought treatment for snake bite in Anchal, Parakkodu and nearby areas, he was convinced that in the past five years, no Viper bite was recorded from the Parakkodu area and no Cobra bite was recorded from the Anchal area. Though the father of the accused was arrested in this case, since there was lack of evidence to prosecute him, he was not arrayed as an accused in this case. However, since the parents and sister of the accused had committed the offences U/Ss 498 A, 406 and 201 r/w 34 of the Indian Penal Code, separate investigation is being conducted against them for those offences. Ext. P272 series are the customer application form and connected records, issued from B.S.N.L which shows that the mobile phone having number 9188847317 was issued in the name of PW1. 65 (B)

certificates with regard to MO37 and MO29 submitted by the relevant custodians are produced by him in Court and marked as Exts. P273 and P274. Ext. P275 series are the property lists (KPF 151 A Form) submitted by him in Court while the material objects were produced. According to him, on 25.5.2020 the place at which MO1 jar was concealed was identified as it was pointed out by the accused. After completion of the investigation, he filed the charge sheet before the Court on 14.8.2020.

216. In cross-examination PW85 testified that he has prepared a mahazar depicting the place of meeting between PW1 and the accused at Chathannoor; that the time of said meeting can be deciphered from the C.D.R and that there were no witnesses for the said meeting. The C.C.T.V visuals of the car in which PW1 had travelled on 26.2.2020 en-route the residence of the accused were not available. There was insufficient back up for the C.C.T.V system installed at the Market junction, Parakkodu. According to him, due to the lock down, the C.C.T.V of several institutions were not working and he had not requested the institutions which had installed C.C.T.V to produce visuals. The suggestion that he had verified all the C.C.T.V visuals and was convinced that the Ambassador car of the accused had not passed from the Market junction, Parakkodu to the Karakkal junction, was denied. According to him, there is a video clipping, of the Viper given by PW1, to the accused on 26.2.2020, in the

mobile phone of the accused and it was retrieved in the Cyber Forensic report. PW1 had captured the Viper after about 9 p.m. He admitted that PW1 had the business of second hand sales of vehicles. On 26.2.2020 at about 5 a.m., PW1 had reached the place Ezhamkulam. On preliminary examination, he could not retrieve the WhatsApp history of PW1 from his mobile phone and from MO31 mobile phone of the accused. He had not seen the videos of the Viper captured from Oozhayikkodu in the mobile phone of PW1 and the accused. On his examination there were no visuals in the WhatsApp history of PW1 dated 23.4.2020. It was revealed from the Cyber Forensic report that several chats and videos were deleted. It was informed from the Cyber Forensic Lab that the deleted files on the mobile phone could not be retrieved. He has produced in this Court the copy of the mahazar prepared by PW78 purporting to the search of the house of PW1 and its premises on 24.5.2020. He has not conducted any investigation with regard to a Cobra recovered from the house of PW1 on 24.5.2020. The suggestion that to create false evidence he had colluded with PW78, who recovered a Cobra, was denied. The demonstration using snakes was conducted as per the direction of the Chief Wild Life Warden and PW51 had brought two Cobra snakes for that purpose. The Cobra seized from the residence of PW1 was not used for that purpose. As per the C.D.R dated 23.4.2020 the mobile phone of PW1 was mostly in the tower location of

Meenambalam from 19.43.2016 hours to 21.17.39 hours. He had added that at 21.17.39 hours, the said mobile phone was in the Chirakkara tower location. According to him, on 23.4.2020 after the Cobra was captured by PW1, there were no calls from his mobile to the mobile of accused, but on 22.4.2020 and 24.4.2020 there were calls. He does not know the location of Mankodu tower in which the mobile phone of the accused was found at 12.02.51 hours on 24.4.2020. The said place named Mankodu is near Ezhamkulam and the tower is situated in the Ezhamkulam – Eenathu road. **According to him, on 24.4.2020 the meeting between the accused and PW1 might have taken place in between 11.45 a.m., and 12 hours.** The five missed calls to MO31 mobile phone in between 11.40 to 11.47 hours would have been before their meeting in between 11.45 a.m., and 12 hours. As per the C.D.R the location of MO31 mobile phone has come within Eenathu tower at 11.41.20 hours, as it is noted as Kaithaparambu, via Eenathu in the C.D.R. The place Eenathu is situated in the boundary of Kollam and Pathanamthirra districts and during the initial phases of the lock down, the inter district travel was not strictly curbed. He admitted that there was a check post at Eenathu maintained by the Kollam and Pathanamthitta district police. He stated that during that time, the curbs of inter district travel without passes were not strictly enforced. There was no register maintained regarding the inter district transit vehicles in the check post.

A C.C.T.V is installed in a cross bar in the Eenathu bridge. **He examined all the C.C.T.V camera footage of the said cameras with the aid of an official of the Cyber Cell and found that the vehicle of PW1 had passed the district border on 24.4.2020. The vehicle number is clear, but only the back side of the rider could be seen. According to him, since only the back side of the rider was available he did not forward the visuals for forensic analysis.**

According to him, the C.C.T.V cameras installed in Eenathu town were not working properly and were having short back up and hence, he did not collect the C.C.T.V visuals dated 24.4.2020. There are 11 C.C.T.V surveillance cameras installed in Eenathu. According to him, the C.C.T.V camera installed at the junction of the old M.C. Road and new M.C. Road was not rotating. He does not know whether the said C.C.T.V cameras were installed in 2019 December. The C.C.T.V visuals of the accused at Eenathu on 24.4.2020 was not obtained. According to him, there are several routes to reach Eenathu from Parakkodu. The Eenathu Service Co-operative Bank is situated at a distance of 30 metres from the rendezvous point of the accused and PW1. However, the said building is not near the road and there are no C.C.T.V cameras installed in the same. The A.T.Ms are situated more than 20 metres away from the said rendezvous point. The C.C.T.V of several institutions near the rendezvous point were not working during the lock down period and they were having very

short back up. The owners of the said institutions have stated so to him. The suggestion that on 24.4.2020 the accused had not come to Eenathu and met PW1 and that is why the C.C.T.V footage are not produced, were denied. According to him, the four C.C.T.V cameras installed in the residence of Uthra were managed by the accused. On examination of the said C.C.T.V cameras by an official of the Cyber Cell, it was revealed that there was no recordings and hence, it was not forwarded to forensic examination. Since, the said C.C.T.V cameras were malfunctioning its description were not mentioned in the observation mahazar. He categorically stated that he had proceeded along the premises of the house of Uthra as pointed out by the accused to recover MO1 jar. He admitted that there was no dust in MO1 even though it was found concealed near coconut husks and cadjans. According to him, the Finger Print expert had applied powder to MO1 jar and he has not inspected inside the same for tracing out dust particles. To the suggestion that the IMEI number of MO31 is different in Ext. P61 C.D.R, the mahazar and Cyber Forensic Report, he replied that the handset initially used by the accused was substituted by him by purchasing a new one on 4.1.2020 and its IMEI number is different. The suggestion that the IMEI numbers of MO3 and MO4 mobile phones are varying in the mahazar and C.D.R were also denied by him. Ext. P64 was obtained on the basis of request for IPDR from 18.2.2020, till 9.5.2020. Uthra was taken for

check up to the Pushpagiri Hospital on the last occasion on 5.5.2020 and he has not seized the treatment details pertaining to the check up's. The suggestion that Uthra was prescribed several medicines even after the discharge was denied by him. He admitted that in Ext. P163 it is stated that one Dr. Shama and Sister Priya Jacob have attended Uthra on 3.3.2020, but he had not recorded their statements. It was elicited that as per Ext. P173 it is not seen mentioned that PW73 Dr. Bhuvaneswari had treated Uthra. To the suggestion that it is not recorded in the records of Pushpagiri Hospital that Uthra had sustained Viper bite, he replied that the treatment was given for hemotoxic bite. He stated that since the Viper bite on 3.3.2020 is pertaining to the same transaction, it is forming part of this case. On 16.6.2020 the remnants of blood sample were returned from the analytical lab as per his request. He had requested the Forensic Head of Department to test for Cobra venom. He denied that the tests mentioned in Ext. P158 are unscientific and it was issued as per his request. He admitted that when the accused had made confession to the media persons, he was in the custody of Forest officials. The suggestion that on the basis of his direction PW78 obtained custody of the accused and PW1, to coerce PW1 to become an approver, was denied. According to him, PW1 has committed the offence U/S 115 of the Indian Penal Code. On the date of her death, Uthra was lying with her head pointing towards north. However, in the mahazar, the cot

on which Uthra had slept is not specifically mentioned. He admitted that on 18.5.2020 PW2 had filed a complaint before the Child Welfare Committee stating that on the date of death of Uthra, her child was in his custody. However, on the date of occurrence the child was not in Uthra's house. During the initial phases of the investigation the Anchal police had collected the C.D.R of the accused. To a pertinent suggestion that 100 sovereigns of gold ornaments belonging to Uthra were recovered, he answered that only by verifying records the exact quantity recovered could be stated. According to him, PW1 had not stated to him that he had put holes in the jar and that he is able to identify the male and female Cobras. PW1 has not stated to him that the accused had called him after seeing the video of the Viper. He admitted that the date of meeting of PW1 and the accused at Chathannoor was not specifically mentioned to him by PW1. The facts omitted to be stated by PW1 in his statements, like the enquiry by the accused about the position of the poison gland of snake, that people are killing snakes nearby the house of accused etc., were admitted. He proved Exts. D1 to D7 contradictions made by the witnesses in their previous statements. The purported omissions of the witness in their previous statements were also admitted by him. The suggestion that all the recoveries effected by him were false, was denied. He also denied the

suggestion that by intimidation, PW1 who had not committed any offence, was made an approver.

217. DW1 Sulaiman Sait, the Administrative Assistant in the Office of the Principal Chief Conservator of Kerala and Chief Wild Life Warden's office, Thiruvananthapuram and also the Public Information Officer in the said office admitted that he had issued Ext. D9 and D10 replies in accordance with the provisions of the Right to Information Act, after verifying the office records. In cross-examination, he admitted that he had issued Ext. P279 series documents pursuant to the application filed under the Right to Information Act by Manoj Kumar, Asst. Sub Inspector, Crime Branch, Kollam Rural. Ext. P279 is the covering letter. He is conversant with the signature of Deputy Conservator of Forests, named Vinayan and Ext. P280 commemoration letter is issued by the said person. The suggestion that he had issued Ext. P279 series to contradict Exts. D9 and D10 were denied. The Prosecutor was permitted to re-crossexamine DW1. The applications submitted under the Right to Information Act by Adv. Brijendra Lal pursuant to which Exts. D9 and D10 were issued, were marked as Exts. P281 (a) and P281 (b).

218. DW2 Satheesh Kumar, who is conducting a Digital Studio at Eenathu testified that he had taken photographs of police surveillance cameras

in Eenathu town, M.C. Road and Eenathu bridge and produced it along with its CDs and 65 (B) certificate, which were marked as Exts. D11 (a) to D11 (k), DMO1 and Exts. D12 and D13. According to him, the surveillance camera which is a rotating one is fixed on an iron pipe at the junction between the old and new M.C road at Eenathu. It's photograph is Ext. D11 (a). D11 (b) is a photograph of the C.C.T.V camera and the Bus Bay, D11 (c) is the photograph of the camera fitted in the cross bar on the southern edge of Eenathu bridge, Ext. D11 (d) is the photograph of the dead end of M.C. road, Ext. D11 (e) is the photograph of the road leading to Mannadi, Exts. D11 (f) & (g) are the photographs of the Link road leading from Eenathu junction to M.C. road, Exts. D11 (h), (i), (j) & (k) are the photographs of C.C.T.V locations of Eenathu town. According to him, the C.C.T.V shown in Ext. D11 (c) is controlled by the Puthoor Police Station. He was the photographer of the inaugural ceremony of the said installation of the cameras. Five cameras were sponsored by the Eenathu Vyapari Vyavasayi unit.

219. In cross-examination by Prosecutor, he admitted that the photographs and CDs were taken by him as per the instruction of Surendra Panicker, the father of the accused. The Eenathu bridge and adjoining road is a bye pass to the Eenathu town, which is situated to the east of the M.C road.

The cameras in photographs marked as Exts. D11 (e) to (k) would not cover the road. He is conversant with the pan shop of Ajeem. When he recorded DMO1 video, the C.C.T.V was not rotating. There are two ways to access the old road from the new road, near the traffic island. If a person passes through the front of the Eenathu Maha Deva Temple and reaches the pan shop of Ajeem, he need not pass in front of the traffic island. He stated about the routes leading from Eenathu – Ezhamkulam road to Parakkodu – Ezhakulam road.

220. DW3 Shanmughadas is conducting a studio in Eenathu. He stated that he took photographs of C.C.T.V cameras from the Eenathu B.J.P office along the old M.C. road to where it ends at link road and till the Co-operative Service Bank. The 16 photographs along with the CDs and 65 B certificates are produced by him. The photographs were marked as Ext. D20 series and the CDs were marked as Ext. DMO4. The location of every photograph is mentioned on its reverse side.

221. In cross-examination, by the prosecutor, he stated that the photographs were taken on the instruction of a person named Surendran and a young man who accompanied him. One C.C.T.V camera was fitted in the Co-operative Society and the other cameras were in private institutions and banks. He stated about the location and focus of the various C.C.T.V cameras.

He admitted that he knows the location of the pan shop of Ajeem. There is a way to access the said pan shop from the old road and new road. He had come to testify on the request of the said Surendra Panicker.

222. Now the second preliminary legal issue raised by the defence, whether PW1 could be tendered pardon and made an approver can be considered.

It was vehemently contended by the learned defence counsel that PW1 cannot be termed as an approver or accomplice as he did not share the alleged intention of the accused to commit murder and therefore, he could not have been arrayed as an accused in this case. After all there was over enthusiasm from the side of the investigating agency. Firstly, they got PW1 declared as an approver though no offence is committed by him under any sections of the Indian Penal Code, in either of the alleged incidents. In short, the contention of the defence counsel is that there should have been a charge against PW1 which disclosed the commission of the offence on trial for which pardon could be granted. The heading of Sec. 306 I.P.C itself reads, tender of pardon to accomplice and the heading of the section is a guide to the contents of the part or sections which it follows. Section 308 (1) also fortifies the legal proposition that a person who was tendered pardon had to be an accused and the non compliance of the pardon would make him liable for a separate trial. As per the charge sheet,

PW1 has not committed any offence under the I.P.C or any other offence for which the accused in this case is implicated. He is kept as a captive to extract his confession and evidence. It was also contended that PW78, a Forest official and PW85, the Investigating Officer colluded together and thereafter, PW78 obtained custody of PW1 who was given time for reflection by the Chief Judicial Magistrate, Kollam in the tender of pardon proceedings. PW26, the Chief Judicial Magistrate had remanded PW1 as time for reflection, till 16.7.2020 on 13.7.2020. In the meanwhile, PW78, a Forest Range officer who was investigating the offences under the Wild Life (Protection) Act regarding illegal possession of Cobra and Viper, obtained custody of PW1 from 13.7.20, till 15.7.20 and thereafter, extracted the confession. Moreover, PW1 has not given a full and true disclosure before the Chief Judicial Magistrate and the J.F.C.M-I, Punalur. According to the defence counsel, PW1 is not directly or indirectly concerned or privy to the offences under trial in this case as offender or abettor and he could not be termed as an accomplice. PW1 had no acquaintance with Uthra and hence, he cannot be imputed any knowledge or intention to kill Uthra. Therefore, by no stretch of imagination, PW1 could be said to be concerned or privy to the offence charged in this case. The defence counsel relied on the decision reported in 2019 (4) KLT 993, Sonu Vs. State of Madhya Pradesh (2020 (2) Crimes 2 SC, 1970 (2) SCC 122 and 2017 (3) KHC

825 to buttress his point. It was also contended that even according to PW85, the Investigating Officer the offence committed by PW1 is one of abetment U/S 115 I.P.C, which is not at all attracted as the accused is not an abettor.

223. The learned Special Public Prosecutor contended that the purpose of tendering pardon is to unearth evidence in heinous offences where the offence is committed in extreme secrecy. The basis of tender of pardon is not the extent of culpability. He drew attention of the Court to Sec. 306 Cr.PC which states that any person directly or indirectly or privy to the offence can be tendered pardon. The word accomplice in the heading has only a limited purpose and the broad purpose has to be considered. In this case, PW1 has supplied two deadly venomous snakes to the accused on two different occasions for cash. Therefore, he has intentionally facilitated and aided in the commission of the offence; but for the involvement of PW1 the accused could not have accomplished or executed his design or modus to commit the offence. The Prosecutor relied on the decision of Apex Court in Suresh Chandra Bahri .V. State Of Bihar, reported in 1995 Supp. 1 SCC 80 and 2014 (1) SCC CrI. 721, 1995 KHC556 to buttress his contention that the basis of tender of pardon is not the extent of culpability.

224. To consider at the threshold, whether PW1 could have been tendered pardon, only the broad facts prevailing at the time of tender of pardon, need to be looked into. While undergoing judicial custody as the second accused in this case, PW1 had submitted Ext P1 application through the Superintendent of the Jail, before the Magistrate expressing his desire to disclose all the matters within his knowledge. How the Magistrate is to proceed in such a situation is laid down by the Supreme Court In Commander Pascal Fernandez .V. State of Maharastra and Others AIR 1968 SC 594 as follows- **Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judges he must first refer the request to the prosecuting agency.** *It is not for the Special Judge to enter the ring, as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution joins in the request. The State may not desire that any accused be tendered pardon because it does not need approver's testimony. It may also not like the tender of pardon to the particular accused because he may be the brain behind the crime or the worst offender. **The proper course for the Special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the***

tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case. The learned Special Judge did not bear these considerations in mind and took on himself something from which he should have kept aloof. *All that he should have done was to have asked for the opinion of the Public Prosecutor on the proposal. But since the Public Prosecutor, when appearing in the High Court, stated that the prosecution also considered favourably the tender of pardon to Jagasia we say no more than to caution Magistrates and Judges in the matter of tender of pardon suo motu at the request of the accused.* This practice is to be avoided. Since the prosecution in this case also wants that the tender of pardon be made it is obvious that the appeal must fail. It will accordingly be dismissed.

225. Therefore, the law on the point is crystal clear that on being directly approached by the accused who requests to be an approver, the Magistrate has to refer the matter to the Prosecutor and get his opinion on the proposal. In this case, the Magistrate did not initiate any such action on the request of the accused and hence the investigating officer directly approached the Chief

Judicial Magistrate and requested to invoke the powers under section 306 Cr.PC and tender pardon to PW1.

226. PW1 had admitted in his statement before PW26, the Chief Judicial Magistrate, Kollam, that he had supplied a Viper and Cobra, both deadly poisonous snakes on two different occasions to the accused. At the time of tendering pardon there were materials to suppose that Uthra had sustained envenomation caused by snake i.e., in the night of 6.5.2020 and she had died of fatal cobra envenomation.

227. From these facts, it is crystal clear that the offence could not have been committed and the design of the accused to fulfil his intention of causing death to Uthra would not have been accomplished without the aid of PW1. It is to be noticed that PW1 has facilitated the commission of the offence. Whether he had the culpable intention same as that of the accused is a mental element which can only be inferred from the circumstances and it would not be directly evident.

Sec. 306 Cr.PC reads as follows :-

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage

of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

228. The object of the provision for tendering pardon is to get evidence in cases involving grave offences alleged to have been committed by several persons in circumstances making it difficult to get evidence otherwise. Evidence collected by tendering pardon is from a person supposed to have been directly or indirectly concerned in or privy to an offence to which the section applies. What is tendered is a conditional pardon, the condition being his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned with the commission thereof. It involves a contract between himself and the State, by which in consideration of the conditional pardon and the subsequent conditional exoneration from liability, he agrees to make a full disclosure. By the acceptance of the pardon tendered, he ceases to be an accused and becomes a witness

229. It is also pertinent to note the definition of abetment in Sec. 107 of Indian Penal Code.

Abetment of a thing.- A person abets the doing of a thing, who-

First.- Instigates any person to do that thing ; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempt to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here, B abets by instigation the apprehension of C.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act. The prosecution has no case that PW1 has conspired with or instigated the accused to cause death of Uthra. The abetment alleged by the prosecution would fall in clause 3 of section 107 I.P.C, viz intentional aiding. The law on the point relating to clause 3 of section 107 I.P.C is discussed as follows.

In *Shriam Vs. State of U.P* (1975 SC 175) The Supreme Court has expounded the scope of the words intentionally aids in clause 3 of section 107 I.P.C. as follows". *Explanation 2 to the section says that*

"Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

Thus, in order to constitute abetment, the abettor must be shown to have "intentionally, aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of S.107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of S.107.

230. In *Purushothaman Vs. State of Kerala* (1989 KHC 127) it is held as follows - *S.107 of the IPC which contains the definition of abetment has three clauses, and if an act of a person falls within the purview of any of them it would amount to abetment. The first and second clauses are not germane in this, context and hence the third clause is reproduced here. "A person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing". The scope of the word "aids" has been clarified in Explanation-2 which reads thus: "Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of*

that act, and thereby facilitates the commission thereof, is said to aid the doing of that act". The said explanation does not say what would or would not amount to "intentionally aids". It only explains what is meant by aiding simpliciter. This means that an act which merely amounts to aiding the commission of an offence is not abetment. The aiding must snow-ball into "intentionally aiding" the doing of a thing. When can you say that a person has intentionally aided the commission of an offence? The commission of the act must be the dominant intention of the person who aids it. Then only it can be said that he "intentionally" aided it. If there is community of interest between the aiding person and the one who commits the offence, there is possibility to draw the inference that the dominant intention was to aid the doing of that particular act. If the person only knows or has only the reason to believe that his act would facilitate the commission of offence, it cannot be said that his dominant intention was that. Eg:- A tells his brother B who is to undergo a surgery that the surgeon concerned (C) is a greedy person and hence the surgeon must be paid some amount in advance to have the surgery properly done. B pays the amount to C. If the acceptance of the money would amount to an offence, the act done by A in telling his brother is doing something in order to facilitate the commission of the offence. But the intention of A is to have his brother's surgery performed properly although A knows that acceptance of the

money by the surgeon is an offence. Here A's suggestion cannot be said to be an act which intentionally aids the commission of the offence. Mukerji, J. has observed in *Emperor v. Ram Nath* (ILR 1925 Vol.XLVII Allahabad 268) "The intention should be to aid the commission of a crime. A mere giving of an aid will not make the act an abetment of the offence.....". The observation made by Batty, J. in *Bhagwant Appaji v. Kedar Kashinath* (ILR 1901 Vol. XXV 202) is considered to be "one of the best expositions of the meaning of the word intent as used in the Indian Penal Code". The learned Judge has stated thus (at page 226): "The word intent by its etymology seems to have metaphorical allusion to archery and implies aim and thus connotes not a casual or merely possible result foreseen perhaps as a not improbable incident, but not desired but rather connotes the one object for which the effort is made and thus has reference to what has been called the dominant motive without which the action would not have been taken". This was followed in *Phul Kumari v. Sheodahin* (AIR 1965 Patna 507). While dealing with the expression "with intent" in S.441 of the IPC the Supreme Court has said that it means the dominant intention. (Vide *Mathri v. State of Punjab* AIR 1964 SC 986). The same interpretation can be imported to the similar expression employed in S.107 of the IPC.

231. Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the offence. Mere proof that the

crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with requirements U/S 107 IPC. The abettor should have had the same intention with the abetted. The phrase used in section 306 Cr.PC to qualify as an approver and tendered pardon is **any Person supposed to be directly or indirectly concerned or privy to an offence.**

Therefore, at that stage there would not be evidence in the strict sense, of his role or knowledge in the offence, and only the supposition of his being concerned directly or indirectly or privy to the offence exists. Intention is a mental element and the proof regarding that aspect has to be deduced from the circumstances. PW1 admitted that he supplied the venomous snakes to accused but has given exculpatory statement regarding the same intent with the accused to cause death of Uthra. But, in the connected offences under Wild Life (Protection) Act, the intent of illegally possessing and dealing with wild animals by PW1 and accused could be said to be the same. In his statement to the Chief Judicial Magistrate, who tendered pardon, PW1 admitted to have had multiple phone calls between him and accused prior to the handing over of the snakes by PW1. Thus, at that stage there was sufficient material which pointed out that he is the person who facilitated the commission of offence by the accused by handing over the venomous snakes. In the absence of inculpatory statement by

PW1, the law on the point regarding tender of pardon under section 306 Cr.PC., laid down by the Supreme Court is discussed as follows.

232. In Commander Pascal Fernandez .V. State of Maharashtra and Others (AIR 1968 SC 594) the Supreme Court has held as follows-. *There can be no doubt that the Section is enabling and its terms are wide enough to enable the Special Judge to tender a pardon to any person who is supposed to have been directly or indirectly concerned in, or privy to, an offence. This must necessarily include a person arraigned before him. But it may be possible to tender pardon to a person not so arraigned.* The Supreme Court in the case of Suresh Chandra Bahri v. State of Bihar, 1995 Supp. (1) SCC 80 : 1994 CriLJ 3271 (SC) 1995 KHC 556, explained the object, extent of culpability of approver and scope of S.306, Cr.P.C. in the following words – *S. 306 of the Code lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows about the procedure. Since many a times the crime is committed in a manner for which no clue or any trace is available for its detection and, therefore, pardon is granted for apprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce*

this section and confine its operation to cases mentioned in S. 306 of the Code. 'The object of S. 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against the tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that S. 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence.

233. Relying on the principle in the decisions reported in Suresh Chandra Bahri Vs. State of Bihar (1995 Supp. 1 SCC 80, 1995 KHC 556) and in State of Rajasthan Vs. Balveer @ Balli (2014 Crilj 314), the Supreme Court has reiterated that the extent of culpability of approver is not material while tendering pardon. In State of Rajasthan v. Balveer alias Balli and another, reported in 2014 CriLJ. 314 the requisites for tendering pardon to an accused is elucidated as follows :-

“The first question that we have to decide is whether the High Court is right in coming to the conclusion that for being an approver within the meaning of S. 306, Cr.P.C., a person has to inculcate himself in the offence and has to be privy to the crime, otherwise he removes himself from the category of an accomplice and places himself as an eye - witness. S.306, Cr.P.C. provides that with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, the Magistrate may tender pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.: This Court in the case of Suresh Chandra Bahri v. State of Bihar, (1995 KHC 556 : 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60 : AIR 1994 SC 2420 : 1994 CriLJ 3271) explained the object of Section 306 Cr.PC in the following words:----- (quoted supra)

---Thus, the High Court failed to appreciate that the extent of culpability of the accomplice in an offence is not material so long as the Magistrate tendering pardon believes that the accomplice was involved directly or indirectly in or was privy to the offence.

234. The factual matrix of the above referred cases decided by the Supreme Court would show that the approvers in those cases completely exculpated them from the offences of murder and rape committed by the accused persons and stated that they were mere onlookers in the perpetration of the offences. In that scenario also the Apex Court relied on the testimony of the approvers and held that the tender of pardon was not vitiated. In view of the dictum laid down in Suresh Chandra Bahri's case, all that S.306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence. The Apex Court has thus laid the law unambiguously that the extent of culpability of approver in an offence is not material for grant of pardon so long as Magistrate tendering pardon believes that the person to whom pardon was tendered was involved directly or indirectly in or was privy to the offence.

235. When a person supplies deadly venomous snakes to another, twice and that too for consideration, it can be inferred that he had knowledge that it was for committing a crime. He should have been informed by the prudence of an ordinary man that the person had obtained the venomous snakes from him for causing death, or for other vicious, deadly deeds. Moreover, he has testified that he knows the procedure that rescued wild animals like Viper and Cobra have to be handed over to the Forest Department. Therefore, it can

safely be concluded that PW1 had knowledge that he was doing an illegal act, which is prohibited under the Wild Life laws, when he sold the Viper and Cobra to the accused. Obviously, PW1 had knowledge that the sale of Viper and Cobra to the accused were offences. Whether or not the person who sold the venomous snakes had the intent or knowledge with the principal offender that the snakes are to be used to cause death of a particular person, is a mental element of which direct evidence is difficult to obtain. Only two people are capable of giving direct evidence regarding this aspect of their mental element, the accused and PW1. It is true that PW1 has not given an inculpatory statement regarding his intent to cause the death of Uthra. However, he categorically stated that the accused caused death of Uthra with the snake supplied by him. Though in view of the dicta of the above referred decisions regarding the scope of abetment, the role of PW1 as an abettor, is dependent on evidence that he shared the same intent with the accused to cause death of Uthra, which is lacking from his exculpatory statement, it can safely be concluded that he facilitated the commission of the offence by supplying venomous snakes to the accused. Moreover, in the cases registered by the Forest Department, the accused and PW1 are co-accused for illegally possessing and handling wild animals (Viper and Cobra) as per Schedule 1 of the Wild Life (Protection) Act.

236. Another contention of the defence counsel is that in the heading of section 306 Cr.PC. the word used is accomplice and only an accomplice can be tendered pardon. The word accomplice is not defined in the Indian Evidence Act. It can be given only its ordinary meaning that someone who had participated in the commission of the offence as principal or accessory and includes any associate in the crime and anyone assisting, co-operating or aiding in its commission. The principle laid down by the Supreme Court in the decision reported in Suresh Chandra Bahri Vs. State of Bihar (1995 Supp. 1 SCC 80) which is reiterated in State of Rajasthan Vs. Balveer@ Balli (2013 KHC 4871) **is that the extent of culpability of approver is not material while tendering pardon and pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence.** Moreover, in the decision of the Supreme Court in Sarah Mathew .V. Institute of Cardio Vascular Diseases (2014) 2 SCC 62, it is held that the heading of a section does not control its meaning as follows - 38. *“So far 'heading' of the chapter is concerned, it is well settled that 'heading' or 'title' prefixed to sections or group of sections have a limited role to play in the construction of Statutes. They may be taken as very broad and general indicators or the nature of the subject matter dealt with thereunder but they do not control the meaning of the sections*

if the meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions”.

237. In this case, PW1 has illegally supplied the deadly snakes to the accused, with which the offences were perpetrated. The sale of the snakes by PW1 to the accused were itself offences under the Wild Life (Protection) Act and cases are registered by the Forest Department. Moreover, in the offence under the Wild Life (Protection) Act, registered for illegally possessing snakes, there is active complicity on the part of the accused. Thus, it can be safely held that he is concerned directly or indirectly in the offence and he has aided in the commission of the offence. In that view of the matter the contention of the defence that tender of pardon is applicable only to an accomplice who participated in the offence and shared the same intention is untenable. This Court is satisfied that the procedure as adopted by the Chief Judicial Magistrate, Kollam, PW 26, suffers from no infirmity as in in State of Rajasthan Vs. Balveer @ Balli (2014 Crilj 314), the Apex Court has culled out the law that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence. Therefore, it is a question of belief at the relevant phase whether the person who is to be tendered pardon is involved directly or indirectly in or privy to an offence. The contentions raised by the

defence counsel are not tenable in this regard. **In view of the above referred Supreme Court decisions, it is crystal clear that though PW1 has not implicated himself, there were reasons to believe at the time of tendering pardon that he was directly or indirectly concerned in or privy to the commission of the offence in this case and the tender of pardon to him is not vitiated.**

238. It is the discretion of the prosecution to invoke the provisions U/S 306 Cr.PC with the aid of the Court and tender pardon to PW1 and make him an approver. The accused has no manner of right to object a procedure adopted by the prosecution for collecting evidence and the said aspect also does not cause any prejudice to the accused. Thus the second preliminary legal issue raised by the defence is found against the defence.

239. **It is convenient to analyse the evidence and law in such an order that the facts of possession by the accused of the venomous snakes, (the source of poison) is considered first and the opportunities of the accused in inflicting venomous bites and motive is then considered. The 29 circumstances narrated serial wise and relied by the prosecution embedded**

and interlinked in the facts will also be considered out of turn, while the above facts are analysed and considered.

Circumstance No. 3. Accused searched about snakes and snake handlers frequently from January, 2020 onwards and contacted PW1, a snake handler and met him in person on 18.2.2020 at Chathannoor.

240. According to the learned Public Prosecutor, the examination of MO31 mobile phone possessed by the accused and recovered at the time of his arrest, vide Ext. P197 series inspection memo would reveal that he had searched for venomous snakes, like Viper and Cobra from his G-mail ID surajskumar1993@gmail.com, synced with the phone. The above referred third circumstance manifests the conduct of the accused which amounts to incriminating evidence regarding his preparation and intention to perpetrate the offence. The Prosecutor drew the attention to Ext. P179 cyber forensic examination report prepared by PW72 and contended that the Internet activity of the accused, till 5.3.2020 evidenced by Ext. P169 (c) shows that he searched for Viper snakes.

241. It is also contended that the accused had contacted PW1 from his mobile phone and he had also made searches for Chavarukavu Suresh. The mobile phone tower location of PW1 and the accused on 18.2.2020 proves that

they met at Chathannoor on 18.2.2020. PW35 Aji Sankar and PW37 Sajeev, have proved Ext. P63 and Ext. P71 CDRs and Ext. P64 (a) IPDR along with the tower decoding details. Ext. P85 CDR of the Vodaphone number 9061419459 also proves that there were communications between the accused and PW1 during the relevant period and that on 18.2.20 both of them had met.

242. Moreover, PW35 Aji Sanker has clearly stated at page 13 of her testimony that the tower location is assessed with latitude and longitude (Lat. Log.). In Ext. P64 (a) the address of the owner of the property where the tower is located is mentioned. The tower location can be obtained from Google maps.

243. **Regarding the fourth circumstance**, the prosecution relies on the testimony of PW1 that the accused had demanded a venomous snake for demonstration with live snakes at his house. PW1 caught a venomous Viper from Oozhayikkodu on 24.2.20 and the images were telecasted live on Facebook. The said image was forwarded to the accused, vide WhatsApp in his mobile number. Thereafter, on 25.2.20, the accused called PW1 and requested him to come for conducting the demonstration with snakes and offered Rs.10,000/- for the same. He had also requested to bring a venomous snake. The Prosecutor relied on the CDRs of PW1 and the accused to corroborate the transaction.

244. **The fifth circumstance of handing over a Russell's Viper to the accused by PW1** in the early morning on 26.2.20 is sought to be proved by the prosecution by the evidence of PW1, the approver, PW7 Premjith, the mages of the accused handling a snake in MO12 mobile phone, recorded by PW7, which was also forwarded to MO32 mobile phone of Soorya, the sister of the accused. It was contended that PW1 has clearly deposed regarding the handing over of the snake in the early morning to the accused, near his house at Parakkodu. The Prosecutor also relies on Ext. P71 CDR to buttress his argument.

245. **Regarding the sixth circumstance** that after one hour of the handing over of the Viper, searches were made in the premises of the house of the accused and PW1 and that a demonstration by live snakes was held and the accused handled it with care, the prosecution relies on the testimony of PW1, PW7 and the call details, tower location of PW1 after 5.28 a.m. to 7.48 a.m., and also the images and visuals in MO12 and MO32 mobile phones which were also retrieved by PW72, while conducting cyber forensic analysis and the pen drive marked as MO33

246. **The seventh circumstance relied on by the prosecution is that few days prior to Uthra being bitten by the Viper, the accused send Uthra upstairs for picking up his mobile phone and on the staircase landing**

Uthra saw a snake and screamed. Thereupon, the accused came there, caught the snake, put in in a sack and took it away. According to the learned Public Prosecutor, PW4 Manimeghala and PW2 Vijayasenan had testified that on 29.2.20 when they visited the residence of the accused in connection with Ezhamkulam Temple festival, Uthra had narrated the above said facts to them. According to the learned Public Prosecutor, the accused had deliberately planted the Viper which he had purchased from PW1 on 26.2.20 and send Uthra upstairs with the intend that the unsuspecting Uthra would be bitten by the snake. According to the learned Public Prosecutor, Uthra is now no more and the statement of Uthra to PW2 and PW4 regarding the confronting of the snake by her on staircase landing and the subsequent act of the accused in capturing it would amount to dying declaration coming within the meaning of Sec. 32 (1) of the Evidence Act. The said fact is mentioned in Ext. P6 petition by PW2 and PW4 also.

247. Circumstance numbers 8, 9 and 10 that Uthra sustained unnatural haemotoxic envenomation in the night of 2.3.20 when she was sleeping with the accused in his residence, there was unexplained long delay in taking her to the hospital and the accused gave false explanation about the cause of illness of Uthra

248. The testimony of PW60, the casualty medical officer at General Hospital, Adoor, PW61 Dr. Chaithanya Sidharthan, the casualty medical officer at Holy Cross Hospital, Adoor and PW73 Dr. Bhuvaneswari, the casualty medical officer at Pushpagiri Medical College Hospital, Tiruvalla, who examined Uthra, are relied by the prosecution to prove that Uthra was brought to casualties of these hospitals in the early morning of 3.3.20 and she had a history of unknown bite. According to the Prosecutor, Uthra was referred from the local hospital, since she had elevated clotting time. Reliance was placed on the testimony of PW74 Dr. Mathew Pulikkan, who treated Uthra at Pushpagiri Medical College Hospital to contend that she had classical symptoms of haemotoxic envenomation and that since Uthra had no idea as to when the bite occurred, the accused had inflicted the bite on Uthra after sedating her. The evidence of PW1 and PW52 are relied by the prosecution to prove that Viper bite causes excruciating pain and even a person who has bitten by a Viper when he is asleep will wake up on sustaining the Viper bite. It is also contended that Viper is not a arboreal snake and the fact that Uthra sustained the bite at the first floor of the house of the accused would show that the snake was taken there by the accused. It was also contended that the accused had deliberately delayed proper treatment being given to Uthra. Though the accused and his father knew driving and there were vehicles in his residence, the accused made a casual

missed call to PW9. PW9 had come to the residence of the accused and took Uthra to the hospital in his vehicle. PW9 has supported the version of prosecution. It was also contended that the positioning of the Viper bites which are vertical is not possible in a standing position and the said fact also points out to the circumstance that when Uthra was lying down in the bed, the Viper had bitten her. Accused had given false explanations regarding the bite sustained by Uthra.

249. The learned Public Prosecutor has contended that in Exts. P16 and P169 (e) petitions filed by the accused, the accused had evasively stated that Uthra sustained the bite when she went out at 9 p.m. The accused had also stated the false version to PW2 as to the time and manner in which Uthra sustained the bite. Moreover, PW4 had testified that Uthra told her that the accused had given her sweet porridge (പൊയ്ക്കര) in the night and she fell fast asleep and that in the night she had severe pain in the leg and cried aloud. However, when she told Uthra about the version of Suraj that the bite was sustained when Uthra got out of the house, Uthra categorically stated that she had not stated so to Suraj. It was contended that the above statement of Uthra to PW4 would also come within the meaning of dying declaration U/S 32 (1) of the Evidence Act. The accused had also given the false version to the doctors and PW9 Sujith and PW13.

250. Circumstance Number 12: To prove the 12th circumstance that PW1 proceeded to Eenathu on 24.4.20 wherein he met the accused and the accused purchased a Cobra after paying Rs.7,000/- from PW1, the prosecution relies on the testimony of PW1, the approver, his mobile phone C.D.Rs and tower location which corroborates his testimony that he had undertaken a journey on 24.4.20 from Kalluvathukkal to Eenathu, the mobile phone C.D.R and I.P.D.R and tower location of the accused which shows that he had withdrawn Rs.5,000/- at 11.31 a.m., on 24.4.20 from an A.T.M at Ezhamkulam en-route Eenathu. The evidence of PW18 and PW85 who has prepared the mahazar of the spot where the Cobra was exchanged pursuant to the disclosure statement made by the accused is also relied. The prosecution has also relied on the route map of PW1 and the accused prepared by PW83 as is evidenced by Ext. P183 to prove that both the accused and PW1 were found in the mobile phone tower location of Eenathu tower in between 11.45 a.m and 11.47 a.m., on 24.4.20 and Cobra was handed over. It was contended that the journey of PW1 was captured by the ANPR Cameras at Eenathu on 24.4.20 at 11.41 hours, which proves that the scooter, bearing Regn. No. KL/02/BE/2823, owned by PW1 had passed Eenathu bridge on that day.

251. Circumstance No. 24: According to the Prosecutor MO1 jar used by PW1 to confine the Cobra was given to him by PW15 Dayimudeen on 23.4.20. The accused gave a disclosure statement to PW85 as Ext. P119 (a) pursuant to which MO1 jar was recovered from behind an old house near the residence of Uthra, which is corroborated by PW17 Navas, PW45 Spencer Bose, the police photographer and PW47 Renjith Babu. Moreover, the D.N.A finger print of Cobra was detected from MO1.

252. It was contended by the defence counsel that the alleged meeting of PW1 and the accused on 18.2.20 at Chathannoor is a material omission which is not mentioned in Exts. P2 to P5 statements. It was contended that in the CDR of the mobile phone having number 7907934909 at 9.55 a.m., the tower location is at KSRTC, Kollam, but at 10.01 a.m., the tower location of the mobile is at Chathannoor. The call which commenced at 10.01 hours had ended at 10.02 hours and the ending tower location is not mentioned. Though, PW1 stated that he met the accused, opposite to Seetharam Stores at Chathannoor on 18.2.20, the mahazar of the site is not prepared. Moreover, the accused has not stated that his driver Raju was present at the meeting and it is a material omission. According to the defence counsel, even if the CDR of the accused and PW1 are correct, so long as the call ending tower is not located and pointed out, the meeting place cannot be ascertained. The call ending tower

locations of MO3, MO4 and MO31 and non-examination of CW16 Raju would amount to suppression of material evidence and adverse inference U/S 114 (g) of the Indian Evidence Act has to be arises. Reliance was placed on the decisions reported in **AIR 2019 SC 4864, AIR 2020 SC 3815 and (2008) 15 SCC 597** to stress on the contention that holding of witnesses to would lead to raising adverse inference that they would not have supported the prosecution case and that the prosecution has to prove the complete chain of circumstances.

253. The defence counsel contended that on analysing the chief examination of PW1, the offer to sell a Viper by PW1 and the offer to purchase it by the accused are conspicuously absent in the deposition. The offer was only to conduct an awareness class which was accepted by PW1. The videos of the said Viper are absent in the mobile phone of the accused and PW1. There were no calls between PW1 and the accused on 24.2.20, but the calls were on 25.2.20. The defence counsel contended that PW1 had not enquired with the accused about the Viper which was allegedly handed over at 5.30 a.m., and had made a ridiculous statement that the Viper was handed over to protect the cultivation from rat infestation. It was also contended that the evidence of PW7 who is a responsible snake rescuer attached to the Forest Department that he did not react when an illegal act of selling snakes occurred between PW1 and the accused, is not trustworthy.

254. It was also contended by the learned defence counsel that the Viper was kept in a jar behind the driver seat which is against human conduct, to usually keep venomous snakes in the boot of the car. Moreover, the residence of the accused is situated in the tower location of Puthumala. The mobile phone of PW1 came within the Puthumala tower location only after 7 a.m. Therefore, the prosecution case that the Viper was handed over at 5.30 a.m., is false. Parakkodu is a known market centre in Travancore and a busy business centre. The Investigating Officer has not obtained any CCTV footage regarding the Ambassador car of PW1, turning towards the house of the accused from Parakkodu junction. The reason stated by PW85 for non production of the CCTV footages are irrational. According to the learned defence counsel, due to the lack of CCTV footages of the Ambassador car, in which PW1 and others were travelling at Parakkodu junction on 26.2.20, an adverse inference has to be drawn that they have not gone to the said place. Reliance was placed on the decision reported in **Thomas Bruno and another Vs. State of Uthar Pradesh (2015) 7 SCC 178.**

255. The defence counsel contended that the fact that a snake such as Viper would remain inactive in the staircase landing rather than creep away is

highly improbable. Moreover, there are other residents also in the house and it would not be logical that the accused kept the snake in the staircase to cause it to bite his wife alone. Though, in Ext. P6 there is such a statement made by PW2 and PW4, since PW4 had denied a portion of the statement made in Ext. P6 regarding the closure of the windows, Ext. P6 cannot be relied at all.

256. It was contended by the defence that, PW9 Sujith was an expert driver and his residence was very near to that of the accused. He was called by the accused at 2.54 a.m. and he called him back at 2.59 a.m. On the request of the accused, PW9 went to his residence and immediately Uthra was taken to the General Hospital, Adoor. The accused was not an expert driver and he had vision problem in the night. Moreover, the father of the accused had consumed liquor on the eve of the temple festival and that is why PW9 was requested to drive the vehicle.

257. The defence counsel contended that PW60, the casualty medical officer at General Hospital, Adoor and PW61 have given inconsistent statements in as much as they have not completed the whole blood clotting time test of 20 minutes. Moreover, PW61 has given a contradictory statement which is marked as Ext. D8 in his 161 Cr.PC statement that there was no oozing

of blood from Uthra. It was also contended that Ext. P170 reference letter issued by PW60 and endorsed by PW61 was suppressed by the prosecution in as much as these documents were not put to these witnesses when they were examined and it was produced along with the case sheet from the Pushpagiri Hospital deliberately. According to the defence counsel, PW60 and PW61 were trying hard to establish without any document or record that Uthra had haemotoxic snake bite, to suit the prosecution case. PW73 who proved Ext. P170 reference letter has also deposed contrary to the medical protocol, about the clotting time. Moreover, in Ext. P141 snake bite register, the name of Uthra is not stated as a patient who came with snake bite. It was also contended that PW73 was not the doctor who examined Uthra at Pushpagiri Medical College Hospital and it was one Dr. Shama. According to the defence counsel, from the evaluation of the oral testimony of the doctors who treated Uthra, the medical records of General Hospital, Adoor, Holy Cross Hospital, Adoor and Pushpagiri Medical College Hospital, Tiruvalla, the prosecution has not convincingly proved that Uthra was bitten by Viper. The proper test to identify snake venom is ELISA test which was also not conducted. In the APTT test; which is an authoritative test, the clotting time of blood of Uthra was within normal range. It was also contended that the case sheet of Pushpagiri Hospital shows that on 3.3.30 at 10.20 a.m., the infusion of anti

snake venom was abruptly stopped and all these points to medical negligence. It was also contended that PW60, PW61 and PW73 have given improbable and inconsistent times at which Uthra came to their hospitals. Moreover, the photograph allegedly taken by PW73 as per MO28 C.D of the bite site of Uthra does not reveal any bleeding which is contrary to the testimony of PW73 that there was bleeding. PW73 has also not measured the depth of the bite or the abrasions noted there. Reliance was also placed on the reverse side of page number 164 in Ext. P173 series to show that Uthra was conscious while she was received from the Emergency Department to Medical Intensive Care Unit. It was contended that there is no evidence in Ext. P173 which shows that PW73 had treated Uthra and it was Dr. Shama on whose instruction anti snake venom was administered.

258. The defence counsel contended that the version of PW1 that the accused had told him that the Viper given earlier had gave birth to offspring and he wanted a big Cobra and food for the Cobra was available in the house, is not a statement which stands to reason and no reasonable prudent man will believe it. The defence counsel pointed out the deposition of PW1 in pages 17 to 23 and contended that PW1 has not spoken about getting the Cobra from Aalamkodu and the dates on which himself and the accused had made phone

calls. The defence counsel pointed out that PW1 had deposed that he had caught a Cobra at around 8 p.m., on the same day from Parippally and thereafter on being informed about the snake at Aalamkodu, he proceeded to Aalamkodu after receiving a call from one Nizam at about 9 p.m. It was contended that PW1 has also made several contradictions in his 161 Cr.PC statements which are marked as Exts. D1, D2 etc., and several embellishments which makes his testimony highly unreliable and untrustworthy. It was also contended that the tower locations of PW1 and the accused would reveal that, both of them have not met as MO31 mobile phone owned by the accused never reached within Eenathu tower location at the relevant time. It is also contended that there is no material which points out that the Cobra caught by PW1 which is depicted in the video clippings were caught by him from Parippally or Aalamkodu on 23.4.20. Moreover, Charge Witness Lijin is also not examined to prove that a Cobra was caught from Aalamkodu.

259. It was contended that as per the tower location of PW1 revealed from Exts. P71 and P85 it would show that he was in Meenambalam from 19.43.16 to 20.50.46 hrs. The mobile phone of PW1 was within Aalamkodu and Vanchiyoor area from 9.40 p.m to 11 O' Clock on 23.4.20. Aalamkodu is 20 kms away from Chathannoor and the fact that he purchased MO1 jar from

the shop of Dayimudeen in normal working hours is highly improbable. The CCTV recordings of the shop of Dayimudeen is not produced by the Investigating Officer. It was also contended that though PW1 contended that the understanding between himself and the accused was to handover the Cobra at Kottarakkara, contrary to that, the snake was allegedly handed over at Eenathu pursuant to a call made by PW1 to the accused at Eenathu. However, as per the C.D.R, no such call was made. The mobile phone of the accused marked as MO31 never reached within Eenathu tower location at the relevant time. During the relevant period the Covid-19 Lockdown was in force and inter district travel was not possible without police permission. PW1 had not stated that he was stopped or obstructed at the border between Kollam and Pathanamthitta districts wherein Eenathu is situated. Eenathu town is covered by CCTV cameras which is admitted by PW85 and proved by the defence witnesses. However, the CCTV visuals are not produced. It was also contended that as per the CCTV visuals of MO17, the ATM counter of South Indian Bank is situated near Ezhamkulam junction. It is seen that the person alleged to be the accused withdraws money from the ATM and proceeds to west which is to the opposite direction of Ezhamkulam. The said person is found standing outside the focus of the CCTV cameras for a few minutes, but the visuals from the adjacent CCTV camera which could have revealed the

activities of the said person, is not produced. It was contended that the Pathanamthitta – Kollam district border comes within the location of the Eenathu Telecom tower. To appear in the Eenathu tower location, it is not necessary that the person should enter Eenathu town. There are no CCTV visuals to show that PW1 entered Eenathu town. As per Exts. P63 and P77 the accused had not come within the area of Eenathu tower on 24.4.20. The defence counsel relied on the tower locations of the accused as per Exts. P63 and P77 and contended that at the most the accused could have been said to have come to the tower location of Kaithaparambu tower. At 12.2.51 the mobile phone of the accused was at Mangadu tower location, which is a place within Eenadimangalam Grama Panchayat. PW85 gave contradictory answers regarding the location of Mangadu and he even substituted the place with the name Mangod which is situated 25 kms away from Ezhamkulam. The exact location of Mangadu tower is not produced. So adverse inference has to be taken against the prosecution U/S 114 (g) of the Evidence Act. Mangadu is more than 5 kms away from Ezhamkulam and there is no likelihood of the accused being present in Eenathu in between 11.45 and 12 noon. The last call between PW1 and the accused on that day was at 12.54.14 hours and at that time PW1 was at Thrikkannamangalam and the accused was at Puthumala. It was also contended that the evidence of PW83 who has prepared the route map

marked as Ext. P189 would only disclose that the mobile phone of the accused had come only within the range of Eenathu tower and not within the Kaithaparambu tower location. PW83 pleaded ignorance regarding the actual distance of 5.7 kms between Eenathu and Kaithaparambu. The latitude and longitude of Mangadu tower is also not given by PW83. Moreover, Kaithaparambu is not in Eenathu – Eezhamkulam route. The prosecution has forged Exts. P64 and P64 (a) allegedly showing the IPDR records and the tower location code as Ext. P64 (a). The defence also attacked the veracity of PW35 and the genuineness of Exts. P64 and P63 on the ground that it does not have a date and time of its generation. Moreover, Ext. P64 itself is self contradictory. The internet activity of MO31 Jio connection at 11.42 is at Puthumala tower location, but at 11.44 it is at Mavadi Village in Kottarakkara Taluk. Again at 11.40 it is at Kaithaparambu. The prosecution reliance on Ext. P64 regarding the Internet activity of the mobile phone of the accused at 11.46 and 11.47 to contend that the accused was within the Eenathu tower location is not probable in view of the evasive answers given by PW35 regarding the location of the tower. Moreover, the IPDR of the phone number 9207720666 was also not taken by the police. Therefore, the defence attacked the veracity of the call detail records marked as Exts. P63, P64, P77 and P85. The defence also drew attention to the Google map showing Eenadimangalam, Eezhamkulam and

Eenathu to point out that Kaithaparambu is situated in the boundary of Eenathu and Ezhamkulam and it is 3 kms east of the Ezhamkulam – Eenathu road. The defence had also attacked the testimony of PW87 and Exts. P284 (a) and P284 (b) printed images of the visuals of the scooter bearing Regn. No. KL/2/BE/2823 passing the Eenathu bridge and the pen drive marked as MO40. It was contended that as per DMO1 there are reflectors in the centre line in Eenathu bridge, but there are no reflectors on the centre line of the route as per Ext. P84. Moreover, the above referred visuals were not forwarded to Cyber Forensic analysis and its hash value is not obtained at the time of seizure.

260. More over, if PW1 had crossed Enathu Bridge and reached Enathu by 11.42 a.m., as can be seen from Ext. P284, there is no logic in saying that after reaching Eenathu, PW1 called the accused, at the place as per Ext. P20 near Ajeem's shop and the accused replying that he was at ATM counter and asked PW1 to wait for five minutes. The accused had allegedly left the ATM counter by around 11.32 a.m on 24.4.20 as per MO17.

261. As per Ext. P71, (BSNL) the CDR report for the number 9446907317 of PW1, after reaching Enathu he got a call from the mobile number 9995322134 at 11.43.03. There is no incoming call to MO31 phone of

the accused on 24.4.21 after 11.42 a.m., till 12.54 p.m. As per Ext. P77 (Idea) CDR for the number 9207720666 of PW1, the alleged call by PW1 to the accused was at 11.41.22 a.m. At that time, if Ext. P284 is correct, PW1 had not even entered Eenathu. The next alleged call was from the Jio connection (No. 7907934909) of the accused as Ext. P63 to the Idea-Vodafone connection of PW1 (No. 9061419459) at 12.54 p.m. By that time, PW1 was at Thrikkannamangalam, Kottarakkara and the accused was at Puthumala, as per the tower locations. So, nothing is there to show that after 11.42, PW1 had called the accused and they spoke. So the handing over the cobra pursuant to call after reaching Eenathu near the shop of PW18 (Ajeem) is proved to be incorrect. Instead of supporting the prosecution case, Ext. P284 has disproved the prosecution case.

262. The finger prints of the accused was also not lifted from MO1 jar. The defence counsel contended that the lifting of finger print by PW47 is irregular and he has fabricated the finger prints in MO1. The basic protocol of finger print examination was not followed. MO1 was taken by a police officer by holding its cap which is irregular and illegal. The explanation given by PW47 that there is no chance of a finger print in the cap of MO1, because it was corrugated is not at all correct. Moreover, he testified that he was sure that the

finger print would not be obtained from the cap of MO1. According to the defence counsel, the cap of MO1 is not corrugated and it has smooth surface and there is every likelihood of finger print being etched in the cap of MO1. Moreover, PW47 admitted in cross-examination that the cap of MO1 had to be examined first. Therefore, the fact that he asked the police officer to pick up MO1 by its cap shows that it was planted there after fabricating finger prints in some other parts of the bottle. It was also contended that the proved scientific procedure of lifting finger prints was not followed by PW47. The defence counsel contended that there are material discrepancies between the time at which the accused had caught the Cobra at Parippally, Aalamcodu and the purchase of MO1 from the shop of Dayimudeen.

263. I have considered the rival contentions on these points At the outset it is to be borne in mind about the scope of certain sections and illustrations of the Indian Evidence Act, relevant to the facts in issue in this case. The provisions are as follows:

Section 7. Facts which are the occasion, cause or effect of facts in issue

Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under

which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Section 8. Motive, preparation and previous or subsequent conduct

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct

influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

.....

Illustrations

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the Will of A.

The facts that, not long before the date of alleged will, A made inquiry into matters to which the provisions of the alleged will relate that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

Section 14. Facts showing existence of state of mind, or of body, or bodily feeling.

Facts showing the existence of any state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

Illustration....

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(l) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

264. Apart from direct evidence and circumstantial evidence, the prosecution relies on scientific evidence like call detail records, mobile phone tower decoding data, internet search history, and other electronic records to prove the case. The call detail records and internet protocol records are accompanied by Customer Application Forms (CAF) by the users of the mobile phone connection. All the electronic records relied by the prosecution are supported by certificates issued u/s 65 B evidence act by competent persons. The evidence tendered by PW72 is reliable. He does not have any animosity to the accused. He has not detected any forgery or morphing in the Mobile phone of the accused. The contentions of the defence regarding the fact of not determining MD 5 hash value etc are not tenable. When PW83 was examined

in court, MO31 mobile phone of the accused was switched on. It was proved that the email address surajskumar1993@gmail.com was synced with the said phone. The Internet search history of accused, as per Ext. P169 cyber forensic report discloses that he made repeated searches for Viper snakes, kuzhimandali snakes and Chavarukavu Suresh PW1, from 31.10.2019 to 10.28 pm on 2/3/20. The Time 10.28 pm on 2/3/20 is relevant as it is on that night Uthra sustained viper bite. This search history is revealed in Ext P169 annexure 2 pages 1 to 19. Thereafter on 4/3/20 and 5/3/20 he searched again for viper snakes.

265. From the above circumstances, it is proved that the accused had searched the Internet for Viper snakes before Uthra was inflicted with an envenomating bite in the night of 2.3.20. It is also evident from the evidence of PW1, that before the said infliction of snake bite on Uthra at the house of the accused at Parakkodu on 2.3.20, the accused had also searched in the Internet about PW1 got acquainted with him by meeting him, invited him to visit his house at Parakkodu and, and met him at his house.

266. The relevance and probative value of call data records was discussed elaborately by the High Court Of Kerala in Shaji.V. State Of Kerala 2018 (3) KLT 164 as follows-22. Call data records constitute an important and

effective tool and evidence which facilitate and assist the Investigating Officer and they help the Court to ascertain the veracity of the prosecution case. Such scientific evidence cannot be ignored or overlooked. An active mobile phone has two components, that is, the mobile instrument and the SIM card. Every mobile instrument has a unique identification number, namely, International Mobile Equipment Identity number, for short, IMEI number. Such SIM card could be provided by the service providers either with cash card or post paid card to the subscriber and once this SIM card is activated the number is generated which is commonly known as mobile number. The mobile service is operated through a main server computer called mobile switching centre which handles and records each and every movement of an active mobile phone like day and time of the call, duration of the call, calling and the called number, location of the subscriber during active call and the unique IMEI number of the instrument used by the subscriber during an active call. This mobile switching centre manages all this through various sub-systems or sub-stations and finally with the help of telephone towers. These towers are actually Base Trans - receiver Stations also known as BTS. Such BTS covers a set of cells each of them identified by a unique cell ID. A mobile continuously selects a cell and exchanges data and signalling traffic with the corresponding BTS. Therefore, through a cell ID the location of the active mobile instrument can be

approximated (Mohd. Arif @ Ashfaq v. State of NCT of Delhi, 2011 KHC 4680 : 2011 (13) SCC 621 : 2011 (3) KLT SN 134). Every time a mobile handset is used for making a call, besides recording the number of the caller as well as the person called, the IMEI numbers of the handsets used are also recorded by the service provider. Call data records, being evidence of a conclusive nature, cannot be overlooked and even a serious discrepancy in oral evidence has to yield to such scientific evidence (See Gajraj v. State (NCT) of Delhi, 2011 KHC 4871 : 2011 10) SCC 675 : 2011 (10) SCALE 695 : 2012 CriLJ 413 : 2011 (107) AIC 43 : 2011 (183) DLT 35).

267. I have considered the call detail records of the accused, his Internet Protocol Data Record, produced as Exts. P64 and P77 call detail records of the accused and Ext. P71 call detail records of PW1. The other call details of accused and PW1 are also considered. For more clarity, a Table showing the mobile phone numbers of the accused and witnesses, the CAF, CDR and IPDR is drawn as follows :-

Mobile phone number, name of user and mobile service provider.	CAF	CDR	IPDR	Tower Decoding List	65 B Certificate	
Mobile phone of Accused	P62	Ext. P63	Ext. P64	Ext. P64 (a) series	Ext. P68	

Sooraj. S. Kumar 7907934909 - Jio						
Mobile phone of PW8 Eldhose Jose 8075801910 – Jio	P65	Ext. P66	Nil	Ext. P68	Ext. P69	
Mobile phone of Accused Sooraj. S. Kumar 9207720666 – Vodafone - Idea	Ext. P76	Ext. P77	Nil	Ext. P79	Ext. P78	
Mobile phone of Accused Sooraj. S. Kumar used by Uthra 8589800970 – Vodafone - Idea	Ext. P80	Ext. P81	Nil	Ext. P83	Ext. P82	
Mobile phone of Eldhose Jose 97450116178 – Vodafone - Idea	Ext. P88	Ext. P89	Nil	Ext. P91	Ext. P90	
Mobile phone of PW1 Suresh Kumar 9446907317 – BSNL	Ext. P70	Ext. P71	Nil	Ext. P71	Ext. P72	
Mobile phone of PW1 Suresh Kumar 9061419459 – Vodafone - Idea	Ext. P84	Ext. P85	Nil	Ext. P87	Ext. P86	
Mobile phone of PW9 Sujith 9207689666 Vodafone - Idea	Ext. P92	Ext. P93	Nil	Ext. P95	Ext. P94	
Mobile phone of PW8 Eldhose Jose	Ext. P73	Ext. P74	Nil	Ext. P74	Ext. P75	

8281754239 BSNL						
Mobile phone of PW7 Premjith 9895492625 Airtel	Ext. P133	Exts. P134 and P137	Nil	Ext. P135	Exts. P136 & 138	
Mobile phone of PW1 Suresh Kumar 9188847317 – BSNL	Ext. P272 series	Ext. P277	Nil	-	Ext.P27 2 (c) & 278	

The contentions of the defence regarding objection to the CDR's IPDR, and that the IMEI numbers are varying are not tenable. The first fourteen digits of the IMEI number is unique and the fifteenth digit is a check digit. Moreover if a handset has two SIM cards, there would be two IMEI numbers. So this court can place reliance on the CDR's produced by the prosecution. Moreover PW83 has testified about his qualification, knowledge and competence in cyber related collection of data and the manner in which he prepared the route maps by collating tower decoded data, latitude and longitude of the same, CDRs and google map by using the "I 9" CDR analyse software.

268. As per Ext. P63 series the tower location of mobile phone/ handset of accused from 9.44 a.m to 10.02 am., on 18/2/20 is as follows.

1	9.44 a.m	Kalluvathukkal
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2	9.55 a.m	Kollam 20 KSRTC
3	9.57 a.m	Kollam 20 KSRTC
4	10.01 a.m	Chathannoor
5	10.02 a.m	Chathannoor

PW35 Aji Sanker has clearly stated at page 13 of her testimony that the tower location is assessed with latitude and longitude (Lat. Log.). In Ext. P64 (a) the address of the owner of the property where the tower is located is mentioned. The tower location can be obtained from Google maps. Ext P64, is the IPDR (internet protocol data record) of mobile no 7907934909 possessed by Accused. As per the said document, on 18.2.20 at 10.01 a.m., the tower location of the said mobile phone of accused was at Chathannoor. On that day as per Ext. P63 and Ext. P71 respectively, the accused called PW1 at 9.44 a.m, 9.55 a.m, 10.01 a.m and 10.02 a.m and PW1 returned the call at 9.57 a.m. The transit of the mobile phone/handset and the calls made in transit, proves that the accused was possessing the same at the relevant time.

269. The contention of defence that the tower location shown in Ext. P63 at 9.55 and 9.57 are Kollam KSRTC and hence it is to be found that it was impossible for the accused to have gone to Chathannoor is an untenable contention. It needs to be noticed that multiple calls were made from the mobile phone/handset and it shows that the accused had made the calls. The accused

has no case that his above said mobile phone was not with him. The latitude and longitude of the tower has been mentioned in the CDR itself from which it can be discerned that the said tower is situated at Chathannoor bus stand and Kollam KSRTC is the address of the owner of the property in which the tower is located. PW35 Aji Sankar testified (at Page 13) clarifying this point. As per Ext. P71 CDR of the mobile phone number 9446907317 possessed by PW1, on 18.2.20 at about 10 a.m., the location of the said handset of PW1 was at Chathannoor. So by necessary implication, PW1 who possesses the mobile phone/ hand set would also be at that location.

270. The Nodal Officer of BSNL, PW37 Sajeev, has given evidence that as per BSNL Standard Operation Procedure, Latitude – Longitude details of the tower will be provided to the State Police.

271. PW83, Mahesh Mohan, CPO, Cyber Cell, Kollam Rural prepared Ext. P191 CDR Analysis Report based on the relevant call details and locations. He testified about the fact of the tower location of mobile phones of PW1 and the accused at Chathannoor on 18.2.20 from 9.55 a.m to 10.02 a.m., Ext P191 report was prepared with the aid of corresponding entries in CDRs and IPDR. PW83 clarified that the location of tower having address K.S.R.T.C Kollam was actually K.S.R.T.C chathannoor as per the lat log co ordinates. (page 17). An

inference can be drawn that, PW1 and accused who possessed the said mobile phones/ handsets would be in the location of their handsets. It is to be noticed that PW83 had stated that the mobile phones of PW1 and the accused were in transit on 18.2.20. The tower address KSRTC, Kollam is the address given by the Cell phone provider. However, as per the latitude and longitude, the tower location is near the Chathannoor KSRTC bus stand. He also stated that since the Investigating Officer has not sought details of the second cell ID location, the call ending tower location was not decipherable. It is to be noticed that the substantive evidence regarding the meeting between PW1 and the accused at Chathannoor is the oral evidence of PW1. The fact that the mobile phone of the accused, bearing number 7907934909 was within the tower location of Chathannoor at about 10 a.m., on 18.2.20 assumes significance. The accused is a resident of Parakkodu in Pathanamthitta district. He has not explained why he had travelled to Chathannoor on 18.2.20. The mobile phone tower location of a witness has only corroborative value regarding the fact that he was present within the range of that tower. In this case, on 18.2.20 there were multiple calls between the accused and PW1 and they were in transit. It is evidenced from the fact that the tower locations are changing within a short span of time. The fact that the tower location is allotted to the address and location given by the cell phone provider is affirmed by the Nodal Officers of the Telecom service

providers, who were examined in this case. The exact tower location is to be deciphered with the help of latitude and longitude and when the tower location of the tower, named Kollam KSRTC is deciphered with latitude and longitude, it is situated near the KSRTC bus stand, Chathannor. The contention of the defence that PW1 had made several embellishments in his testimony and that the alleged meeting dated 18.2.20 is omitted to be mentioned in Exts. P2 to P5 statements are not at all tenable. It is also to be noted that the contention of the defence that no mahazar of the meeting place is prepared by PW85 and hence, the location is not proved is also not having much force, in view of the fact that even after 18.2.20, the first meeting between the accused and PW1, there were multiple phone calls between them. So also, the non-examination of the driver of PW1 is not very material as the prosecution can select the witness to be examined to prove a particular point. The evidence has to be weighed and not counted and the defence cannot insist that all the witnesses cited by the prosecution are to be examined. The defence contention that no videos send by PW1 to the accused were recovered and the testimony of PW1 that the accused had communicated with him about the characteristics of snakes are not reliable and trustworthy, is not sustainable. It is to be noticed that, according to the scientific evidence, if the chats or videos are deleted from the mobile phone it could not be recovered. Therefore, the non recovery of videos of snakes send

by PW1 to the accused is not a material discrepancy. The decision relied by the defence counsel **Harbeer Singh Vs. Sheeshpal and others (2016) (16) SCC 418** regarding omissions and improvements to a statement U/S 161 Cr.PC is not applicable to the facts of this case.

272. The fact that PW1 had caught a Viper on 24.2.20 is corroborated by the evidence of PW11 Aneesh and MO14 CD containing the visuals of the Viper being caught by PW1. The fact that the accused had called PW1 in his mobile phone on 25.2.20 is proved by the testimony of PW1 which is corroborated by Ext. P63 series and Ext. P71 series CDRs. It is also to be noted that thereafter, PW1 had called PW7 Premjith in the evening. **The conduct of the accused in repeatedly asking PW1 as to whether he was coming alone is also relevant to point out the object of the accused to keep the transaction of handing over the snake, shrouded in secrecy.** The testimony of PW1 reveals that even when the accused repeatedly asked him that is not he coming alone, he did not reply and thereafter, he called PW7, his driver and Lijin and arranged the trip to the residence of the accused with the venomous viper kept in a jar. Exts. P71, 77, 134 and 94 are CDRs which reveals the calls and planning for journey to Parakkodu on the next day.

273. The following are the details of the multiple calls made before to the trip made to Parakkodu by PW1 and it discloses the preparation and planning for making the said trip.

Call of PW1 on 25.2.2020 as per Ext. P71 CDR

1	9.21	Incoming call from Vodafone number of accused (P77)
2	11.30	Incoming call from Vodafone number of accused (P77)
3	17.18	Incoming call from Jio number of accused (P63)
4	18.55	Outgoing call to Jio number of accused (P63)
5	19.02	Outgoing call to PW7 Premjith (Ext. P134)
6	19.06	Outgoing call to CW17 Lijin
7	19.10	Outgoing call to CW16 Raju (Ext. P97)

PW7 Premjith who accompanied PW1 and his team, to the residence of the accused has corroborated the version of PW1 about their proceeding to the residence of the accused, handing over the viper, taking awareness class with a non venomous snake, and that he himself took images of accused handling the snake, with MO12 mobile phone, with PW1 near him etc. The evidence of PW1 and PW7 discussed above proves that on 26.2.20 they proceeded in an Ambassador car to Parakkodu. On the way, there were multiple calls between PW1 and the accused as is evidenced by the call details. The fact that PW1 and PW7 proceeded to Parakkodu is corroborated by their CDRs and the mobile

tower location, as is evidenced by Ext. P187 series route map prepared by PW83. It is interesting to note that as per Ext. P71 at 3.34 a.m., i.e., in the early morning the accused had called PW7 as is evidenced by Ext. P134 and again he called PW7 at 4.33 a.m. The contention of the defence that there was no demand made by the accused for Viper as per the testimony of PW1 and hence, it has to be held that the accused had not demanded any Viper from PW1 is not at all tenable. It is to be noticed that the transaction of sale of Viper was done clandestinely and stealthily, that is why the accused waited on the way at 5.30 a.m., and at first received the viper kept in a plastic jar and paid to PW1 Rs.10,000/-. Therefore, the contention that PW1 had gone to the residence of the accused only for a demonstration with snakes is not at all tenable. The evidence of PW1, to the effect that he (PW1) had handed over a Viper to the accused which was kept in a plastic jar, near to the residence of the accused at Parakkodu at about 5.30 a.m on 26.2.20 is substantially corroborated by PW7 in this aspect. The following calls made between PW1, to accused and PW7, as is evidenced by PW71 and Ext. P63 series also corroborates the testimony of PW1 and PW7.

Call of PW1 on 26.02.2020 to PW7, CW16 & CW17
(As per Ext. P 71)

1	3.31	Outgoing call to CW16 (Ext. P94)
2	3.32	Outgoing call to CW17

3	3.34	Outgoing call to PW7 (Ext. P134)
4	3.56	Outgoing call to CW16 (Ext. P94)
5	4.11	Outgoing call to CW16
6	4.33	Outgoing call to PW7 (Ext. P134)

Calls of Accused on 26.2.2020 from 4.47 a.m to 5.21 a.m.
(As per Ext. P63 series)

Sr. No.	Time of Cal		Location of PW1
1	4.47	Outgoing call to PW1	Pooyappally
2	5.09	Outgoing call to PW1	Mylom
3.	5.22	Outgoing call to PW1	Vadakkumbhagam
4.	5.25	Incoming call from PW1	Karikkineeth, Adoor
5.	5.28	Incoming call from PW1	Parakkodu

274. The fact that PW1 and his team including PW7 were in transit enroute Adoor to Parakkodu is proved by the constant change in the tower locations of their mobile phones. Moreover, the fact that the accused had purchased a snake was admitted by him to PW9 as is evidenced from the testimony of PW9. It is to be noticed that according to PW9, the accused was tensed when he stated to him that he had purchased a rat snakelet (page 11 and 12 of testimony of PW9).

275. It is to be noticed that as per Ext. P41 pay slip of the accused proved through PW24, the salary of the accused was only Rs.11,980/-. The

contention of the defence that the accused had called PW1 only for conducting a live demonstration with snakes and he never purchased a Viper and that there was no demand to PW1 for a Viper is falsified by the statement of PW1 that the accused had paid him Rs.10,000/-. It is highly improbable that a person who obtained a salary of about Rs.11,000/- had paid Rs.10,000/- for conducting an awareness class using snakes. Therefore, the irresistible conclusion is that the accused had clandestinely purchased a Viper from PW1 by paying Rs.10,000/- and the transaction took place at 5.30 a.m., on the way near the residence of the accused at Parakkodu.

276. It is to be noticed that, if the rendezvous is clear, then there need not be any repeated calls regarding the route. Here, according to PW1 and PW7, the accused was waiting in the road situated near his house at the early morning on 26.2.20 and he was met by PW1. In the said circumstances, there was no confusion regarding the destination by PW1 and others and no necessity or occasion for the accused to call and ensure whether they were on the correct route. The details of the route might have been intimated in the earlier calls and the accused was waiting in the road. It is common knowledge that only if a mobile phone receives a call or message, it will be reflected in the CDR and its tower location could be deciphered. Therefore, there is no merit in the

contention of the defence that since the tower location of the accused's and PW1's phone was absent at Puthumala at 5.30 a.m., on 26.2.20 it does not prove that they have come to that place for handing over the Viper. So also, due to several reasons the CCTV footages may be lost or not obtainable. The absence of CCTV footages regarding the car of PW1 on 26.2.20 in and around Parakkodu area is also not a material defect. The investigation had commenced only in the month of May, i.e., after a period of 3 months. Therefore, the testimony of PW85 that there was no back up for the CCTV cameras at Parakkodu and he did not obtain such CCTV footage can be accepted. The decision of Thomas Bruno relied on by the defence counsel is also not applicable to the facts of this case. That was a case where admittedly there were CCTV cameras installed in a hotel. It was stated by the Manager of the hotel that there were CCTV footages and that he had given the said CCTV footages. Here, there is no evidence that such CCTV footage is available.

276 (a) *It is to be noticed that when questioned U/S 313 of Cr.PC, in answer to question number 313, the accused gave an interesting reply as follows :-*

അന്ന് PW1 വീട്ടിൽ വന്നപ്പോൾ വിഷമില്ലാത്ത പാമ്പാണ് ആരേയും കടിക്കില്ല എന്നു പറഞ്ഞു. 2-3 പേരുടെ കൈയ്യിൽ ടി പാമ്പിനെ കൊടുത്തു. അപ്പോൾ ഞാൻ ടി പാമ്പിനെ തൊട്ടു. അതിനെ PW1 കൊണ്ടുപോയി.

It is to be noticed that as per Sec. 313 (4) of the Cr.PC, the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against him. In the decision reported in Mohan Singh Vs. Prem Singh (2002) 10 SCC 236 and State of Uttar Pradesh Vs. Lekshmi (1988) 4 SCC 336, it is held by the Supreme Court that a statement made by the accused U/S 313 Cr.PC can certainly be taken aid of to lend credence to the evidence let in by the prosecution. So by the above referred statement the accused has admitted that PW1 had came to his house with live snakes.

The call details of tower location of PW1 after 5.28 a.m to 7.48 a.m., on 26.2.20 are as follows :-

*Call details and Tower Location of PW1
after 5.28 a.m to 7.48 a.m., on 26.2.2020*

		<i>LOCATIONS</i>
<i>1</i>	<i>5.28 outgoing calls to accused</i>	<i>Parakkodu</i>
<i>2</i>	<i>6.34 incoming call from accused</i>	<i>Adoor KSRTC</i>
<i>3</i>	<i>6.40 Random incoming call</i>	<i>Adoor KSRTC</i>
<i>4</i>	<i>6.41 Random outgoing call</i>	<i>Adoor KSRTC</i>
<i>5</i>	<i>6.43 Random outgoing call</i>	<i>Adoor KSRTC</i>
<i>6</i>	<i>6.47 incoming call from accused</i>	<i>Adoor KSRTC</i>
<i>7</i>	<i>7.03 outgoing call to accused</i>	<i>Puthumala</i>
<i>8</i>	<i>7.04 outgoing call to accused</i>	<i>Puthumala</i>
<i>9</i>	<i>7.25 random incoming call</i>	<i>Puthumala</i>
<i>10</i>	<i>7.29 random incoming call</i>	<i>Puthumala</i>
<i>11</i>	<i>7.30.2 random incoming call</i>	<i>Puthumala</i>
<i>12</i>	<i>7.30.57 random incoming call</i>	<i>Puthumala</i>

13	7.44 random incoming call	Puthumala
14	7.48 random incoming call	Puthumala

276 (b) While considering the fact that Uthra encountered a snake in the landing of the staircase of the residence of the accused at Parakodu and whether she sustained haemotoxic envenomation from viper bite, The law relating to dying declarations and admissions have to be analysed. The law relating to dying declarations covered by Sec. 32 (1) had been succinctly stated by the Privy Counsel in *Pakala Narayana Swami Vs. Emperor* (AIR 1939 PC 47). The Court held the scope and meaning of the word “circumstances of transaction” as follows :-

“It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the “circumstances” can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitaitons. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was

proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae." Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that "the cause of (the declarant's) death comes into question."

277. This principle relied on by the Privy Council was followed by the Supreme Court in **Patel Hiralal Joitaram VS. State of Gujarat (2002) 1 Supreme Court Cases 22**), wherein it was held that (Para. 29)

“The words “statement as to any of the circumstances” are by themselves capable of expanding the width and contours of the scope of admissibility. When the word “circumstances” is linked to “transaction which resulted in his death” the sub-section casts the net in a very wide dimension. Anything which has a nexus with his death, proximate or distant, direct or indirect, can also fall within the purview of the sub section. As the possibility of getting the maker of the statements in flesh and blood has been closed once and for all the endeavour should be how to include the statement of a dead person within the sweep of the sub-section and not how to exclude it therefrom. Admissibility is the first step and once it is admitted the court has to consider how far it is reliable. Once that test of reliability is found positive the court has to consider the utility of that statement in the particular case.

In *Rattan Singh V. State of H.P (1997) 4 SCC 161*) it is held as follows :-

The collection of the words in Section 32(1) ‘circumstances of the transaction which resulted in his death’ is apparently of wider amplitude than saying ‘circumstances which caused his death’. There need not necessarily be

a direct nexus between ‘circumstances’ and death. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death.”

In the decision of the Hon’ble High Court of Kerala in State of Kerala V. Ammini 1987 (1) KLT 928 and others, the Kerala High Court has held regarding the proximity of time of making the declaration and the death and held as follows :-

*“in Sharad Birdhichand Sarda v. State of Maharashtra (AIR 1984 S.C. 1622), where the majority of the Judges held that “ the test of proximity cannot be too literally construed and practically reduced to a cut-and dried formula of universal application so as to be confined in a strait-jacket. Distance of time would depend or vary with the circumstances of each case. **For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the***

entire statement would have to be read as an organic whole and not torn from the context". The Supreme Court adopted the interpretation that the expression "any of the circumstances of the transaction which resulted in his death" is wider in scope than the expression "the cause of his death". In the light of the said decision of the Supreme Court, motive factor available in the statement of the deceased cannot be discarded as a remote circumstance, if it is otherwise intimately connected with the circumstances of the transaction which resulted in his death."

278. ***In this case the death Of Uthra is a logical culmination of a continuous drama, long in process, hence the statement regarding each step directly connected with the end of the drama would be admissible .*** In view of the dictum of the above referred decisions, it is clear that the statement made by Uthra to PW2 and PW4 regarding the fact that she confronted a snake in the landing of the staircase in the residence of the accused and that the accused caught the snake and put it in a sack and took it away, is a vital piece of evidence which is admissible U/S 32 (1) of the Evidence Act, as it relates to the circumstance relating to her death. This fact is stated in Ext. P6 also by PW2 and PW4. Thus, the seventh circumstance relied by the prosecution is also held to be proved. The situation in illustration (1) of section 14 of evidence act

regarding the statements made by a person who died of poison, during his illness as to his symptoms can be given an extended meaning to include the above statements also.

279. It is to be noticed that PW9 Sujith is a thick friend of the accused. It appears from the evidence that when Uthra was crying aloud in the night the accused called PW9. It was a missed call. Thereafter, the accused did not make a further call and PW9 called back. It is to be noticed that if a person's near relative is crying aloud in the night, then that person would make a frantic call. Even if one call is missed or not picked up, immediately another call will be placed. The evidence of PW9 and Ext. P93 CDR would reveal that after the missed call at 2.54 a.m., the accused had not called back. Thereafter, PW9 called back to the accused at 2.59 a.m. Of course, during cross-examination it was elicited from PW9 that he is a better driver than the accused and the accused had vision problems in the night and that the father of the accused consumed liquor. It was also stated by the accused in 313 that he had consumed liquor. However it is not stated so in Ext P16 complaint. The trend of cross-examination of PW9 would suggest that since the accused was not a better driver, he sought the aid of PW9, an expert driver. At this juncture, the circumstances at which the accused had made the call to PW9 is to be borne in mind and that it is evident that Uthra was crying aloud in pain and agony. This

fact is deposed by PW9 in his testimony. Therefore, in the normal human conduct, if a person's wife is in great pain and agony and a call made to a person seeking aid is not picked up, then the person would get frantic and immediately make repeated phone calls. Ext. P76 is the C.A.F which evidences that the Vodafone Idea mobile phone number 9207720666 was allotted to the accused. As per Ext. P77 C.D.R, it is seen at page 29 that after making the call at 2.54 a.m., on 3.3.20 to the mobile phone number of PW9 having number 9207689666, the accused had conspicuously not made any further call for the next five minutes. The testimony of PW9 is eloquent to that effect. He has stated that when he reached the residence of the accused, Uthra was lying in the bed and repeatedly telling to the accused that her leg was having pain.

280. According to PW9 when he asked the accused what happened, the accused casually said that she was bitten by something. Thereafter, it was PW9 who took Uthra in his arms and put her in the car. When he again asked the accused as to what happened, he gave an evasive reply by stating that when Uthra got out to wash clothes of the child in the evening, something might have bitten her. Thus, from the testimony of PW9, it is revealed that Uthra was in great pain. The circumstance revealed from the call detail records of the

accused would show that he had made one call to PW9 and thereafter, did not call anyone, which is unusual conduct for a person whose wife was in great pain. Therefore, the contentions of the defence that there is nothing unusual in the conduct of the accused in calling PW9, since he is an expert driver is belied from the conduct of the accused who made only a casual call to PW9 and remained silent. The decisions relied by the defence reported in (2003) 10 SCC 57, 2020 CrL. Law Journal 886 and (2016) 16 SCC 418 are not applicable to the facts of this case as the facts of the above decisions are entirely different.

281. It is to be noticed that PW60 and PW61 who are working in the casualty departments of the hospitals are expected to give immediate life saving treatment to the patients. Both of them have recorded the history of Uthra as unknown bite as stated by the bye-stander. PW60 has identified the accused as the person who introduced himself as the husband of Uthra. She categorically stated that the accused had narrated the history that Uthra sustained bite at 8.30 p.m / 9 p.m., when she got out of the house. PW60 has even identified the accused in Court. The testimony of PW60 and PW61 are found to be reliable and trustworthy. The contention of the defence that since they had not waited, till the culmination of 20 minutes to confirm the clotting time test of 20 minutes is not at all a ground to disbelieve these witnesses who were apparently dealing with the matters of life and death in the casualty of hospitals. The testimony of

PW60 would reveal that as abundant caution after 7 minutes, since the blood was not clotting she referred the patient to a higher centre, since it was not possible to manage at her hospital. PW61 also did not wait for the completion of 20 minutes while conducting the whole blood clotting time. He stated that Uthra was having low blood pressure and even after starting intravenous fluids, her vitals were not stable. Therefore, he arranged the High Tech Ambulance and referred her for higher treatment. He also stated that the bite mark on the leg of Uthra was vertical. It is true that PW61 had denied the statement in 161 Cr.PC that there was no oozing of blood from the bite site. The fact that Ext. P170 reference report issued by PW60 and PW61 was not put to them would not amount to suppression. The actual fact is that Ext. P170 was incorporated with the case sheet of Uthra issued from Pushpagiri Hospital which runs to about thousands of pages and only when PW73 was examined and the case sheet of Pushpagiri Hospital was taken, it was found. Therefore, it would not amount to suppression of Ext. P170 at all.

282. PW73 is a native of Andhra Pradesh and she does not have any animosity with the accused. She categorically stated that there was pin point active bleeding from the bite sites of Uthra. It is corroborated by Ext. P171 O.P record of Uthra in which in the initial assessment form, PW73 has noted that there was pin point bleeding from the bite site and she has also drawn the

diagram of the bites. She has also stated the complaint as unknown bite which was informed by the bye-stander, who is the accused. Moreover, PW73 had also taken photographs of the bite marks on Uthra and the C.D along with 65 B certificate were marked. MO28 was displayed through the monitor of the Court. The bite marks are vertical. She has categorically explained that the abrasion mark noted outer to the bite marks could also be by snake bite. The testimony of PW73 shows that she gave anti snake venom to Uthra on being convinced that she had suffered envenomation as the blood was not clotting, to save the life of the patient. The challenge against the veracity of PW60, PW61 and PW73, all of them who were working in the Emergency Department / Casualty of the hospitals, is not at all sustainable because the aim of doctors working at the casualty is to save the life of the patient. All of them have succeeded in that object and Uthra's life was saved with regard to the bite she sustained in the night of 2.3.20, The contention of the defence that Uthra did not suffer snake bite, since it is not stated in the snake bite register, is only to be rejected. It is to be noticed that PW60, PW61 and PW73 have noted the history as stated by the bye-stander. Moreover, PW60 and PW73 categorically identified the accused as the person who stated the history. PW74 Dr. Mathew Pulikkan, who is the Head of Department of Critical Care Unit, Pushpagiri Medical College Hospital has

proved Ext. P173 series case sheet of Uthra and given clinching evidence regarding the medical condition of Uthra. He had stated that there was compartment syndrome, near the bite marks and it causes necrosis of the muscles. Uthra had impaired kidney function and myocarditis – dysfunction of the heart and complication of snake bite. According to him, at first, when he examined Uthra she was drowsy. After two, three days when she became more conscious he enquired about the history of snake bite and Uthra was not clear about how and when the bite occurred which is unusual because normally snake bite patients would be clear as to when and how the snake bite occurred. These facts would point out that Uthra was under sedation when she sustained the viper bite in the night of 2/03/20. The evidence of PW74 also discloses that Uthra told him that she woke up from her sleep because of pain in her leg and when she complained to her husband, initially his response was very casual. He categorically deposed at page 8 of his cross-examination that Uthra was having all signs of snake envenomation. The evidence of PW60, PW61, PW73, PW74 and PW75 coupled with medical records and the case sheet of Uthra issued from Pushpagiri Medical College Hospital, conclusively proves that Uthra had all the symptoms of haemotoxic snake envenomation. In fact, she had underwent inpatient treatment for 52 days and her life was saved due to timely treatment. Thus, the contentions of the defence that the medical

evidence was fabricated by the prosecution is not at all tenable. Equally untenable is the contention of the defence that the medical witnesses were prompted to testify favouring haemotoxic envenomation. In Ext P16 complaint, at page 2 last portion accused admitted that he understood from Pushpagiri Medical College that Uthra sustained viper bite. Therefore the defence cannot now turn around and contend that Uthra did not sustain haemotoxic envenomation which is caused by viper bite. It is to be noticed that at the time when Uthra sustained snake bite on 3.3.20 early morning, the accused was the person with her. It is in evidence that on that night at 10.28 pm the accused searched the internet in his mobile phone for viper snake. The expert evidence that bite marks on the leg of Uthra could not be sustained, if a bite was inflicted when she was standing up, because the bite marks are not horizontal and it is vertically placed is acceptable. Moreover, the fact that Uthra was suffering excruciating pain when PW9 first saw her and she was treated by PW60 would negate the defence case that she sustained an unknown bite at about 9 p.m., outside the house. The bite sustained by Uthra was life threatening and it gave rise to several medical complications. Such a serious snake bite would not go unnoticed by a person who is not sedated. Both PW1 and PW52 who were having history of being bitten by venomous snakes have testified that there would be excruciating pain on sustaining viper

bites. So the statement made by the accused that Uthra sustained an unknown bite while she went out is false. Moreover though the accused stated in his 313 Cr.Pc. Statement that it was not informed by the doctors of Pushpagiri M.C.H, that Uthra sustained Viper bite, in Ext P16 complaint he stated that it was informed from the said hospital that Uthra sustained viper bite. PW 74 Dr Mathew Pulickan has clearly stated that normally snake bite patients would be clear as to when they sustained bite, but Uthra could not say when she sustained the bite. According to PW74, initially Uthra was drowsy while she was admitted. It needs to be noticed that drowsiness is not a normal symptom of haemotoxic envenomation. These circumstances point out to the fact that Uthra was under sedation when she sustained the viper bite on 2/03/20. Moreover the experts have testified that Russels viper is not arboreal. It was when Uthra was sleeping in the first floor of the house of the accused that she sustained viper bite, which is also a circumstance which points to the involvement of a person who brought the snake upstairs. Moreover Uthra had categorically told to PW4 that she encountered a snake in the landing of the staircase and the accused captured it. So the attempt of the accused to contend that Uthra did not sustain viper bite is an afterthought. Thus, the history of Uthra sustaining unknown bite as stated by the accused to his relatives and doctors at the causalities of the

hospitals are evidently false and it creates a grave circumstance which points towards his guilt.

283. The contentions of the defence counsel are not tenable. First of all, the accused has admitted that PW1 had come to his house and a snake was touched by him. More over the evidence of PW72 discloses that he retrieved images from the mobile phone of accused and marked those were marked as Ext P169(b). A perusal of Ext P169(b) discloses that the accused was actually taking the snake in his hand and standing with a smiling face. PW1 can also be seen standing near accused. PW72 testified that these images were taken on 26/2/20 at 7.36 am in the Oppo mobile phone of PW7. These facts disclose that the accused was not afraid to handle snakes. In fact before she sustained viper bite Uthra had also told her parents that the accused had handled a snake given by a snake rescuer. PW7 is an independent witness and the accused does not have a case that he is on inimical terms with him. He has no reason to implicate the accused. The evidence of PW1 and PW7 regarding the handing over of the Viper, the search conducted in the premises of the house of the accused and the live demo conducted is reliable and trustworthy. The prosecution has proved that the accused had handled a non venomous snake without any fear. The conduct of the accused in first obtaining the Viper in the

early morning and then getting a stage managed search for a snake in the premises of his house speaks volume of his nefarious and criminal intention. The purchase of the Viper by the accused was by ensuring secrecy. The above referred conduct of the accused tends to prove his intention to plan to inflict a Viper bite on Uthra and create a probability in the minds of the inmates of the house and others that it was a natural snake bite.

284. PW1 whose evidence is discussed above in detail has stood the test of cross-examination. It is settled law that two tests have to be satisfied for the acceptability of the evidence of an approver. The approver should be reliable witness and his evidence should be corroborated in material particulars.

Regarding Approvers Evidence it was held in 1973 SC 1188, 1973 KHC 747)

Ram Narain Vs. State of Rajasthan as follows

The statutes thus permits the conviction of an accused person on the basis of uncorroborated testimony of an accomplice but the link of prudence embodied in Sec. 114 (b) it strikes a warning cautioning the Court that an accomplice does not generally deserved to be believed unless corroborated in material particulars.

An approver who is admittedly guilty of the crime is an accomplice who has betrayed his associates and has apparently sought pardon for giving his own

skin. In other words he has purchased complete immunity for his prosecution at the expense of his associates by agreeing to give evidence against them for the prosecution. He is therefore presumed not to be a man of his character or a fair witness. His pardon being conditional to please the prosecution, he may well weave some false detail into the true details of the prosecution story and may also involve some innocent person. Thus there is a real danger of telling a story true in general outline but containing some untruth which he can easily work into the story. It is for this reason that the Courts as a matter of prudence and caution anxiously look for some corroboration to satisfy their conscience, that the approver's testimony which is clearly admissible is also worthy of belief. One can of course visualise an accomplice who is generally repentant for the commission of his crime and truly desires to make a clean breast of the whole affair by way of penitence.

285. It is also well settled that merely on the ground of minor contradictions, the testimony of the witness is not to be discarded and disbelieved because minor contradictions are bound to occur specially after a lapse of considerable time in the testimony of natural witness. The witnesses react differently under different circumstances and unless the discrepancies in witness account is vital, it will not affect the credibility of the witnesses. In the

judgment of the Apex Court in the case of Leelaram (D) through Duli Chand Vs. State of Haryana and Another AIR 1999 SC 3717, it is held that unless the discrepancies are vital it will not affect the credibility of the witnesses as corroboration of evidence with mathematical niceties cannot be expected. It is apposite to refer to the decision wherein the authoritative pronouncements of Supreme court are also relied on as follows- *There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony (1985 (1) SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48). In para 10 of the Report, this Court observed: (SCC pp. 514-15)*

"10. 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 scrutinise 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. If 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 proper 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."

In a very recent decision in Rammi v. State of M.P. (1999 (8) SCC 649) this Court observed: (SCC p. 656, para 24)

24. "When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making

some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

285 (a) The contentions of the defence that PW1 had made embellishments and contradictions and hence, his testimony is liable to be discarded is not tenable. It is settled law that testimony of a witness has to be taken as a whole. The fact that PW1 and the accused were acquainted is corroborated by the call detail records and the fact that the accused has admitted in his 313 Cr.PC statement that PW1 had brought a snake to his house. PW7 Premjith has also testified regarding the earlier occasion on 26.2.20 when PW1 and the accused had met at the residence of the accused at Parakkodu and handed over a viper. The fact that PW1 had proceeded to Eenathu from Kalluvathukkal on 24.4.20 is corroborated by the call detail records of his mobile phone, bearing number 9061419459 on which day the accused had called PW1 and PW1 has called him back as shown in the table (Exts. P63 and P85). As per Ext. P87 tower decoding data and Ext. P85 call detail records, it could be seen that on 24.4.20 the mobile phone of PW1 having number 9061419459 had proceeded to Eenathu. Further as per Ext. P71 CDR, the mobile phone number of PW1 having number 9446907317 also shows that on 24.4.20 at 11.42 and 11.43 he was at the place Eenathu. Therefore, the testimony of PW1 that he had proceeded to Eenathu on 24/4/20 is corroborated

by the call detail records produced by the prosecution. PW1 has testified that after about 11.30 a.m on that day, he reached near the pan shop, after Eenathu bridge (near the shop of Ajeem) and called the accused. Even the said call is reflected in Ext. P63 series. According to him, at that time, the accused replied that he was in the ATM. The said call is reflected in Ext. P85 CDR of the mobile phone number 9061419459 of PW1. It is to be noticed that MO17 pen drive of the ATM visuals would show that at 11.31 a.m., the accused entered the ATM on 24.4.21. He withdraws cash and it could be seen that he waits outside the ATM. It is within seconds of the accused leaving the ATM that PW1 calls him. As per the evidence of PW72 and the cyber forensic report, the identity of the accused as the person coming in a motor bike and withdrawing cash is established. PW72 has also testified that the call details of the MO 31 mobile phone of accused was retrieved and those calls also reflect a call being made on 24/4/20 at 11.31.50 hrs to the mobile phone of PW1 having number 9061419459 saved as Sresh.Black.1., which was not attended. There are also incoming calls from this mobile phone number of PW1 to the phone of accused. The message that accused had withdrawn 5000 rupees from SIB Ezhanmkulam Branch at 11.31.05 hrs is also retrieved by cyber forensic analysis. (Ext 168 series result no 4 and 5)

286. It is to be noticed that the prosecution has given the latitude and longitude of the tower locations. PW35, the Nodal Officer of Reliance Jio and PW83, the Civil Police Officer, who prepared the route map and who is an expert in cyber devices, have categorically stated that the tower locations of the cell IDs (mobile phone tower) is located with the latitude and longitude

coordinates provided in the tower decoding data supplied by the mobile service providers. On considering the latitude and longitude of various Cell IDs having address Kaithaparambu, Mangadu, Mavadi etc., which are vehemently challenged by the defence as it is far away places than the Ezhamkulam – Eenathu road, it is found that the said coordinates of the Cell ID or mobile towers fall proximate to the route taken by the accused and PW1 to their destination at Eenathu. The vehement contentions of the defence regarding the variation in the mobile phone tower locations in the CDRs produced by the prosecution are not tenable. Moreover, PW83 has categorically stated that the route map prepared by him as Ext. P187 series is not the exact way through which the accused or PW1 have passed by. It needs to be noticed that the mobile phone continuously selects a Cell and exchanges data with the mobile tower. Therefore, the location of the mobile tower would reveal the approximate location of a mobile phone, if it is active in that particular tower location. In this case, the mobile phone tower locations of the accused would reveal that he had proceeded to Eenathu on 24.4.20. As per Ext. P64 I.P.D.R, on 24.4.20 at 11.45 to 11.47 the mobile phone of the accused was within the range of Eenathu as is borne out from his Internet data activity. This fact also corroborates the testimony of PW1 that he met the accused at Eenathu and handed over the Cobra contained in MO1 jar. It is to be noticed that in **Shaji**

P.A Vs. State of Kerala (2018 (3) KHC 429), the Kerala High Court had relied on the Supreme Court decision in **Gajaraj Vs. State of NCP (2011 KHC 4871)** and held that call data records being evidence of a conclusive nature cannot be overlooked and even a serious discrepancy in oral evidence has to yield to such scientific evidence. During the relevant time, the mobile phone tower locations of the accused and PW1 on 24.4.20, called time and latitude and longitude coordinates are as follows :-

CDR/IMEI No.	Other Party/Internet	Starting date and time	Tower Name	Latitude and Longitude
7907934909	Internet	24/Apr/2020 11.45.04	Enath	9.09244, 76.75583
7907934909	Internet	24/Apr/2020 11.46.07	Enath	9.09244, 76.75583
7907934909	Internet	24/Apr/2020 11.46.52	Enath	9.09244, 76.75583
7907934909	Internet	24/Apr/2020 11.47.24	Enath	9.09244, 76.75583

CDR/IMEI No.	Other Party/Internet	Starting date and time	Tower Name	Latitude and Longitude
9061419459	7907934909	24/Apr/2020 11.41.21	Enath Town	9.09223, 76.75566
9061419459	VA-IDEA	24/Apr/2020 11.42.05	Enath Town	9.09223, 76.75566

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According to PW1 he had waited at the rendezvous at Eenathu, after reaching there and the accused came there and met him. It is to be noticed that only if the mobile phone is active like an incoming or outgoing calls or messages are send or received, the mobile activity will be detected in the call data record and the tower within which it is situated. The mobile phone of PW1 might have remained without any activity after he reached the rendezvous at Enath and therefore, the fact that at the time of meeting, his cell phone was not detected in the tower location range does not affect the prosecution case.

287. The doctrine falsus in uno falsus in omnibus is also not having universal application in India. The decision of the High Court Of Kerala in Kurian. V. State, 2019 KHC 741 has laid down as follows-37. *The maxim 'falsus in uno, falsus in omnibus' (false in one thing, false in everything) is not a sound rule to be applied in India. It is the duty of the Court, in cases where a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutinise the rest of his evidence with care and caution. If the remaining evidence is trustworthy and the substratum of the prosecution case remains intact, then the court should uphold the prosecution case to the extent it is considered safe and trustworthy (See Ranbir v. State of Punjab, 1973 KHC*

590 : AIR 1973 SC 1409 : 1973 (2) SCC 444 : 1973 SCC (Cri) 858 : 1973 CriLJ 1120).

One hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroidery or embellishment. An attempt has to be made to separate truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto

288. It is to be noticed that there may be minute variations in time regarding the activities narrated by PW1. However, on examining his testimony as a whole, I do not find any material discrepancy to disbelieve him. The fact that PW1 caught a Cobra from Aalamcodu is corroborated by the video clippings and the testimony of PW12. The other contention that PW1 had kept another Cobra in his house and he made a statement that he let loose a Cobra, near the river bank, does not affect his credibility. PW1 is a person who rescues snakes. Therefore, he might have kept a snake in his house and let loose another snake. However, the above said fact does not affect his credibility.

289. Thus, the variations in time and place, if any made by PW1 regarding his meeting with the accused and making calls to the accused on 24.4.20, the day on which he handed over the Cobra to the accused is not material. It is to be noticed that the fact that PW1 had not been checked in any Covid check point maintained by the police to enforce the lock down is not a material aspect to disbelieve him for the reason that PW1 who was carrying a snake in the scooter would always evade the law enforcement agencies to avoid unnecessary questions. The contention of the defence that no CCTV footage of PW1 and accused at or near Enathu is produced and the defence witnesses have testified about existence of CCTV cameras and it is fatal to the prosecution is not at all tenable. On Cross examination of DW2 and DW3 it was brought out that they do not know about the focus of the CCTV cameras. Thus the evidence of PW85 that he was not able to obtain such CCTV footage has to be given credence. Moreover the prosecution cannot be compelled to produce evidence which is not obtainable. In this case there is substantive evidence of PW1, that on 24/4/20 he proceeded to Enathu in his scooter and met accused. The said fact is corroborated by the CDR of his mobile phone which was also in transit in the said route. Moreover, the ANPR Camera visuals marked as Ext. P284 series would also prove that the scooter of PW1 had passed Eenathu bridge and

proceeded towards Eenathu on 24.4.20 at about 11.41 a.m. The challenge made by defence against genuinity of Ext P284 series is also not tenable.

In this case, all the witnesses have supported the prosecution. Even PW8 and PW9, the friends of the accused supported the prosecution. Though the defence has cross examined all the witnesses at length their credit has not been impeached. I have considered the evidence of PW85, PW45, PW47, PW17 and PW15 Dayimudeen who gave MO1 can to PW1. PW1 categorically stated that he procured the can from the shop of PW15 after he captured the Cobra on 23.4.20. Thereafter, he put air holes in the same. On perusing MO1 it can be seen that it has air holes.

290. The defence challenged the veracity of PW1 and PW15 on the ground that with reference to the mobile phone tower location of PW1, who was at Aalamkodu late at night, it was improbable to obtain MO1 from the shop of PW15 Dayimudeen, before the shop closed on that day. The said objection is not tenable, as minor discrepancies with regard to the time and place, which does not affect the substratum, would not cast suspicion on the testimony of witness. PW15 had categorically identified MO1 and stated that he had given it to PW1. PW1 has also identified the same. The recovery was effected in the presence of police photographer and other witnesses. PW17 has also

corroborated the recovery. MO1 was hidden beneath rubbish, like cadjan leaves, coconut husks etc. Though, it was incumbent on PW47, the finger print expert for himself to handle MO1, as if anyone else handled it, there was chance of erasure of finger print, since the recovery was made in the presence of independent witnesses, police photographer etc, the fact that a police constable was asked to pick up MO1, does not amount to a vitiating or suspicious circumstance. The challenge made by the defence regarding the lifting of finger print and the procedure adopted by PW47 was properly explained by him in cross-examination. Therefore, there is no ground to doubt the veracity of PW47 regarding the lifting of finger print. PW47 has proved that he developed finger prints of the accused from MO1 at the site itself. Therefore, the recovery of MO1 bottle pursuant to the disclosure statement made by the accused is proved. The discovery of the fact that MO1 jar was concealed at the place from which it was recovered, pursuant to the disclosure of the said fact by the accused to PW85, is relevant and admissible U/S 27 of the Evidence Act. (Ext. P19 (a). **From the said fact an inference can be raised, that the accused was in possession of MO1, before it was concealed there.**

291. PW63 who conducted necropsy at the site, has testified that he forwarded samples of the cobra along with MO1 for D.N.A comparison. The

D.N.A analysis and comparison was conducted by PW80 at Rajiv Gandhi Centre for Biotechnology. PW80 has proved that the D.N.A obtained from the biological traces recovered from MO1 and from the remnants of the buried snake was of the species Naja Naja or Cobra. The Supreme Court in case of Dharam Deo Yadav v. State of U.P., 2014 (4) Scale 730 : 2014 CriLJ 2371 (SC). 2014 KHC 4245 held as follows regarding DNA evidence

34. *“The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made - up of a double standard structure consisting of a deoxyribose sugar and phosphate backbone, cross - linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. The most important role of DNA profile is in the identification, such as an individual and his blood relations such as mother, father, brother, and so on. Successful identification of skeleton remains can also be performed by DNA profiling. DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than*

half a century, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in Court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory” .

292. It is true that by DNA profiling, only the species could be identified and the identity of the traces of cobra found inside MO1 jar and the remnants of the cobra recovered from the buried spot was not established as the same, due to scientific reasons. However, DNA profile of the species was found to be that of naja naja or Indian cobra. The challenge that the recovery of MO1 was stage managed and evidence was fabricated is unsubstantiated. Though the defence counsel contended that it was impossible to enclose a fully grown cobra in a flimsy bottle like MO1, it could be seen that in the live demonstration conducted by PW19 also a large cobra was enclosed in a similar jar. PW1 has identified MO1 jar, as the jar in which he gave the cobra to the accused. PW15, who gave it to PW1 also identified MO1. Fingerprints of accused was recovered from MO1 jar. Interestingly PW1 has also identified the images of the dead snake inside the room of accused as that which was supplied by him. PW63 has testified that on necropsy, the coelomic cavity of the cobra was

empty. It presupposes that the cobra was under starvation or in captivity. All these facts would cumulatively prove that the cobra supplied by PW1 to the accused was enclosed in MO1. It is found that the prosecution has proved the above referred circumstance of recovery of MO1 plastic jar pursuant to the disclosure statement made by the accused and the fact that it contained the D.N.A of Indian Cobra and that the accused had subsequently concealed the jar. From the above circumstances an inference can be drawn that the accused was in possession of MO1 jar and the cobra supplied by PW1 was contained in the same

293. On analysing the testimony of PW1, it is found that his evidence is corroborated in material facts by evidence adduced by the prosecution. Truth and falsehood are not inextricably mixed up in his evidence. His testimony has a ring of truth around the same in view of the corroboration in material particulars by direct as well as scientific evidence. Though he has given some evasive replies, in cross examination, the substratum of his evidence is not shaken. Thus it found that PW1 is a reliable witness and his evidence is trustworthy. **In the said circumstances, it is held that the prosecution has proved that on 26/2/20 PW1 had handed over a viper to the accused at Parakkodu and on 24.4.20, PW1 had proceeded to Eenathu and handed**

over MO1 jar containing a Cobra to the accused and the accused paid cash for the same to PW1.

294. **Thus the prosecution has conclusively established the fact that the accused was in possession of a viper and a cobra, both venomous snakes and the source of the poison, with which Uthra sustained envenomation in the night of 2/3/20 and the fatal envenomation sustained in the night of 6/05/20.**

295. It is found by this court that death of Uthra was caused by to cobra envenomation and the accused had possession of the, cobra, the source of lethal poison which caused death of Uthra. This case is unique in as much as, the accused is alleged to have used a live animal to inject venom, a type of poison for committing the offence. A case of murder by poisoning, is committed in utmost secrecy. In majority of cases there will only be circumstantial evidence. In a case of murder by poisoning, the third Proposition and fact to be proved according to the Supreme Court is **whether the accused had the opportunity to administer the poison on the deceased.** The motive of the accused is also incidentally interlinked and embedded in these facts and circumstances.

It was held by the Supreme Court in *Anant Chintaman Lagu v. The State of Bombay*, 1960 (2) SCR 460 = (AIR 1960 SC 500):

"A case of murder by administration of poison is almost always one of secrecy. The poisoner seldom takes another into his confidence, and his preparations to the commission of the offence are also secret. He watches his opportunity and administers the poison in a manner calculated to avoid its detection. The greater his knowledge of poisons, the greater the secrecy, and consequently the greater the difficulty of proving the case against him."

296. In this case Uthra sustained envenomation for the first time while she was in the residence of the accused and the fatal envenomation in the privacy of her house at Anchal Eram. It is alleged by the prosecution that on both occasions of envenomation sustained at night, the accused alone was with her. The planning, preparations, attempt and actual execution of the offence of murder by poisoning are done clandestinely and there would only be circumstantial evidence regarding the same. The accused has to offer valid explanations about the incriminating circumstances against him and of facts exclusively within his knowledge, u/s 106 of Evidence Act. While analysing the incriminating circumstances adduced by the prosecution, the law laid down by the Supreme Court, regarding the appreciation of circumstantial evidence should be borne in mind. It is apposite to quote, the following observations made in *Sharad Birdhichand Sarda v. State of Maharashtra*, 1984 KHC 145 :

1984 (4) SCC 116 : 1984 KLT SN 101 : AIR 1984 SC 1622 : 1984 SCC (Cri) 487 : 1984 CriLJ 1738 (SCC p. 185 para 153-154):

regarding the "**the panchsheel of the proof of a case based on circumstantial evidence.**"

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, 1973 CriLJ 1783 where the following observations were made:

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

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.

296 (a). In Trimukh Maroti Kirkan .V. State Of Maharashtra, 2006 (10) SCC 681 it was held as follows---

11. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of. the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit

the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirlahd v. Director of Public Prosecution* (1944 AC 315) quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* 2003 (11) SCC 271. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind S.106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b.) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but

the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of S.106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

297. **Regarding the second circumstance,** the Prosecutor relied on the testimony of PW2, PW4 and PW6, who are the parents and the cousin brother of deceased Uthra and contended that their evidence proves the incident which occurred in January, 2020. Relying on the testimony of PW2, PW4 and PW6 it was contended that the circumstance when the parents and PW6 decided to take back Uthra to her parental house and PW6 demanded the accused to return the car, cash and gold ornaments of Uthra, the accused patched up the matter by taking the child and assuring that in future there would not be any problems.

According to the Public Prosecutor, the above said incident and the conduct of the accused pursuant to the demand made to him to return the cash, car and gold

ornaments is the inception of the criminal intention in the mind of the accused to do away with Uthra. Thereafter, the accused started his planning by searching for venomous snakes.

298. As the 11th circumstance, the prosecution contends that immediately after Uthra was admitted in the I.C.U of Pushpagiri Medical College Hospital, Tiruvalla for treatment of Viper bite, the accused searched the Internet from his mobile phone for venomous snakes, like Cobra and requested PW1 to sell a venomous Cobra for consideration. PW1 has reciprocated the demand after he captured a Cobra on 23.4.2020. The learned Public Prosecutor contended that the Internet search history for the accused from MO31 mobile phone proved by PW72 and marked as Ext. P169 (d) has proved the searches made by the accused for the venomous snakes and the dates, immediately preceding the admission of Uthra in Pushpagiri Medical College Hospital. Ext. P79 the tower decoding details coupled with Ext. P77 call detail record of mobile phone number 9207720666 proves the dates and location of the accused when the searches were made.

299. As the 13th circumstance, the prosecution contends that on 6.5.2020 the accused came to the house of Uthra with MO2 shoulder bag after creating evidence that he was coming due to compulsion of Uthra. The prosecution

relies on the testimony of PW4, PW85, the communication between Uthra and the accused from MO9 mobile phone kept by Uthra to the mobile phones of the accused which are evidenced by Ext. P63 series C.D.R, the testimony of PW2 and PW3 and PW29 John Zacharia and also PW85.

300. The circumstance numbers 14, 15, 16, 17 and 18

14. On 6.5.2020 accused slept in the room of Uthra and unusually woke up in the early morning and went out of the room without even caring the abnormal lie of Uthra.

15. Though the fact of snake bite was not known to any one when Uthra was brought to the hospital, accused disclosed the site of bites to doctor and gave false information to his in-laws that doctor mentioned about a snake bite on her hand.

16. The conduct of accused in connection with the detection of snake in the room.

17. Uthra was last seen with the accused on both the occasions of snake bites and the accused failed to explain as to the transaction underwent in that room and to discharge his burden U/S 106 of Evidence Act.

18. False plea of alibi.

19. On both the occasions of snake bites, Uthra was stupefied with drugs without her knowledge.

The contentions on these circumstances relied by prosecution are considered together. According to the learned Public Prosecutor, in Ext. P6 complaint itself, PW2 and PW4 have stated that the accused who usually wakes up late, unusually woke up at 6 a.m., on the morning of 7.5.2020 and this fact was categorically deposed by PW2 and PW4. Moreover, in Ext. P16 and Ext. P169 (e) complaints, the accused had categorically admitted that he had slept in the room along with Uthra in the night of 6.5.20. Though, the evidence of PW4 shows that Uthra was lying in an abnormal condition, the accused has suppressed the said condition and it would not have escaped his notice. It was only after PW4, PW2 and PW3 raised alarm on finding Uthra lying in an unconscious condition the accused came to the said room.

301. According to the learned Public Prosecutor, the bite site in the hand of Uthra was covered with clotted blood and it could not have been identified by a layman. However, the accused made a statement in the presence of PW62 Dr. Jeena Badhar, who was working in the casualty of the St. Joseph's Mission Hospital, Anchal, that there were some bite marks in the hand of Uthra. Even before PW62 finding out the bite marks on the hand of Uthra and stating that it

was a snake bite to the accused, he got out of the casualty room and stated to his in-laws that Uthra was bitten by a snake. Thereafter, the accused and PW3 went to the house of Uthra and the accused immediately pointed out the snake and evaded from the room. Though, PW3 stated that it was the accused who pointed out the Cobra beneath the cupboard of the dressing room of Uthra, in his 313 Cr.PC statement, the accused gave a false answer that it was Vishu, who pointed out the snake.

302. On both occasions, i.e., on 3.3.2020 early morning, when Uthra sustained the Viper bite and on 6.5.2020 night when Uthra sustained Cobra bite, the accused and deceased Uthra were alone in the room. In Ext. P16 and Ext. 169 (e) complaints, the accused had admitted that he and Uthra had slept together in the same room. However, the accused failed to explain the circumstance under which Uthra sustained the bite and how she sustained unbearable pain on her leg on account of the Viper bite. According to the learned Public Prosecutor, the accused had the burden U/S 106 of the Evidence Act to disclose the facts which are exclusively within his knowledge. However, subsequently he backtracked from his initial admission that he had slept along with Uthra in her room. The learned Public Prosecutor also contended that on 3.3.2020 and 7.5.2020 when Uthra was inflicted with Viper

bite and Cobra bite respectively, she was sedated by the accused without her knowledge. In the evening of 6.5.2020, the accused took a glass of juice to the room of Uthra on the pretext of giving it to her and did not give it to her even at late night. Moreover, Uthra had told PW4 that in the night of 2.3.2020, the accused gave her a glass of 'പായസം' and after drinking that she became drowsy. The learned Public Prosecutor also drew attention to the testimony of PW61 Dr. Chaithanya Sidharthan and PW74 Dr. Mathew Pulikkan and PW65 Dr. Rajesh to fortify his argument that in haemotoxic envenomation, drowsiness is not a usual finding. Moreover, MO21 Okacet tablets, MO22 hammer etc., were seized from the residence of the accused by PW85 Asokan and after the death of Uthra MO16 Monti L.C tablets was seized from the car of the accused. According to the learned Prosecutor, PW75 had testified that at the time of discharge of Uthra she had no oral medication, but as per Ext. P158 PW76 had reported that a toxic dose of Cetirizine – 0.542 mg per 100 ml of blood was detected in the blood of Uthra. The Prosecutor also relied on the testimony of PW64 to contend that the above said dose of Cetirizine is a toxic dose. It was contended that these circumstances unmistakably point to the fact that it was the accused who had administered the stupefying drugs on Uthra.

Circumstance No. 20 **The extra judicial confession made by the accused to PW1 on 9.5.2020 by using the mobile phone of PW8 Eldhose.** According to

the learned Public Prosecutor, the extra judicial confession made by the accused to PW1 is relevant and admissible and it would throw light on his motive, commission of the offence and his actual commission of the offence.

The circumstance no. 21 is that the accused searched for Viper and Viper bite and Cobra and Cobra venom extraction, just before the Viper bite. It is contended by the prosecution that Ext. P169 Cyber Forensic report has proved the Internet searches made regarding Viper and Cobra on the relevant dates by using MO31 mobile phone.

303. Circumstance number 22 : In proximity to Viper bite and Cobra bite he was in possession of respective snakes and the need basis communication between PW1 and the accused.

304. 23. Unexplained image of a snake kept in the gallery of MO31 mobile phone of accused which was retrieved in Cyber Forensic examination.

305. The circumstance number 25

The conduct of the accused at each stage of transaction. Under this head the prosecution relies on the fact that the accused had a causal callous conduct while Uthra was taken to Pushpagiri Hospital after sustaining Viper bite. After the funeral of Uthra, the accused was found in a happy mood. The accused opened the locker of Uthra on 2.3.2020 before the Viper bite sustained to Uthra.

That on 11.4.2020 he pledged gold ornaments and availed a loan of about one lakh rupees and the attempt of the accused to project a snake bite as a serpentine curse.

306. Circumstance Numbers 28 & 29 are considered out of order

307. Circumstance No. 28

According to the learned Public Prosecutor, since Uthra was a differentially abled girl which was known by the accused at the time of his marriage with her, he had ill will towards Uthra on account of her mental condition and that the motive to commit the murder was to retain the assets received by him from the family of Uthra on account of the marriage and to project the murder as natural and serpentine curse. The learned Public Prosecutor relied on the testimony of PW2, PW3, PW4, PW6 and PW54 Dr. Vasantha Das along with Exts. P140, P141, P142 (a) and P143 to prove that Uthra was differentially abled. It was also contended that PW65 Dr. Ragesh had testified that the brain of Uthra was underweight which causes significant reduction in intelligence. The Prosecutor also relied on the extra judicial confession made by the accused to PW1 that his wife was mentally retarded and the testimonies of PW8 and PW9, the close friends of the accused to buttress the point that Uthra was differentially abled.

308. The learned Public Prosecutor contended that the evidence of PW20 coupled with Ext. P24 photocopy of marriage register, MO19 wedding album and MO20 CD of the wedding proves that Uthra was adorned with a good quantity of gold ornaments at the time of her marriage. Moreover, she was gifted with a Beleno car and cash also. It was also contended that the accused and his father had purchased an auto cab and Bullet motor cycle after the marriage of Uthra, and Suraj was paid with Rs.8,000/- per month by PW2, which is proved by PW30, PW38 and PW22.

Circumstance Number 27 – Non explanation or false explanation of entire proved circumstances.

309. According to the learned Public Prosecutor, the accused need not explain any incriminating circumstances brought out against him in his examination U/S 313 Cr.PC. But, when he opts to offer a false explanation, the same will provide an additional link in the chain of circumstances.

310. The defence has vehemently opposed the Cyber Forensic reports marked as Exts. P167, P168 and P169 on the ground that the MD hash value is not properly assessed and that the mobile phones and electronic devises seized by the police were tampered with. The Meta Data and properties are also not

analysed. The defence vehemently argued that MO2 shoulder bag was not possessed by the accused and it was planted to create evidence. It was contended that on the date of death of Uthra, the room wherein Uthra was found dead was inspected by the police, but MO2 shoulder bag was not traced out. This is contrary to the version of PW2 that MO2 bag was kept in Uthra's room. In Ext. P186 also it is not mentioned that MO2 bag was found in the room. Moreover, PW3 who claims to have produced the bag to the police has admitted that after the death of Uthra, the accused and his relatives were staying in the very same room and then also MO2 bag was not recovered. Moreover, PW3 had not stated that he had not seen Estronaforte bolus tablets being recovered from MO2 bag. PW2 and PW3 had admitted that there were CCTV cameras in the house of Uthra. However, the CCTV footage of the accused coming home with MO2 shoulder bag was not recovered and this also creates an adverse inference as it can be inferred that the said CCTV footage was suppressed. The defence counsel also relied on the Supreme Court decision in **Thomas Bruno and another Vs. State of Uthar Pradesh (2015) 7 SCC 178** and contended that non production of CCTV footages is fatal.

311. The learned defence counsel contended that in MO1 plastic jar and MO2 shoulder bag, the D.N.A of the accused was not detected. The defence

counsel attacked the veracity of PW2, PW3 and PW4 and contended that none of the above circumstances are proved by the prosecution. It was also contended that Exts. P16 and P169 (e) complaints were fabricated by the police and Ext. C1 the corresponding e-mail whereby Ext. P16 was allegedly forwarded to the Office of the Chief Minister of Kerala is not admissible in evidence as it is not scientifically extracted. It was also contended that PW14, the advocate clerk who allegedly prepared Ext. P16 has made embellishments and contradictions and he is not a reliable witness. Moreover, PW70 the Handwriting expert who prepared Ext. P16 with the admitted and specimen signatures of the accused and submitted Ext. P16 report has deposed contrary to the accepted principles of handwriting forensic science and her testimony is to be rejected. The defence also challenged the evidence of PW66, PW67, PW68 and PW69 on the ground that they are not reliable witnesses and the methodology of their analysis of samples were not full true. Moreover, snake venom was not detected from the urine of Uthra, from the bed sheet and PW69 had stated that she received one fang and a detached fang. The prosecution has not proved whether the puncture marks on Uthra would be caused by the above referred fang and those were not shown to PW65 Dr. Ragesh and PW71 Dr. Sasikala. Hence, adverse inference has to be drawn. The defence counsel contended that the testimony of PW1, PW8, PW7 and PW10 regarding the

alleged extra judicial confession made by the accused is not at all reliable and it is to be discarded. The defence counsel attacked the validity of Ext. P169 and contended that MO31 mobile phone was not properly hashed and its hash value was not recovered at the time of seizure. Moreover, PW72 has not determined the G.P.S tower location of the mobile phone. The I.P.D.R is the relevant source revealing the exact place where the data is used and the prosecution has not produced the I.P.D.R. It was also contended that by merely showing the search history of a mobile phone, it is not proved that the accused had viewed the search items.

312. The learned defence counsel contended that PW2 and PW4 do not have a case that Uthra was mentally retarded. Ext. P142 disability certificate states that it cannot be used for medico legal purposes. Hence, it cannot be used in a criminal proceeding to prove mental disability. Uthra had signed in Exts. P140, P141, P142 and P143 in English. In Ext. P141 it is stated that Uthra had handshaking and the words 'M.R' indicating mental retardation was subsequently written. Moreover, Ext. P143 IQ assessment was prepared by one Dr. Chithra attached to one Clinic, named Spectrum, which is not a part of District Hospital, Kollam. The IQ assessment conducted by an unauthorised institution cannot be relied by the Medical Board. Uthra had completed S.S.L.C and Plus Two and she had a bank account which are admitted by PW2.

Moreover, Uthra managed the affairs of the child and she took care of domestic chores and prepared food and washed clothes. It was contended that PW2 had admitted in his cross-examination that Uthra had operated her bank account and used to look after the child very well. PW2 has merely stated that Uthra was little slow in doing things. The medical certificates were obtained for gaining more time for Uthra to write exams. Hence, it cannot be said that Uthra was differentially abled and she was having any disability.

313. It was also contended that the prosecution has not proved that the accused and his family had treated Uthra with extreme cruelty and it became intolerable for her to live in the matrimonial home. In this case, the offence of cruelty defined U/S 498 A I.P.C is not alleged against the accused. If the accused had attempted to commit murder of his wife, then Sec. 498 A is attracted and it should have been incorporated in the case. There are only vague allegations made by PW2 and PW4 regarding the cruelty committed by the accused on Uthra. In the last week of February, 2020 when Uthra's parents went to the house of the accused in connection with the temple festival, Uthra was not ill-treated immediately prior to that. Moreover, the WhatsApp chat of Uthra retrieved in forensic examination would also show that Uthra and the accused had a cordial relationship. PW4 the mother of Uthra and PW9 the

friend of the accused had stated that the accused and Uthra used to live in both of their houses without any issues. Thus, according to the defence counsel, the prosecution has not proved that Uthra was differentially abled and she was subjected to cruelty or illtreatment by the accused or his family members. The defence counsel contended that the answers given by the accused when questioned U/S 313 Cr.PC cannot be used as an incriminating material to convict him and prove the circumstances against him.

314. It is to be noticed that Uthra was admitted to Pushpagiri Medical College Hospital, Tiruvalla on 3.3.2020. As per Ext. P169 report issued by PW72, Exts. Q1 and Q2 mobile phones of the accused were analysed and in those mobile phones, the Internet search history could be retrieved. It is interesting to note the Internet search history that on 4.3.2020 MO31 mobile phone of the accused was used for searching “Vava Suresh Cobra Malayalam” video at 9.02 a.m., and Cobra’s snake Malayalam at 9.03 a.m.

On 10.3.2020 at 11.38 a.m., Anakaryam Cobra Snake was searched. On the same day four times i.e, at 11.40 a.m, 12.13 p.m, 1.49 p.m and 3.12 p.m., “Cobra venom extraction was searched” by the accused.

On 28.3.2020 MO31 was used for searching “Cobra snake Malayalam video”.

The evidence of PW37 Augustine Joseph, who issued Ext. P77 C.D.R of mobile phone number 920772066 possessed by the accused coupled with Ext. P79 tower decoding details would reveal that on 4.3.2020 while the accused made the search for Cobra, which is evident from Ext. P169 Cyber Forensic report, page number 9, item number 12 and the screen shots in annexure 2, page number 20, that his location was at Pushpagiri Medical College Hospital.

(It is interesting to note that on 2.3.2020, the date on which Uthra sustained haemotoxic envenomation in the night, the accused has searched for Viper snake from MO21 mobile phone at 2.47 p.m and 10.28 p.m., as is evidenced by page 9 of Ext. P169 and annexure 2 screen shot, page numbers 18 and 29).

315. It is to be noticed that just immediate to Uthra being found screaming aloud that she was having pain in her leg and being taken to the Adoor General Hospital, Adoor Holy Cross Hospital and Tiruvalla Pushpagiri Medical College Hospital, the accused has searched for Viper snakes on that dates and the last search was at 10.28 p.m. Interestingly, Uthra might have sustained the bite of the Viper immediately after the said search by the accused at 10.28 p.m., and it can never be a coincidence. The accused has not offered any explanation in his 313 Cr.PC statement as to why he had searched for a

Viper in the Internet on that particular day and he had flatly denied the said circumstance. The above referred searches for Viper made by the accused on the day of Uthra sustained envenomation by Viper is relevant in legal parlance as preparation and previous conduct which is covered under Sec. 8 of Indian Evidence Act. Before Uthra sustained Cobra bites, the accused was searching for Cobra in the Internet, which is also relevant fact.

316. It is to be noticed that it is extremely difficult for the prosecution to unravel the full dimension of the mental element of the accused. **The advent of internet, digital technology, devices like mobile phones and computers have created the cyberspace, whereby a person can communicate to others, share data, has information in his finger tips and he is able to take positive action, like issuing of e-mails, conducting searches for gathering information etc.** Cyberspace is a virtual world created by Internet and digital networks. It is a link between physical and infinite world. Cyberspace is now part of human life. **Just like a person carrying on activities in the real world leaving trails, signs and traces of his presence at locations which he visited, like footprints, fingerprints etc, a person who does online activity in the cyberspace would leave trails known as digital footprints.** Every time a person is online, he creates a trail of information, which he has viewed or created, which is known as digital footprint. A person's digital footprint is a record of all his

interaction online in cyberspace. Once a trail is left by an online user, it remains permanently in cyberspace. The active and passive digital footprint of a person is a guide to identify his mindset. Every online user creates a niche for himself in cyberspace. The digital footprint of a person is the next closest thing to a person's thought. A person's general online browsing behaviour can also reflect their choice, preference, and reflexes, which is largely controlled by their unique psychological characteristics. The court can take judicial notice of the above referred matters of common and general knowledge.

317. At the time of drafting the Evidence Act, these advancements in technology were not foreseen. However, the Evidence Act is an ongoing statute. Electronic devices, which are used by the accused to gather information and make preparations come within the ambit of the Indian Evidence Act. In *State Through CBI/New Delhi vs S.J. Choudhary* : 1996 AIR 1491, 1996 (2) SCC 428, the Supreme Court held that though Typewriters were invented after enactment of Evidence Act, it was held that Evidence Act was an ongoing statute and held that handwriting includes typewriting also. It is apposite to note that the Court recognised the advent of new technologies and held as follows--

(2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it

is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

In the comments that follow it is pointed out that an ongoing Act is taken to be always speaking. It is also, further, stated thus:

"In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as 'a living Constitution', so an ongoing British Act is regarded as 'a living Act'. That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.

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An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."

11. There cannot be any doubt that the Indian Evidence Act, 1872, is by its very nature, an 'ongoing Act'

12. It appears that it was only in 1874 that the first practical typewriter made its appearance and was marketed in that year by the E. Remington and Sons Co. which later became the Remington typewriter. Obviously, in the Indian Evidence Act enacted in 1872 typewriting could not be specifically mentioned as a means of writing in S.45 of the Indian Evidence Act. Ever since then technology has made great strides and so also the technology of manufacture of typewriters resulting in common use of typewriters as a prevalent mode of writing. This has given rise to development of the branch of science relating to examination of questioned typewriting.

318. In *Jisal Rask .V. State of Kerala* 2019(4) KHC 928 the High Court of Kerala expounded the value and role of electronic evidence in investigation of crimes. It is apposite to quote Justice Raja Vijaya Raghavan, the author of the judgement

“20. Before proceeding to decide the question raised, it would be apposite to bear in mind that major shifts in the Information Technology landscape from the mid 90's have made the collection and analysis of electronic evidence an increasingly important tool for solving crimes and to bring culprits to justice. Though digital evidence is conceptually the same as any other evidence, it has a much larger scope and the information can be used to pin people and

events within the confines of a specific time and space and establish a causality in criminal cases. Great many sensational cases, wherein there is total absence of direct evidence have been solved and the culprits have been brought to book with the aid of electronic evidence. It has to be borne in mind that electronic evidence is volatile, easily altered, damaged or destroyed, time sensitive and not bound by territorial jurisdictions. In almost all cases, call data records, chat messages, security cam videos, whatsapp profiles and facebook status messages provide valuable clues to zero in on the offender and the law enforcement agencies extensively rely on such forms of electronic evidence before Court in aid of the prosecution.”

319. The mental condition of a person can only be gathered from the circumstances and by deductions and inferences from the proved circumstances. In this regard, the normal human conduct is to be taken as a touchstone while analysing the particular conduct and preparation of a person. It is to be noticed that by way of the Internet, YouTube etc., which can be accessed by a handheld device, like the mobile phone, information regarding anything in the world can be searched and collected. Just like the action of a person picking up a stone to throw an object, in the primitive ages would unravel his preparation and intention to make the throw, a person's online searches and digital foot print on the cyberspace, regarding a particular object, throws light on his propensity regarding the things searched. If a person searches for a new model of a car in the Internet, it reveals his interest, or his preparation to purchase the said car.

Likewise, if a person searches the Internet and YouTube for venomous snakes it would tend to disclose his nefarious design in some particular instances. When a person searches the Internet for a venomous snake, like Viper in the late hours of the night and within a short duration his wife sustains envenomation similar to that could be injected through the fangs of a Viper and that person offers false explanation multiple times to multiple people, it points out to a guilty mind and an adverse incriminating circumstance which is not a mere coincidence -

Illustration (d) to Sec. 8 of the Evidence Act is a pointer towards the preparations and previous conduct of the accused regarding his quest for obtaining venomous snakes, the means of procuring it and the manner of handling the same and inflicting bites. It refers to activities carried on in the real world, of a person whose execution of a will is in question. That a person makes enquiries into matters regarding the provisions of a will, which he allegedly made, he consulted advocates, he caused drafts and other wills to be prepared are all relevant for consideration when the fact in issue is whether the impugned will was the will of the said person. In this case, the fact in issue is whether the accused procured venomous snakes for committing murder of Uthra. His digital footprint in cyberspace like the circumstances that he searched in the Internet for venomous snakes frequently, he consulted PW1, an

expert snake handler etc., are relevant facts which come within the purview of Sec. 8 illustration (d). Thus, the above referred circumstances relied by the prosecution are also proved in this case.

320. On consideration of the evidence of PW4, it is evident that on 5.5.20, the accused left Uthra's house in a hurry after returning from Pushpagiri Hospital, where Uthra was taken for dressing. He told PW4 that he would come on the next day, i.e, on 6.5.2020. However, later on he called Uthra and told that he would not come on that day. PW85 had deposed that in the WhatsApp chat history of Uthra, Uthra had requested the accused to come and later on in the evening he promised to come. Moreover, the accused told in his 313 Cr.PC statement that he came on being requested by Uthra to come home. There is one chat made by Uthra through WhatsApp to the accused after a call made by him that the accused had cheated her by promising to come on that day and not coming. It was only later on, the accused informed Uthra that he would come.

321. PW2 and PW4 have testified that though the accused never used to carry a shoulder bag, when he came home on 6.5.2020, he came home with a shoulder bag. PW2 categorically stated that the accused had taken the shoulder

bag inside Uthra's house after he first came into the house. This fact is also endorsed by PW4 who also stated that after the accused came home, he again went out and returned with MO2 shoulder bag. It was PW3 who took MO2 bag and produced it to the police. The evidence of PW2 and PW4 that on 6.5.2020 the accused brought MO2 shoulder bag is unimpeached by cross-examination. Moreover, the visuals of the accused withdrawing money from the ATM on 24.4.2020 evidenced by MO17 pen drive also shows that the accused was carrying a shoulder bag at that time. The contentions of the defence that the police have not mentioned MO2 in the mahazar and it was remaining in the room where Uthra met his death, at the time of preparing the mahazars and hence, it was planted is not tenable. It is to be noticed that at the initial stage, the police and the witnesses were in the dark regarding the modus operandi of the murder and hence a bag, like MO2 which is common might have escaped their notice and hence, it was omitted to be described in the mahazars. PW2 and PW3 have stated that the CCTV cameras in their house was not working at the time of Uthra's death. There is no contrary evidence to prove that the CCTV cameras were in working condition on 6.5.2020 or immediately thereafter. Therefore, the absence of CCTV cameras also does not cast a doubt on the prosecution case. It is to be noticed that the non detection of D.N.A can be for several reasons. The D.N.A finger print falls in the category

of trace evidence in MO1 and MO2. The fact that D.N.A of the accused was not found in MO1 and MO2 is not a circumstance which exculpates the accused. It only amounts to non detection of incriminating trace evidence. In this case, PW2 and PW4 have categorically stated that the accused had come on 6.5.2020 to the house of Uthra with MO2 shoulder bag. He was found inside the ATM with MO2 shoulder bag and MO2 shoulder bag was recovered from the house of the deceased Uthra. Thus, on consideration of the evidence adduced by the prosecution, it is found that the above referred circumstance that the accused unusually came with MO2 shoulder bag to the residence of Uthra on the evening of 6.5.2020 is also proved.

322. I have considered the evidence adduced by the prosecution. The evidence of PW2, PW3 and PW4, who were the inmates of the house wherein Uthra was found dead, is categoric to the effect that on 7.5.20 in the morning the accused was the last person who came to the room of Uthra after PW4 found her lying unconscious and in an abnormal posture. PW2 has categorically stated that the accused had woke up early in the morning and brought a glass to the kitchen which he washed and then went out. Thereafter, PW4 saw Uthra lying in an abnormal position in her bed and raised alarm call when she was found unconscious. It is to be noticed that it has already been found that Uthra had sustained fatal Cobra envenomation and it was the cause

of death. Vide Ext. P16 complaint addressed to the Rural Superintendent of Police, Kottarakkara, the accused had admitted in page 2 of Ext. P16 that himself and Uthra had slept together on 3.3.2020, the date on which Uthra sustained Viper envenomation and at page 4, he had admitted that both of them had slept in one room in the night of 6.5.2020 and on 7.5.2020 early morning at 1 a.m., he helped Uthra to the bathroom. The accused had got Ext. P16 complaint prepared by PW14, who supported the prosecution and testified that he had written Ext. P16 as narrated by the accused. Moreover, the accused had forwarded a scanned copy of Ext. P16 from his mobile phone to the e-mail of the Chief Minister of Kerala. Since the accused attempted to deny the authorship of Ext. P16, the Court suo-moto issued summons to the office of the Chief Minister and produced the e-mail along with the complaint send by the accused on 20.5.2020. Ext. C1 series was produced from the office of the Chief Minister, after downloading the mail send by the accused from his e-mail address which is synced with his MO1 mobile. The contentions of the defence that the hard copy of the e-mail which was produced from the office of the Chief Minister is not admissible, is not at all tenable. It is to be noticed that the e-mail ID was pertaining to the Chief Minister of Kerala and it is preposterous to contend that it would be fabricated with an antedated e-mail and a complaint.

323. The challenge made against the testimony of the handwriting expert by the defence counsel is not sustainable. Ext. P165 report categorically proves that the accused has signed Exts. P16 and P169 (e) petitions. Therefore, it is categorically proved by the prosecution that Ext. P16 and Ext. C1 are signed and sent by the accused. The accused cannot wriggle out of the contents of Ext. P16. Ext. C1 is the identical scanned copy of Ext. P16. It is to be noticed that even an admission made by the accused is relevant as an admission under Evidence Act. Thus, it is proved by the prosecution that on 3.3.2020 and 7.5.2020, when Uthra sustained the Viper bite and Cobra bite, the accused was the person who was with her. Moreover, in the night of 6.5.2020, the accused was the person who was last seen with Uthra when she was alive. From the evidence of PW19 Mavish Kumar, PW51, PW52 and PW1, it is crystal clear that on sustaining Viper bite and Cobra bite there would be excruciating pain. PW1 has also stated that due to the pain, the victim of the snake bite would urinate. In this case, from the scientific evidence of the examination of the dress worn by Uthra and bed sheet in which she was lying, when she sustained fatal Cobra bite (marked as MO26 and MO8), that traces of urine found were having the same DNA profile of Uthra. The above said scientific evidence is proved by PW68 and Exts. P161 and P162, the challenges made by the defence

counsel against the evidence adduced by the prosecution in this regard are not sustainable.

324. Hence, the circumstance that Uthra was last seen alive with the accused and she sustained Viper bite and Cobra bite when the accused was with her, is proved by the prosecution. It was categorically deposed by PW4 who first saw Uthra in the morning of 7.5.2020, that she was lying abnormally. The fact that the accused who was inside the room with Uthra had not noticed this abnormal condition of Uthra is improbable and it is a circumstance against him. It is to be noticed that on both occasions of sustaining envenomation, Uthra was sedated as per the evidence adduced by the prosecution, by expert and scientific evidence. PW4 had testified that Uthra had told that on the night when she sustained Viper bite, the accused gave her porridge (പൊയ്ക്ക) and then she fell asleep and in the night, she was bitten by something in her leg. This fact is corroborated by PW61 and PW74 who testified that Uthra was drowsy. PW65 had stated that drowsiness is not a usual finding of haemotoxicity which results due to Viper envenomation. Moreover, the recovery of MO21 strip of Okacet tablets and MO16 strip of Monti L.C tablets, which are having Cetirizine, a sedative, from the places which the accused had access, by PW85 and the scientific expert also is a suspicious circumstance. The batch number of these medicines corroborate that they were purchased from the shops of PW27 and

PW29 which are corroborated by the sales report. The evidence of PW76 Eureka has proved that Uthra had 0.542 mg of Cetirizine per 100 ml of blood and PW64 had testified that Monti L.C is a medicine which is a combination of Monti Lucast and Levo Cetirizine, Levo Cetirizine is an isomer of Cetirizine. She categorically stated that the above said dose is a toxic dose. The evidence of PW75 would prove that at the time of discharge, Uthra was not prescribed Cetirizine or other oral medication. At this juncture, it is pertinent to note that PW74 Dr. Mathew Pulikkan has categorically stated that in normal cases a patient who is bitten by a snake could be able to narrate the details of the bite clearly, Uthra had no knowledge about she sustained the bite. This fact also would prove that the accused has sedated Uthra. Moreover, PW4 had categorically stated that the accused had taken a glass of juice to the room of Uthra in the evening of 6.5.2020 and in the night when the accused and Uthra were together also the juice was remaining there at the time when she left the room. The above referred chain of circumstances coupled with the fact that the accused was last seen together with the deceased Uthra proves the circumstances alleged by the prosecution. From the above said circumstances, coupled with the fact that the accused had not explained the circumstances properly and gave false explanation, it is found that the prosecution case that before causing to inflict the Viper bite and Cobra bite, the accused had heavily

sedated Uthra is proved. Moreover, the evidence of PW62 proves that even before she examined Uthra, the accused had told that there were bite marks in the hand of Uthra. The testimony of PW4 would show that even without PW62 confirming that it was a snake bite, the accused represented that Uthra was bitten by a snake. The testimony of PW3 that it was the accused who pointed out a snake beneath the cupboard and thereafter, he evaded from the scene is reliable and trustworthy. All these facts would lead to an inference that the accused was aware and had knowledge of the Cobra and the Cobra bite inflicted on Uthra.

325. I have considered the oral evidence of PW1, PW8, PW9 and PW10. It is to be noticed that PW8 Eldhose, a close friend of the accused, testified that the mobile phone number 9745016178 which is activated in MO13 series Redme mobile handset and SIM was handed over by him to the accused on 9.5.2020 for making a call. He also narrated the circumstances that on 9.5.2020 himself, PW9 and one Gireesh went to the residence of the accused for mourning the death of Uthra and at that time, the accused was called to the police station. They proceeded to the police station and from there the accused boarded their car and on the way, he requested the mobile phones of PW9 Sujith and Gireesh. Since, they did not oblige and asked him the mobile phone, he

gave it to the accused. By that time, they reached near the residence of the accused and the accused walked away and made a call. He categorically stated that he does not know PW1 and has never called PW1 from his mobile phone. He has also given Ext. P10 statement U/S 164 Cr.PC. PW1 testified that (page 24) on 9.5.2020 at 11 a.m., he received a call from the accused from another mobile phone. Then, the accused revealed that his wife is no more and thereupon, the PW1 retorted why he did this thing and the accused replied as follows :-

"ചേട്ടാ ഒന്നാലോചിക്കണം. മന്ദബുദ്ധിയായ ഭാര്യയുമായി എനിക്ക് ജീവിക്കാൻ പറ്റാത്തതുകൊണ്ട് ഞാനിത് ചെയ്തതാണ്. ചേട്ടനാരോടും പറഞ്ഞില്ലെങ്കിൽ സർപ്പദോഷമായിട്ട് ഇതങ്ങ് തീരും. അല്ലെങ്കിൽ ചേട്ടൻ എന്നോടൊപ്പം കൊലക്കേസിൽ പ്രതിയാകും."

The fact that the mobile phone having number 9745016178 was used to call PW1 on 9.5.2020 is proved by Ext. P89 C.D.R and the evidence of PW37. it is proved by Ext. P89 C.D.R that on 9.5.2020 at 11.20 hours, the above said mobile was within the location of Eeram tower, i.e., near the house of Uthra and a call was made to PW1. The reciprocating C.D.R of PW1 having number 9188834317 to which the call was made are Ext. P272 (c), the C.A.F of PW1 and Ext. P277, the C.D.R of the said mobile phone. So that the testimony of

PW1 that the accused called him from the mobile phone of PW8 Eldose Jose is corroborated by scientific and electronic evidence. At this juncture, it is worthwhile to note the conduct of PW1 after receiving the call. PW1 immediately made multiple phone calls to PW7, which is proved by Ext. P137 C.D.R, which is also corroborated by PW7. Thereafter, PW1 proceeded to Kollam, met the accused and narrated the fact that with the Cobra given by PW1, the accused had committed homicide of his wife. The testimony of PW7 also reveals that PW1 was frantic. Moreover, the tower location of PW1 also shows that on 9.5.2020 at noon, i.e., after receiving the call from the accused, he proceeded to Kollam. PW10, the daughter of PW1 had also stated that on 8.5.2020 morning the accused made her to read the newspaper regarding a news item about the death of a lady due to snake bite while undergoing treatment for snake bite. She stated that on the next day she found PW1 in great sorrow and when she asked him the reason, he divulged that Suraj (the accused) had called him and threatened and told that he had committed homicide of his wife by using the snake given by him and not to tell anyone about the matter. It is to be noticed that the above said statements made by PW1, to PW7 and PW10 are corroborative pieces of evidence U/S 157 of the Evidence Act of the above said fact deposed by PW1. The fact deposed by PW1 is regarding the extra judicial confession made by the accused to him, which is already discussed earlier. The

prosecution has thus proved the extra judicial confession made by the accused to PW1 regarding the circumstances of death of Uthra. In the decision reported in State of Kerala vs. Mani, **1991 (2) KLT 208** the High Court of Kerala has relied on the precedent laid down by the Supreme Court and held that though extra judicial confession may possess weaknesses, the Court can act on it if it believes the testimony of the person who speaks to it. In this case it is proved by the prosecution by relying on the CDRs of PW8 Eldhose Jose and PW1 that a call was made from the mobile phone of Eldhose Jose to the phone of PW1 on 9.5.2020 and at that time the location of the phone of PW8 was at Eram. PW8, who is a friend of the accused has categorically stated that the accused had borrowed his mobile phone on 9.5.2020 while they were at Anchal Eram and made a call to someone. Therefore, the version of PW1 regarding the extra judicial confession made by the accused as above referred is corroborated in material particulars. In the said circumstances, it is held that the extra judicial confession made by the accused as above referred is proved by the prosecution.

326. It is to be noticed that if the G.P.S of a mobile phone is switched on and the mobile data is also switched off, its location can be tracked only by the cell phone activity. Therefore, there is no force in the contention of the defence that since the location of the mobile phone of the accused was not proved, the

actual location of the accused when the mobile phone was used is not proved, is not at all tenable. It is proved that the accused was at Pushpagiri Hospital at the time when he searched for Viper and Cobra as is borne out from the tower decoding details of his Jio mobile phone, which is marked as Ext. P64 (a), PW83 has stated that the True Imager Digital device developed by C-Dac which is used by the police while determining the hash value of electronic device is not mobile compatible. At any rate, PW72 has testified that on analysis it was found that the date in MO31 mobile phone was not tampered with. Ext. P169 Cyber Forensic Report and Ext. P169 (a) Internet search history of MO31 mobile phone of the accused reveals that the accused had searched for Viper, Viper bite etc., preceding the Viper bite sustained by Uthra and thereafter, from 04.03.2020 onwards, he searched about Cobra, Cobra venom extraction etc. It is to be noticed that Cobra venom extraction is by holding the head of the Cobra and like causing an induced bite of the Cobra. It is already found that Uthra sustained fatal homicidal induced Cobra bites. Thus, the prosecution has proved the above referred circumstance also.

327. Circumstance number 22 : The accused made multiple phone calls to PW1 preceding the Viper bite sustained by Uthra and the Cobra bite sustained by Uthra. The C.D.R marked as Exts. P63, P71, P77 and P84 proves

that just before the accused obtained a Viper from PW1, the accused made multiple calls. Thereafter, he remained silent. Preceding the purchase of a Cobra from PW1, the accused again made multiple phone calls and he remained silent. Moreover, after 24.4.2020 the day on which the snake was obtained by the accused, he again called PW1 only on 9.5.2020 and that too from the mobile phone of PW8 Eldose Jose. Ext. P64 I.P.D.R reveals the tower location of MO31, the mobile phone of the accused within the limits of Anchal Panayamcherry and Eeram on 9.5.2020 and it is evident that the phone was in the possession of the accused and even then he called PW1 from the mobile phone of PW8 Eldhose Jose. The above said circumstance proves that the accused communicated to PW1 only when he needed snakes and it is a link in the chain of circumstances relied by prosecution.

328. As per Ext. P169 Cyber Forensic Report, there is an image of a snake kept in a transparent bottle, but it is not clear as to the species of snake, the specific nature of the can etc. Hence, it cannot be held that an incriminating circumstance regarding the possession of a snake by the accused. Circumstance No23 is thus not proved.

PW2, the father of Uthra has deposed that the accused repeatedly told him after the death of Uthra that she sustained snake bite due to serpentine curse.

PW1 had also testified that the accused told him that if he did not divulge the matter to anyone, the death of Uthra would pass off as a serpentine curse and otherwise both of them would be implicated in a murder case. The above said circumstance that the accused tried to project the snake bites of Uthra as a serpentine curse which is a rural folklore prevalent in the State is relevant as a subsequent conduct which points to the guilt of the accused.

329. It is contended that Uthra was differentially abled. I have analysed the testimony of PW2, PW3, PW4, PW6, PW1, PW54 and PW65 in this regard and the documentary evidence produced by the prosecution. Ext. P142 is the disability certificate issued to Uthra by the Standing Disability Assessment Board of District Hospital, Kollam. The Board comprised of an Psychiatrist, Orthopaedist, Ophthalmologist, E.N.T. Surgeon and Psychologist. Apart from that the 'IQ' of Uthra was assessed by a consultant Psychologist attached to Spectrum, Centre for cognitive and rehabilitation. The defence counsel attacked Ext. P163 'IQ' assessment report of Uthra, which is appended to the file relating to Uthra while her disability was assessed. PW54 had categorically denied the suggestions put by the defence in cross-examination and stated that Dr. Chithra is a qualified clinical Psychologist. He further stated that only recently the service of a clinical Psychologist was made available in the District Hospital.

Therefore, it is evident that Uthra was referred to a private clinical Psychologist for assessment of 'IQ' to enable the Medical Board to reach the conclusion. Moreover, PW54 has categorically stated that Ext. P142 was issued as per the requirement of the National Trust Act for the persons governed by the said law. He had also stated that mild mental retardation is a lower level of mental retardation. He further stated that the person who had signed the application for Ext. P141 has not written the initials 'M.R'. From the evidence of PW54, it is clear that the initials 'M.R' was read as 'Mental Retardation'. As per Ext. P143 'IQ' assessment report (certified copy), the 'IQ' of Uthra was 62.8 and she had mild mental retardation. The Medical Board had come to a conclusion that Uthra had 20% disability in the category of Psychiatric handicap. The testimony of PW2 and PW4 is reliable as no parent would deliberately give evidence to the effect that their daughter is differentially abled. Moreover, the evidence of PW1 to whom the accused had stated that his wife is mentally retarded also is a circumstance which proves that the accused had considered Uthra as mentally retarded. PW6 has also testified that the accused had told him about the retarded nature of Uthra.

330. It is to be noticed that the defence contention that Uthra had passed S.S.L.C. Plus Two and she used to operate bank accounts and hence, it has to

be held that Uthra was not differentially abled, is not at all tenable. The specific disablement of Uthra stated in Ext. P141 application for issuance of disability certificate is that her hands were shaky. A perusal of the signatures of Uthra found in Exts. P141, 140, 142 and 143 would reveal that the signature was put by a person with shaky hands due to the irregular nature of the signatures. The signatures put by Uthra does not appear to be free flowing. Moreover, a perusal of the WhatsApp chat by the accused and Uthra, which is retrieved by the Cyber Forensic Laboratory and proved by PW72 contained in annexure 3 pen drive folder, named 'data from 'Q4' SIM' would reveal that Uthra was having a lesser 'IQ'. It is interesting to note the WhatsApp chat between Uthra and the accused whose name is saved as 'Chettan' in MO9 mobile phone of Uthra. (the customer application form for the SIM was submitted by the accused for the mobile phone number 8589800970). However, the said mobile phone and SIM were used by Uthra.

From WhatsApp – Uthra owner

'mazaundo'

'ividemazyannu'

'njanavidemazaundoennachothichu'

'annanevidaya'

'annanennuvaramennuparanjupattichu'

'phonennumedikumonjanvarumbmthannallmathi'

The vernacular translation / decipherable meaning of these WhatsApp chats are as follows :-

'മഴയുണ്ടോ'

'ഇവിടെമഴയാണ്'

'ഞാനവിടെമഴയുണ്ടോ എന്നാ ചോതിച്ചു'

'അണ്ണനെവിടയാ'

'അണ്ണനീനുവരാമിന്ന് പറഞ്ഞുപറ്റിച്ചു.'

'ഹോണെന്നുമേടിക്കുമോൻഞാൻവരുമ്പതന്നാൽമതി.'

It is to be noticed that Uthra was aged about 25 years and the mother of a child when she died. She had passed S.S.L.C and Plus Two and had gone for degree course. However, the above quoted WhatsApp chats made by Uthra would reveal her poor language skills, which is comparable to that of a nursery school child. There is no gap between different words in a chat and it is very difficult to decipher its meaning. All these would show that Uthra had poor intelligence quotio and she was a differentially abled lady.

331. Moreover, PW65 Dr. Ragesh who conducted the post-mortem examination of Uthra testified that though the normal weight of the brain of an adult female is in the range of 1250 to 1350 grams, the weight of the brain of Uthra was only 720 grams. According to him, a significant reduction in the

weight of the brain is associated with reduction in intelligence. Moreover, PW6 and PW1 have testified that the accused had referred Uthra as mentally retarded person in conversation with them. PW8 Eldhose Jose and PW9 Sujith who are thick friends of the accused have also disclosed that while visiting his friends residence the accused never took Uthra along with him. All these circumstances would reveal that the prosecution has proved that Uthra was differentially abled and the accused had an aversion towards her. Moreover, it has come out in evidence that due to her disability Uthra had obtained an Order from the Government which permitted her to write examinations for more than the normal allowed time.

332. PW2 Vijayasanen, the father of Uthra had categorically stated that in connection with the marriage of Uthra, the accused was given Rs. 5 lakhs in cash, a Baleno car and she was adorned with gold ornaments having 96 sovereigns. In Ext. P24 marriage register which is proved by PW20, the Secretary of Eeram S.N.D.P. branch, it is categorically stated that Uthra was adorned with 90 sovereigns of gold ornaments (720 grams). A perusal of MO19 wedding album of Uthra and the accused and viewing of MO20 marriage CD would reveal that Uthra was adorned with a large quantity of gold ornaments. Moreover, a Baleno car was also given to the accused for his use in

connection with the marriage. Exts. P100 and P101 registration particulars of the Bajaj Motor Cab in the name of the father of the accused and the Bullet motor cycle in the name of the accused would reveal that those vehicles were purchased after the marriage of Uthra. PW30, the Bank Manager, who proved Ext. P53 account extract has testified that every month Rs.8,000/- was regularly deposited in the account of the accused. Moreover, on 9.2.2018 and 17.2.2018, Rs. 1 lakh and Rs. 2 lakhs were transferred in the account of the accused from the account of Uthra Agencies. The corresponding account particulars of Uthra Agencies, proved by PW22 has also reiterated the said fact of payment of money into the account of the accused from the account of Uthra Agencies.

333. The contention of the defence counsel that the specific acts of cruelty of the accused and his family members against Uthra are not mentioned and hence, the prosecution accusation is without any substance. The contention of the defence is not tenable. Cruelty includes the conduct which may be subtle or gross directed against a woman by her husband and in-laws. Here, the evidence adduced by the prosecution discloses that the accused was regularly being transferred with money in his account and after the marriage with Uthra he had purchased vehicles for himself and for his family. Uthra was definitely differentially abled. To cause mental stress and strain to such a

person subtle methods of harassment by using verbal provocation and other conduct which belittle her would be sufficient to amount to harassment. PW2, PW4 and PW6 had categorically stated that in the month of January, Uthra was unable to endure the cruel treatment perpetrated by the accused and his family members and they went there and were prepared to take Uthra back. When they were about to leave with Uthra, PW6 directed the accused to return the cash, gold ornaments and the car and at that time, the accused who was remaining as a mute spectator came and took the child and assured that there would not be any problems in future. This conduct of the accused reflects his mental element or intention to retain the properties obtained by him on account of the marriage with Uthra at any cost. Moreover, after the death of Uthra, the accused had asked PW2 that he would look after the child and the financial aid given to him should continue. When PW2 and PW6 asked the accused to sell the car and gold ornaments and deposit the cash in the name of the child, the accused vehemently resisted the same and was reluctant to do so. In fact, after the said direction made by the father and relatives of Uthra, the attitude of the accused changed and this aroused suspicion in the mind of PW2 and PW4 regarding the circumstances of the death of Uthra and they lodged Ext. P6 complaint to the District Police Chief, Kollam Rural, Kottarakkara. It is also to be noted that on 2.3.2020 in the afternoon, before Uthra sustained the Viper bite in the night,

the accused had operated the joint locker maintained by him and Uthra and this also is a conduct which reflects the intention of the accused to misappropriate the gold ornaments. The fact of opening the locker on 2.3.2020 is proved by Ext. P56 locker register and the evidence of PW30, the Manager of the Federal Bank. The contention of the defence counsel challenging the above said circumstances are not at all tenable and is to be repelled. Circumstance numbers 2, 28 and 29 are thus proved by the prosecution.

334. In this case, about 707 questions were put to the accused when he was questioned U/S 313 (1) (b) Cr.PC. He has flatly denied many proved circumstances and it is evident that he has offered false explanations also to certain proved circumstances. It is settled law that it is not obligatory on the part of the accused while being examined U/S 313 Cr.PC to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation, even in a case of circumstantial evidence, in order to decide whether or not the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculcate in relation to the commission of the crime and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing the missing link for

completing the chain of circumstances. **In Govindaraju Vs. State of Karnataka (2013 KHC 4638), the Hon'ble Supreme Court held that in a case of circumstantial evidence it is obligatory on the part of the accused to offer some explanation with regard to incriminating circumstances. If he fails to offer an explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. (Para 23).**

335. It is worthwhile to note the false answers given by the accused to the following circumstances :-

Though, it is proved by the credible evidence of PW2, PW3, PW4 and PW6 and Exts. P140, P141, P142 and P143 that Uthra was differentially abled and the accused himself had admitted that Uthra was mentally retarded to PW1 and PW6, he has denied that Uthra was differentially abled or she had any disability. (Answers to question Nos. 1, 94, 299 and 516). These answers denying that Uthra was having disability, given by the accused, are obviously false and it points out to the attempt of the accused to establish that Uthra was not having any disability.

336. The accused vehemently denied bringing MO2 shoulder bag to Uthra's house on 6.5.2020, in spite of the evidence of PW1, PW2, PW3 and

PW4, PW1 categorically stated that the jar containing the snake was kept by the accused in MO2 bag. Moreover, the visuals of the CCTV of ATM Counter on 24.4.2020 contained in MO17 CD categorically proves that the accused was possessing MO2 bag just before he met PW1 at Eenathu. It is to be noticed that MO2 bag was used by the accused to carry the Cobra put in MO1 Jar to the house of Uthra. However, in answer to question Nos. 18, 38, 81, 293, 294 etc., he denied flatly that he possessed MO2 bag. However, to question number 450 regarding the CCTV visuals whereby he was having a shoulder bag and withdrawing cash from the ATM on 24.4.2020, he gave an evasive reply by stating that he usually withdraws money from the said ATM. He did not deny possessing the shoulder bag. PW1 and PW7 have categorically stated that on 26.2.2020 PW7 had also accompanied PW1 to the house of the accused. In fact, MO12 mobile phone of PW7 contains the image of the accused handling the snake at his residence. However, in answers to question numbers 317 to 324, the accused denied the presence of PW7 at his residence, though in answer to question number 313, he admitted that PW1 had come to his house on that day. In spite of the evidence of PW2, PW4 and PW75 that Uthra was non ambulant at the time of her discharge from the Pushpagiri Medical College Hospital and that no medicines were prescribed for her, the accused gave false answers to the effect that Uthra was prescribed medicines and that she could

walk by using a walker. In fact, MO34 plaster cast found on the body of Uthra at the time of inquest also corroborates the fact that she could not walk. In answer to question numbers 16 and 75, the accused has falsely contended that Uthra was able to walk and denied that she was unable to walk. In answer to question numbers 16 and 76, the accused offered false explanation that at the time of her discharge, Uthra had medication. He even stated that PW75 Dr. Cyril had told that Uthra would have take medication for six months. However, PW75 Dr. Cyril Joseph had categorically stated that Uthra did not have any medicines at the time of her discharge from Pushpagiri Hospital. In answer to question number 165 regarding the statement of Dr. Cyril Joseph that Uthra was not prescribed any medicines, the accused stated that she was prescribed medicines. Moreover, in answer to question number 166 regarding the statement of Dr. Cyril Joseph that Uthra was unable to walk at the time of her discharge, the accused offered a false explanation that Uthra was discharged when she was able to walk. These false answers and false explanations made by the accused is a deliberate attempt made by him to justify the lethal dose of sedative Cetirizine found in the blood of Uthra during post-mortem examination.

337. The accused, though admitted that he had made some calls to PW1, has not explained the unusual number of multiple calls made between him and PW1 on relevant dates, i.e., 26.2.2020 and 24.4.2020.

338. Though, Ext. P16 complaint was forwarded to the e-mail of the Chief Minister of Kerala and a print out of the said e-mail taken from the Office of the Chief Minister was produced and marked as Ext. C1 series, the accused gave a false denial regarding the same, in answer to question numbers 701 and 702 regarding the e-mail. He also denied the contents of the complaint lodged by him, in answer to question numbers 704, 705 and 706 and gave a false explanation that on 20.5.2020 the police took him into custody in the morning and forcibly took possession of his mobile phone, in answer to question numbers 701 and 707. The accused has also denied the explicit CCTV footages of the accused entering the locker room of Adoor Federal Bank on 2.3.2020 in which he could be identified for reasons best known by him. The accused has also denied Ext. P15 petition and Ext. P130 petition filed by him before the Adoor DYSP and Child Welfare Committee, obviously for the reasons that it contains incriminating admissions.

339. The accused has also taken a false contention in his 313 Cr.PC statement that the child was in the house of Uthra, though the averments in Ext. P130 petition would show that the child was at his house at Adoor, as on the date of Uthra's death.

340. It is also to be noted that in his additional statement U/S 313 Cr.PC, vide answers to question numbers 701 and 707, he has made a false contention that his mobile phone was seized by the police on 20.5.2020, which is obviously to deny that he send Exts. P16 and C1 complaints, in which there are incriminating admissions about his presence at the residence of Uthra and that he was the person last seen by Uthra when she was alive. Apart from that, the accused has also falsely contended in his written statement filed U/S 313 Cr.PC that on 7.5.2020, the Anchal Police had taken his mobile phone into custody. This statement is obviously false on verifying the Internet activity of MO31 mobile phone of the accused.

341. The above referred false assertions, false explanations and flat denials made by the accused to the proved incriminating circumstances against him are having probative value. It is settled law that undoubtedly, the prosecution has to prove its case beyond reasonable doubt. However, in certain

circumstances the accused has to furnish some explanation to the incriminating circumstances which has come in evidence. A false explanation by the accused may be counted as providing a missing link for completing the chain of circumstances. The above referred false assertions, false explanations and flat denials made by the accused offers additional links in the chain of circumstantial evidence which proves only to his guilt.

342. Circumstance No. 26 : The circumstance relied by the prosecution is the alleged extra judicial confession made by the accused to PW78. The defence counsel has vehemently attacked the admissibility of the said confession made to PW78. It is to be noticed that at the time the accused was supposed to have made the confession he was in judicial custody in this case and the Chief Judicial Magistrate had initiated the proceedings U/S 306 Cr.PC to tender pardon to the accused and he was given time for reflection. It is to be noticed that in the decision of **Toofan Singh Vs. State of Tamil Nadu (AIR 2020 SC 5592)** the Hon'ble Supreme Court held that irrespective of the fact whether an officer is having the power to file Final Report, the said officer if having the powers of investigation, arrest, seizure and extract confession, he comes within the purview of a police officer, as defined in Sec. 25 of the Evidence Act. A Range forest officer is a member of the uniformed service.

Range forest officer is having the power to investigate and arrest an offender and effect seizure. Moreover, at the time when the alleged confession was made by accused, he was in judicial custody in this case. Therefore, his liberty was curtailed and he was under the ken of surveillance. Thus, though judicial remand would not amount to custody of the police in the strict sense, the rigour under section 26 of the Evidence Act would also apply. In this case admittedly the confession was not made in the immediate presence of a Magistrate as mandated U/S 26 of Indian Evidence Act. Thus, in view of the dictum of the decision **Toofan Singh's** case, PW78 would come within the definition of a police officer and a confession made to PW78 is fit U/S 25 of the Evidence Act. Moreover, at the time when the alleged confession was made, though the accused was in judicial custody, it can be said that his liberty was curtailed and U/S 26 of the Evidence Act, the confession had to be made in the immediate presence of a Magistrate. Here, PW78 has extracted the confession from the accused while he was in judicial custody in another case, not in the presence of a Judicial Magistrate. On that score also, the extra judicial confession allegedly made by the accused to PW78 is not admissible.

Now the first preliminary legal issue raised by the defence, Whether non registration of F.I.R for Viper bite sustained by Uthra at residence of accused at Parakkodu can be considered.

First preliminary legal issue raised by the defence. According to the defence as two distinct offences were committed at two different places in two different districts on two different dates, registration of F.I.R for both the offences were mandatory. The alleged Viper bite was sustained by Uthra in the night of 2.3.2020 at the residence of the accused at Parakkodu, which is in Pathanamthitta district and the fatal Cobra bite was sustained by Uthra in her house at Eram at Anchal in the night of 6.5.2020 which is in Kollam district. The defence counsel drew attention to Sections 154, 155, 156 and 157 of the Cr.PC and contended that both the offences committed at Parakkodu and Anchal are distinct and separate and hence two distinct F.I.Rs had to be registered. To buttress the point, reliance was placed on the decisions reported in T.T. Antony & Others Vs. State of Kerala (2001 (3) KLT 1) (Paragraphs 18 and 19); the decision reported in Babubhai & Others Vs. State of Gujarat & Others (2010 (12) SCC 254) in which Ram Lal Narang Vs. Om Prakash Narang & Another (AIR 1979 SC 1791) is discussed. The defence counsel contended that in view of the dicta of the above referred decisions, the previous incident of viper bite of Uthra has not arisen out of the same transaction as claimed by PW85. It was contended that prejudice was caused to the accused due to the non registration of the F.I.R regarding the Viper bite at Parakkodu, as the details of the incident were not put on notice. It was contended that---(i). If

an F.I.R was registered, the accused could have got an opportunity to know the name and address of the informant, details of the time of information and the details of the accusations.

343. Per contra, the learned Prosecutor contended that as per the scheme of the Cr.PC., the F.I.R is to be registered on getting the first information regarding the commission of a cognizable offence. During investigation, a second F.I.R cannot be registered with respect to the same transaction. The Prosecutor relied on T.T. Antony's case and the decision reported in 2019 (5) SCC 667 to buttress his argument. According to the learned Public Prosecutor the previous attempt to murder Uthra by inflicting a Viper bite and the subsequent infliction of fatal Cobra bite are parts of the same transaction which was perpetrated by the accused to murder Uthra. The dominant purpose of the accused, that is, to cause death of Uthra was common in both these offences. The Prosecutor relied on the decision of the apex court in State of A.P.V. Cheemapalti Venkata Rao, 1963 SC 1850, and contended that the incidents are part of the same transaction in view of the dictum laid down by the Supreme Court and both the charges can be jointly tried U/S 220(1) of the Cr.PC.

344. It is to be noticed that the dominant intention of the accused in inflicting the Viper bite on Uthra at his house at Parakodu on the night of 2/03/2021 (early morning of 3/03/2020), and in inflicting the induced Cobra bites on her at her house at Anchal in the night of 6/05/2020 (early morning of 7/05/2020) was to cause death of Uthra. An attempt to commit an offence is the last preceding step before the offence is successfully accomplished. In this case, the intention of the accused while the Viper bite was inflicted on Uthra in the night of 2.3.2020 was to cause her death. However, the said intention could not be accomplished and Uthra was saved due to medical aid. The accused had pursued the very same purpose, that is, to cause the death of Uthra and inflicted the induced Cobra bites on her in the night of 6.5.2020. Therefore, there is unity of purpose and design and continuity in the action of the accused. Due to the fact that in the first incident of Viper bite, no suspicion was caused to the relatives of Uthra or anyone else, it passed off as an accidental envenomation. The second attempt had culminated into execution of the common purpose in both these incidents and resulted in the death of Uthra. It is to be noticed that the word transaction is not intended to be interpreted in any artificial or technical sense. Common sense and ordinary use of language must decide whether on the facts of a particular case one is concerned with one transaction or several transactions. In order that a series of acts be regarded as the same

transaction, they must be connected together in some way as for instance proximity of time, unity of place, unity or commonality of the purpose or design or continuity of action. Proximity of time and unity of place are not essential though they furnish good evidence of what unites several acts. The main test must really be continuity of action by which men following up of some initial act through all its consequences and incidents until the series of acts or group of connected act come to an end, either by attainment of the object or by being put an end to or abandoned, if any of these things happens. The accused had indulged in series of acts which had a commonality of the purpose and design and continuity in action, though the offence of attempt to murder by inflicting Viper bite on 2.3.2020 and inflicting the fatal Cobra bite in the night of 6.5.2020 were carried apart in two different districts and several days apart. It needs to be noticed that the earlier act of attempt of murder by the accused is a relevant fact to establish the fact in issue in the offence of murder as it points out to his intention to cause death of Uthra. Only when due to the unnatural coincidence of two snake bites on the hapless victim and the conduct of the accused, the relatives of Uthra became suspicious and triggered an investigation by the District Police Chief, Kollam Rural, though the fact that the earlier incident of snake bite of Uthra was also intentionally caused by the accused.

345. In State of A. P. V. Cheemalapati Venkata Rao, AIR 1963 SC 1850, the Apex Court held as follows regarding the expression 'the same transaction' -

What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should coexist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. Thus, it is held that both these acts committed by the accused were with the common purpose and design of causing death of Uhtra. Since, the modus operandi was the same, there is continuity in action.

346. The contentions of the defence that an F.I.R had to be registered for the offence relating to attempt to murder for causing the viper bite, by relying on T.T. Antony & Others Vs. State of Kerala (2001 (3) KLT 1) is not tenable. In fact, the Supreme Court held that registration of a second F.I.R is not permissible and held as follows - From the above discussion it follows that under the scheme of the provisions of S.154, S.155, S.156, S.157, S.162, S.169, S.170 and S.173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of S.154 Cr.PC. Thus, there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in S.173 Cr.PC."

This proposition of law is reiterated In Manoj Kumar. V. State of Uttarakhand (2019 (5) SCC 667).

347. In this case both the offences of attempt to murder and homicide are intricately connected and there is a commonality of purpose and design and continuity in action. Since, the original F.I.R in this case was registered for unnatural death U/S 174 Cr.PC, the registration of a second F.I.R for the offence of attempt to murder by using Viper is not at all warranted. Due to the commonality of purpose, continuity of action and the same modus operandi two separate F.I.Rs are uncalled for, much less illegal. Thus, it is held that the two offences, viz., attempt to murder and the actual causing of death of Uthra forms part of the same transaction. The facts in issue in the offence of murder include the fact of attempt to commit murder of Uthra on an earlier occasion as proof of the intention of the accused to cause her death. Moreover, as per Sec. 178 Cr.PC where an offence is committed partly in one local area and partly in another, it may be enquired into or tried by a Court having jurisdiction over any of such local area. It is crystal clear that as per Sec. 220(1) of the Cr.PC, the accused can be tried for both the offences in the same transaction and therefore, as per Sec. 184 of the Cr.PC, any of the Courts competent to enquire into or try the offences, have jurisdiction in the case. Contention of the defence that due to non registration of F.I.R, he could not obtain the name

and address of the informant, details and time of information and that PW1 was declared as an Approver and it causes prejudice to the accused are not at all tenable. It is to be noticed that the accused was the person who had accompanied Uthra to Pushpagiri Hospital, after she sustained Viper bite and he had knowledge about the circumstances which affected Uthra and the matters which transpired at Pushpagiri Hospital during her treatment.

348. **In the said circumstances, it is held that the non registration of the F.I.R in the earlier case of Viper bite on Uthra is not at all an irregularity, illegality or material defect, which caused prejudice to the accused.**

349. PW2, PW3, and PW4, the parents and brother of Uthra have categorically testified that the accused was in the room with Uthra in the night of 6/05/20, when she sustained cobra envenomation. Ext P16 complaint by the accused submitted before the District police chief Rural Kottarakkara is proved by the prosecution by conclusive evidence. PW14, an advocate clerk and the scribe of the same has proved that he wrote the same as per the direction of the accused and the accused signed the same. The testimony of PW14 is reliable. PW70 the handwriting expert has given evidence that Ext P16 was signed by

the accused. While examining PW83, it was brought out that the email address of the accused, surajskumar1993@gmail.com, was synced with MO31 mobile phone of accused. PW72, who examined the MO31, mobile phone of accused has testified that he retrieved image files of Ext P16 complaint and the screen shot of the reply mail issued from the office of the chief minister acknowledging the same to the email address of the accused. From the office of the chief minister the hard copy of the email send by the accused along with the attached complaint is produced. Though the accused contends that the above said complaint and email are not send by him, it is not tenable. In view of the unimpeachable evidence the prosecution has proved that Ext P16 complaint was submitted by the accused. The relevant contents of Ext. P16 are already reproduced in vernacular and the accused has admitted in the same that on both the nights when Uthra sustained venomous snake bites he was in the room with the deceased. It amounts to an admission of his presence, with Uthra.

350. In Veera Ibrahim .V. State of Maharashtra A.I.R 1976 SC 1167 it was held by relying on Pakala Narayana's case that admission made by accused of incriminating facts are admissible. It was held as follows. Firstly, the statement in question is not a "confession" within the contemplation of S.24. It is now well settled that a statement in order to amount to a "confession" must either admit in terms the offence, or at any rate substantially all the facts which

constitute the offence. An admission of an incriminating fact, howsoever grave, is not by itself a confession.

351. In *Kanda Padayachi. V. State of Tamil Nadu* A.I.R 1972 SC 66, the Supreme Court considered the judicial precedents and held that **the admission made by an accused of incriminating an incriminating fact which established his presence in the room of the deceased is an admission which can be admitted in evidence.** It is apposite to quote the said judgement as follows-- 8. *As regards the second contention, we think that on the strength of the decisions, both of the Privy Council and of this Court, the High Court was right in its conclusion that the appellant's statement before the Doctor was properly admitted in evidence and could be relied upon as an admission under S.21 of the Evidence Act, 1872. Nothing was and could be found against the Doctor to prevent his evidence about the statement made before him by the appellant from being accepted. The only question, therefore, is whether that statement was inadmissible by reason of S.26.*

10.... *The question as to the meaning of 'confession' was ultimately settled in 1939 by the Privy Council in *Pakala Narayana Swami v. The King Emperor*, 66 Ind App 66 : AIR 1939 PC 47 wherein at Page 81 Lord Atkin laid down that no statement containing self exculpatory matter could amount to confession if the exculpatory statement was of some fact which if true could negative the offence alleged to be confessed. He observed:*

11. As held by the Privy Council, a confession has to be a direct acknowledgement of the guilt of the offence in question and such as would be sufficient by itself for conviction. If it falls short of such a plenary acknowledgement 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 his guilt. Such a statement is admission but not confession. Such a definition was brought out by Chandawarkar, J., in *R. v. Santya Bandhu*, (1909) 11 Bom LR 633 by distinguishing a statement giving rise to an inference of guilt and a statement directly admitting the crime in question

12 ...In *Faddi v. State of Madhya Pradesh*, 1964 (6) SCR 312 : AIR 1964 SC 1850 the appellant filed a first information report on the basis of which the dead body of his step son was recovered and three persons were arrested. As a result of the investigation, however, the appellant was arrested and was sent up for trial which resulted in his conviction and a sentence of death. In an appeal before this Court, he contended that the first information report ought not to have been admitted by reason of S.25 of the Evidence Act and S.162 of the Criminal Procedure Code. The contention was rejected on the ground that neither of the two provisions barred the admissibility of the first information report as that report was only an admission by the appellant of certain facts which had a bearing on the question as to how and by whom the murder was committed and whether the statement of the appellant in the Court denying the evidence of certain prosecution witnesses was correct or not. Such admissions were admissible under S.21 of the Evidence Act and as such could be proved against the accused.

It is true that in Queen Empress v. Nana, 1889 ILR 14 Bom. 260 (FB) the Bombay High Court, following Stephen's definition of confession, held that a statement suggesting the inference that the prisoner had committed the crime would amount to confession. Such a definition would no longer be accepted in the light of Pakala Narayana Swami's case, 66 Ind App 66 : AIR 1939 PC 47 and the approval of that decision by this Court in Palvinder Kaur's case. In State of U.P. v. Deoman Upadhyaya 1961 (1) SCR 14 at p. 21 : AIR 1960 SC 1125 Shah, J. (as he then was) referred to a confession as a statement made by a person "stating or suggesting the inference that he had committed a crime". From that isolated observation, it is difficult to say whether he widened the definition than the one given by the Privy Council. But he did not include in the expression 'confession' an admission of a fact, however incriminating which by itself would not be enough to prove the guilt of the crime in question, although it might, together with the other evidence on record, lead to the conclusion of the guilt of the accused person. In a later case of A. Nagesia v. State of Bihar, AIR 1966 SC 119 at p. 123 Bachawat, J., after referring to Lord Atkin's observations in Pakala Narayana Swami's case and their approval in Palvinder Kaur's case, 1953 SCR 94 : AIR 1952 SC 354 defined a confession as "an admission of the offence by a person charged with the offence". It is thus clear that an admission of a fact however incriminating, but not by itself establishing the guilt of the maker of such admission, would not amount to confession within the meaning of S.24 to 26 of the Evidence Act.

14. On the authority of these pronouncements by this Court, it is clear that the statement in question did not amount to a confession. It was an admission of a fact, no doubt of an incriminating fact, and **which established the presence of the appellant in the deceased's room** but which clearly was not

barred under S.26. The Sessions Judge and the High Court were, therefore, right in holding it to be admissible and in relying upon it. In this view, counsel's second contention also fails and has to be rejected.

352. Thus it is held that the statements made by the accused admitting his presence with the deceased on both the nights of 2/03/20 and 6/05/20 are admissions which are admissible in evidence and those are incriminating circumstances against the accused.

353. In State of Kerala .V. Poulouse, 1989(2)KLT 351 it was held that False plea of alibi or failure to establish the plea is having the effect of establishing his presence as alleged by the prosecution though criminality has to be positively proved otherwise.

354. Thus it is held that in Ext P16, the accused has admitted his presence with Uthra in her room when she was last seen alive on the night of 6/05/20 and the prosecution has conclusively proved the same. Though the accused took a plea alibi, about his presence in the night of 6/05/20, it turned out to be false. Moreover, in the night of 2/03/20 also he admitted his presence with Uthra when she sustained viper envenomation and that fact is corroborated by PW9.

355. All these facts would prove that the accused was last seen with the deceased in her room when she was last found alive and when she sustained the homicidal induced cobra envenomation. The fact that accused was found with Uthra in her room in the night of 2/03/2020 when she sustained viper envenomation is also proved. It is proved that on both these occasions Uthra was under sedation. The prosecution has proved that the accused was in possession of a cobra and viper snakes with which Uthra sustained envenomation on both occasions. The accused has thus exclusive knowledge of the facts which transpired when he and Uthra were alone. There is a corresponding burden on him u/s 106 of Evidence Act, to explain the circumstances how Uthra was sedated and she sustained cobra and viper bites. The last seen theory will apply with full force when, due to the time gap between the fatal injuries sustained and the point of time when the accused and deceased were last seen is so short, that no other person had the opportunity to inflict the fatal injuries on the deceased. In this case there is a proved additional circumstance that the accused had clandestinely procured venomous snakes, and was in possession of the same and Uthra had sustained envenomation caused by these snakes. It is also proved that the fatal envenomation by cobra was by induced bites. So if the accused does not offer any explanation as to how Uthra sustained envenomation by these snakes which were possessed by

the accused, by applying the last seen theory and section 106 of Evidence Act, the conclusion which is to be raised is that in all probability the viper envenomation and fatal cobra envenomation sustained by Uthra was caused by the accused. This proposition is laid down by the Supreme court in Trimukh Maroti Kirkan .V. State Of Maharashtra, 2006 (10) SCC 681 wherein it was held as follows--- (At the risk of repetition it is quoted again)

11.... But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirlahd v. Director of Public Prosecution (1944 AC 315) quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh 2003 (11) SCC 271. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led.

The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind S.106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b.) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of S.106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

In Nawab .V. State of Uttarakhand 2020 (2) SCC 736 in similar case wherein the deceased wife was last seen alive with the accused together in their room, the Supreme Court held as follows-

9. The wife of the appellant met a homicidal death in her own house past mid night when the appellant was alone with her. His defence has completely been disbelieved with regard to the intruders and we find no reason not to uphold the same. The prosecution had therefore established a prima facie case and the onus shifted to the appellant under S.106 of the Evidence Act, 1872 to explain the circumstances how his wife met a homicidal death. The appellant failed to furnish any plausible defence and on the contrary tried to lead false evidence which is an additional aggravating factor against him.

In State of Himachal Pradesh Vs. Jeet Singh 1999 SCC (cri) 539, the Supreme court has held that every criminal act was done with a motive but its corollary is not that no criminal act was done if the prosecution failed to prove the precise motive.

In 1998 (9) SCC238 Nathuni Yadav .v. State of Bihar it was held as follows.17.

Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible

that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Campbell struck a note of caution in Reg v. Palmer (Shorthand Report at page 308 CCC May 1856) thus :

"But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties."

355 (a). Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence docs not mean that no such mental condition existed in the mind of the assailant.

356. The investigation in this case was conducted in a scientific manner and vital evidence of the trail left by the accused even in cyberspace was collected. Thus, on evaluating the evidence on record, which includes the digital foot prints and traces left by the accused in cyberspace, and the law on the point, it is held that the prosecution has proved the third vital fact necessary to be established in a case of murder by poisoning, **that is, the accused had the**

opportunity to administer the poison. The prosecution has succeeded in adducing legal evidence on relevant facts and circumstances to establish conclusively the complete chain of circumstances against accused and there are no missing links. There is no hypothesis from the proved circumstances, which points out to the innocence of the accused. The proved circumstances point only to the guilt of the accused. It is established beyond reasonable doubt by adducing relevant facts that on both of the two occasions in which Uthra sustained envenomation the accused had sedated her, he knew about her condition and he had the opportunities to administer the fatal Cobra bite and Viper bite on her. The prosecution has also proved the motive of the accused to get rid of Uthra, who was a disabled lady and to continue to obtain the funds he received from her family. It is also to be noted that it is proved by the prosecution that the accused has asked PW2, the father of Uthra to continue to give financial aid to him even after her death and he was reluctant to utilise the proceeds of the sale of gold and car for the welfare of his only child. This motive is established by the fact that he has searched for viper snake immediately before Uthra sustained viper envenomation and even while she was admitted in the hospital he was searching for Cobra, with which he inflicted the homicidal induced bites which caused death of Uthra. **Thus, it is held that the prosecution has proved that the accused had a motive to do**

away with Uthra and he had the opportunity to administer the venomous snake bites on her. It is conclusively proved by the prosecution that the accused was the person who was last seen with Uthra in her room when she was alive. Thus, the only irresistible conclusion which is possible is that the accused has inflicted the homicidal induced Cobra bites on Uthra and caused the fatal envenomation which resulted in her death.

357. In this case, the prosecution has adduced evidence and proved 27 out of the 29 circumstances relied to prove the guilt of the accused. Only circumstances numbers 23 and 26 are not proved. It is held that the prosecution has proved beyond a reasonable doubt that the accused has caused homicidal induced Cobra bites on Uthra in the night of 6/05/2020, which has caused the fatal envenomation resulting in her death. It is to be noticed that on 2.3.2020, the accused had made another attempt to cause fatal envenomation by inflicting Viper bite on Uthra. She survived because of medical treatment. The above said attempt made by the accused is relevant fact U/S 14 illustration (I) and (O) of the Evidence Act, which discloses his intention to cause her death. It is also to be noted that he had also made an unsuccessful attempt by placing the Viper on the landing of the staircase and sending Uthra in that direction. This fact is also relevant U/s. 14 of Evidence Act. The prosecution has proved that Uthra, who was sedated sustained two homicidal, induced Cobra bites which caused

the fatal envenomation and it was sufficient in the ordinary course to cause death. The infliction two induced Cobra bites, definitely is with the intention to cause death. In the said circumstances, it is held that the accused has caused the death of Uthra with the intention of causing her death. The act of the accused does not come within any of the exceptions U/S 300 I.P.C and it amounts to murder as defined U/S 300 I.P.C. Thus the prosecution has proved beyond a reasonable doubt that the accused has committed the murder of Uthra and committed the offence punishable u/s 302 I.P.C.

358. The prosecution has also proved beyond reasonable doubt that the accused has attempted to murder Uthra by inflicting Viper bite in the night of 2/03/20 and has committed offence punishable U/S 307 I.P.C.

359. It is proved that on both occasions when Uthra sustained envenomation, the accused had administered stupefying drugs or sedative tablets to Uthra and attempted to murder her and has caused death by inflicting Cobra envenomation. The death was also caused by administering Cobra venom, a poison. Section 328 I.P.C is an independent offence. Thus, the prosecution has proved beyond reasonable doubt that the accused has committed offence U/S 328 I.P.C.

360. The accused has also caused disappearance of evidence in a murder case by washing the glass in which he gave sedative mixed juice to Uthra and destroying the stick with which he handled the snake. Thus, the prosecution has proved beyond reasonable doubt that the accused has committed the offence U/S 201 I.P.C.

361. Point Numbers (3) to (9) are found in favour of the prosecution and it is held that the the accused has committed offences punishable U/Ss 307, 302, 328 and 201 of the Indian Penal Code. The accused is found guilty of the commission of offences U/S 307, 302, 328 and 201 of the Indian Penal Code and is convicted U/S 235 (2) Cr.PC. The benevolent provisions of the Probation of Offenders Act are not applicable and the accused is to be heard U/S 235 (2) Cr.PC on the question of sentence.

In the result, the accused is found guilty of the commission of the offences punishable U/Ss 307, 302, 328 and 201 of Indian Penal Code and convicted U/S 235 (2) Cr.PC. He will be questioned U/S 235 (2) Cr.PC.

(Dictated to Confidential Assistant transcribed and typed by him corrected and pronounced by me in open court this the 11th day of October, 2021.)

Sd/-

M. Manoj.

VI Addl. Sessions Judge, Kollam

362. **Point No. (10):** In answer to point Numbers 1 to 9, this Court has found the accused guilty of the offences U/Ss 302, 307 328 and 201 IPC and

convicted him U/S 235 (2) Cr.PC. The accused was heard on the question of sentence and the learned Special Public Prosecutor and the learned Defence Counsel were heard.

The accused pleaded that he is innocent, that he is a member of a family consisting of both his parents, sister and his child.

363. The learned Special Public Prosecutor contended that though this case is proved by circumstantial evidence, this case falls in the category of rarest of the rare. It was submitted that generally cases of Uxoricide may be common, but due to the mode of execution and the diabolic plan of the accused to murder Uthra, his wife who was bedridden, makes it fall in the category of rarest of the rare. It was contended that the unparalleled cunningness of the accused for planning the murder, the amount of pain the accused inflicted on the hapless victim, his intention to make use of a Cobra as a weapon, even on the day that he murdered Uthra he made her believe that he had love and affection for her and his attempt to camouflage the murder as a myth of serpentine curse with the object of receiving financial aid from the family of the wife, makes the murder dastardly and rarest of the rare. It was contended that the murder was committed in a diabolic, brutal, grotesque and abhorrent manner which has shocked the collective conscience of the society. The murder was committed for obtaining financial gain and the accused was in a fiduciary relationship with

the victim. The learned Public Prosecutor placed reliance on the decision reported in *Sushil Murmu .V. State of Jharkhand*, 2004 SCC CrI. 529 and contended that though the normal penalty for murder is imprisonment for life, death sentence can be imposed, when the normal punishment of life imprisonment is not adequate. According to the learned Public Prosecutor it is not the legality or philosophy of the Court in imposing the sentence, which matters, but the circumstances and nature of the murder which matters. When the uxoricide was committed in a manner of unparalleled cunning and in an extremely dastardly and ghastly manner, normal punishment of life imprisonment is not sufficient. For the first time in the history of Kerala, the modus operandi of using a live Cobra as a weapon for murder was adopted, for inflicting deadly envenomation on a hapless victim who was bedridden. Even when the victim was convalescing after the first attempt for murder failed, the accused was planning to inflict a Cobra bite to kill her. According to the learned Public Prosecutor the mitigating circumstance of the young age of the accused has to be ruled out in this case due to the persistent efforts made by the accused to murder his wife. The accused has no possibility of reformation. It was also contended that in view of the rise in instances of cold blooded murder of innocent women in the society, a message has to be given to the society by

awarding capital punishment to instil deterrence that such type of offences would be dealt with an iron hand by the justice delivery system.

364. The learned defence counsel contended that Uxoricide, in itself would not fall under the rarest of the rare case. The accused is aged only 27 years and of a very young age. He has no previous criminal antecedents and there is hope of reformation. The defence counsel relied on the decisions reported in Mohinder Singh .V. State Of Punjab, AIR 2013 SC 3622 and Gurvail Singh .V. State Of Punjab, 2013 SC 1177 to buttress his argument.

365. It is true that the accused has committed Uxoricide in a diabolic, ghastly and dastardly manner by adopting a method of unparalleled wickedness. He prepared and planned for the murder even while Uthra was convalescing after the Viper bite. On both occasions of the attempt to murder and the murder, the unsuspecting victim and the accused were alone in the room. The accused had purchased and kept the venomous snakes in his possession and was seeking for the right opportunity to murder the hapless victim, while she was unsuspectingly thinking that the accused, her husband, was loving her. The accused was even able to take his in-laws into confidence after the first attempt of murder was unsuccessful. He sedated the unsuspecting victim on both occasions by giving sedative drugs mixed in liquids which he gave her to drink. As contended by the Special Public Prosecutor the victim unsuspectingly drank

the same, mistaking it for the love of the accused, but in fact the accused gave her a poisoned chalice. In the said circumstance, the commission of murder was definitely diabolic, cruel, heinous, and dastardly.

366. The punishment for murder prescribed u/s 302 I.P.C is death or imprisonment for life with fine. U/S 354(3) Cr.PC it is stated that, when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or for a term of years, the judgement shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for the sentence. It is clear that imprisonment for life is the rule and death sentence the exception, which can be awarded for special reasons.

367. The Hon'ble Supreme Court, in *Macchi Singh .V. State of Punjab*, AIR 1983 SC 957, by relying on the rarest of the rare case doctrine propounded by the Supreme Court in the decision in *Bachan Singh. V state Of Punjab*, AIR 1980 SC 898, laid down the guide lines for awarding death sentence. It is apposite to quote the guidelines as follows-

- (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;*
- (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime';*
- (iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment*

having regard to the relevant circumstances of the crime, and provided only when the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

34. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

368. The doctrine of "rarest of rare case" confines two aspects and when both the aspects are satisfied only then the death penalty can be imposed. Firstly, the case must clearly fall within the ambit of "rarest of rare" and secondly, when the alternative option of awarding imprisonment for life is foreclosed. The selection of death punishment as the penalty is as the last resort when, alternative punishment of life imprisonment will be futile and serves no purpose.

In the decision of the Supreme Court reported in Md Mannan @ Abdul Mannan. V. State of Bihar 2019 SC 2934 it is held as follows regarding the criteria to decide the rarest of the rare category-

“74. The proposition of law which emerges from the judgments referred to above is itself death sentence cannot be imposed except in the rarest of rare cases, for which special reasons have to be recorded, as mandated in S.354(3) of the Criminal Procedure Code. In deciding whether a case falls within the category of the rarest of rare, the brutality, and / or the gruesome and / or heinous nature of the crime is not the sole criterion. It is not just the crime which the Court is to take into consideration, but also the criminal, the state of his mind, his socio - economic background, etc. Awarding death sentence is an exception, and life imprisonment is the rule.

75. Therefore, before imposing the extreme penalty of death sentence, the Court would have to satisfy itself that death sentence is imperative, as otherwise the convict would be a threat to society, and that there is no possibility of reform or rehabilitation of the convict, after giving the convict an effective, meaningful, real opportunity of hearing on the question of sentence, by producing materials.”

369. In this case, death was caused by injecting venom, a poison with a live animal after the unsuspecting victim was sedated. No doubt, the murder is diabolic, ghastly, brutal and heinous. However, death sentence can be awarded

only in rarest of the rare category, and in deciding that, the mitigating circumstances in favour of the accused also has to be considered. The accused is aged 28 years now and the prosecution does not have a case that before pursuing his diabolic plan to commit uxoricide, he had criminal antecedents and was involved in offences of grave nature of moral turpitude in the past. True, the offence was committed with unparalleled wickedness and in a ghastly manner. The accused had repeatedly pursued his intent to murder Uthra. In spite of the forceful arguments advanced by the Prosecutor for awarding the death sentence, the court has to take note of the mitigating circumstances in favour of the accused. In the absence of any criminal antecedents, the young age of the accused would be a mitigating circumstance. Without a person having criminal antecedents, it cannot be held that, if death sentence is not awarded, he would be a threat to the society. In the said circumstances the chances of reformation of the accused cannot be said to be foreclosed and the case does not fall in the category of rarest of the rare so as to award death sentence. In the said circumstances, it is held that death sentence need not be imposed and a sentence of imprisonment for life would serve the interest of justice.

In the result,

- (i) The accused is sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,00,000/- (Rupees Five Lakhs only) for the commission of offence punishable u/s 302 I.P.C;
- (ii) In default of payment of fine the accused shall undergo rigorous imprisonment for 1 (one) year;
- (iii) The accused is sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/- (Rupees fifty thousand only) for the commission of offence punishable u/s 307 I.P.C;
- (iv) In default of payment of fine the accused shall undergo rigorous imprisonment for 6 (six) more months;
- (v) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and to pay a fine of Rs. 25,000/- (Rupees twenty five thousand only) for the commission of offence punishable u/s 328 I.P.C;
- (vi) In default of payment of fine the accused shall undergo rigorous imprisonment for 3 (three) more months;
- (vii) The accused is sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs.10,000/- (Rupees ten

thousand only) for the commission of offence punishable u/s 201 I.P.C;

- (viii) In default of payment of fine he shall undergo rigorous imprisonment for 1 (one) more month.
- (ix) The Supreme Court in Muthuramalingam . V. State AIR 2016 SC 3340 has held that sentences of life imprisonment shall run concurrently. It is also held that in case a term sentence is also imposed along with imprisonment for life, the court can order the term sentence to run first.
- (x) Therefore it is ordered that the sentences of term imprisonments imposed for the offences u/s 328 and 201 I.P.C shall run consecutively at first.
- (xi) The sentences of imprisonment for life will commence after the term imprisonment awarded is underwent by the accused and shall run concurrently.
- (xii) In case of remission of the substantive sentence, the period of detention underwent by the accused as under trial prisoner from 24/5/2020 till today shall be set off from the substantive sentence of imprisonment u/s 428 Cr.PC.

(xiii) PW1, Suresh Kumar, the approver in this case is detained in this case. He is ordered to be released U/S 306 (4) (b) Cr.PC, he is not to be detained in any other case.

Issue warrant to commit the accused to Central Prison, Thiruvananthapuram.

MO1, MO2, MO5, MO6, MO7, MO8, MO11 series, MO16, MO21, MO26 series, MO26(a), MO27 and MO34, being valueless are ordered to be destroyed after the appeal period.

If the fine amount is recovered it is ordered to be paid as compensation in equal share to PW2 and PW4 U/S 357 (1) (b) of Cr.PC.

In this case, the minor son of Uthra, has lost his mother and he is now in the care and custody of PW2 and PW4 and he needs rehabilitation on account of the crime committed. Therefore, this is a fit case in which recommendation can be made to the District Legal Services Authority, Kollam for payment of compensation U/S 357 A Cr.PC to provide Victim Compensation to the son of Uthra. It is ordered that a recommendation be made to the District Legal Services Authority, Kollam to pay Victim Compensation U/S 357 A Cr.PC to the minor son of Uthra.

(Dictated to Confidential Assistant transcribed and typed by him corrected and pronounced by me in open court this the 13th day of October, 2021.)

Sd/-

M. Manoj.
VI Addl. Sessions Judge, Kollam

Appendix :-**Exhibits marked from the side of Prosecution:-**

P1	30-06-2020	Letter addressed to JFCM-I, Punalur proved by PW1
P2	16-07-2020	164 Statement proved by PW1
P3	27-07-2020	164 statement proved by PW1
P4	04-08-2020	306 (4) Statement proved by PW1
P5	17-06-2020	Attested Copy of Confession Statement proved by PW1
P6	19-05-2020	Complaint to SP Rural, Kottarakkara proved by PW2
P7	07-05-2020	FIS proved by PW3
P7(a)	07-05-2020	FIR proved by PW81
P8	20-05-2020	Mahazar regarding bag (MO2) proved by PW6
P9	13-07-2020	164 statement proved by PW7
P10	22-07-2020	164 statement proved by PW8
P11	22-07-2020	164 statement proved by PW9
P12	09-08-2020	65(B) Certificate of CD (MO14) proved by PW11
P13	-	65(B) Certificate of Pen drive (MO15) proved by PW12
P14	10-07-2020	Mahazar of place of catching Cobra proved by PW12
P15	15-05-2020	Petition addressed to Dy.S P, Adoor proved by PW14
P16	20-05-2020	Petition addressed to Rural S.P Kottarakkara proved by PW14
P16(a to f)	-	Relevant extracts of P16 petition proved by PW14
P17	29-05-2020	Seizure Mahazar of Car proved by PW16
P18	23-03-2018	Registration Certificate of Maruti Baleno Car (KL-25-L-3232) proved by PW16
P18(a)	23-03-2020	Insurance Certificate of Maruti Baleno Car (KL-25-L-3232)proved by PW16
P19	25-05-2020	Recovery Mahazar of Plastic Jar (MO1) proved by PW17
P19(a)	-	Relevant portion of Ext. P19 proved by PW85
P20	27-05-2020	Mahazar of place of handing over of Cobra proved by PW18

P20(a)	-	Relevant portion of P20 Mahazar proved by PW85
P21	12-08-2020	Expert Committee Report proved by PW19
P22	07-08-2020	Report of Dummy Demonstration with Cobra proved by PW19
P23	06-08-2020	Report of Dummy Demonstration with Viper proved by PW19
P24	25-03-2018	Attested copy of Page 41 of Marriage Register proved by PW20
P25	07-02-2018	വിവാഹ പത്രീക proved by PW20
P26	13-06-2020	Moonnamstanam Kaichit for Marriage Register proved by PW20
P27 series	12-07-2018	Scanned Printout Copy of Account opening form, KYC proved by PW21
P28	18-06-2020	Certified copy of Account Statement of HDFC Bank, Adoor proved by PW21
P29	28-01-2021	Certified copy of the details of transaction of amount at South Indian Bank ATM at Ezhamkulam date 24-04-2020 proved by PW21
P30	28-01-2021	Location details of ATM of South Indian Bank, Ezhamkulam marked (under subject to objection) proved by PW21
P31series	20-06-2020	Attested copy of Account opening form of Vijayasenan (PW2) proved by PW22
P32	20-06-2020	Attested copy of Account Statement proved by PW22
P33series	25-11-2013	Attested copy of Account opening form of Uthra Agencies proved by PW22
P34	20-06-2020	Attested copy of Account details of Uthra Agencies proved by PW 22
P35 series	20-03-2018	Attested copy of account opening form of Uthra proved by PW22
P36	20-06-2020	Attested copy of Account details of Uthra proved by PW22
P37series	20-03-2018	Attested copy of vehicle loan application proved by PW22
P38	20-06-2020	Attested copy of Account details of vehicle loan proved by PW22

P39	23-06-2020	Certified copy of Statement of Account proved by PW23
P40	04-07-2018	Attested copy of Appointment letter of accused proved by PW24
P41	-	Attested copy of cumulative pay slip of accused proved by PW24
P42	-	Attendance Register from January, 2020 to February, 2020 proved by PW24
P43	-	Attendance Register from March, 2020 to June, 2020 proved by PW24
P44series	11-03-2020	Medical Reimbursement application proved by PW24
P44(a)	11-03-2020	Medical Certificate from Pushpagiri Medical College Hospital proved by PW24
P45	26-06-2020	Certificate No. BR/GEN/11/2020-2021 of South Indian Bank proved by PW26
P46	09-07-2020	Copy of Report submitted by Investigating Officer proved by PW26
P47	14-07-2020	Printout of Sale report proved by PW27
P47(a)	-	Invoice No. 1445 proved by PW27
P48	30/07/2020	Attested copy of statement of PW1 and Time granted for reflection proved by PW26
P49	17-07-2020	Certified Copy of letter by Investigating Officer proved by PW26
P50	27-07-2020	Certified copy of Order of tendering pardon proved by PW26
P51	17-07-2020	Printout of sale report of distribution of Monty LC Tablet proved by PW28
P52 series	26-04-2016	Account opening form proved by PW30
P53 series	11-06-2020	Statement of account proved by PW30
P54	11-04-2019	Application for gold loan proved by PW30
P55	11-04-2019	Gold loan pledge token proved PW30
P56	-	Attested copy of safe deposit locker Register proved by PW30
P57	-	Agreement for hiring locker proved by PW30
P58	03-06-2020	Moonnamsthana Kaichit of safe deposit locker register proved by PW30

P59	11-07-2020	65 (B) Certificate of pen drive (MO18) proved by PW31
P60	13-07-2020	Moonnamsthana Kaichit for Wild life Register proved by PW33
P61	03-06-2020	Moonnamsthana Kaichit for RRT Register proved by PW34
P62	29-10-2016	Certified copy of customer application form of Suraj. S. Kumar proved by PW35
P63series	-	Certified copy of call details Record of Suraj. S. Kumar from 01-12-2019 to 23-05-2020, (Jio Phone No. 7907934909) proved by PW35
P64	-	Certified copy of Data usage records of accused proved by PW35
P64(a)	-	Certified copy of tower decoding records with latilog details proved by PW35
P64(a1)	-	Internet activity tower location of Mobile No. (7907934909) of accused proved PW35
P64(a2)	-	Data Usage Tower location proved by PW35
P65	16-12-2016	Customer application form of Jio phone No. 8075801910 proved by PW35 (Eldhose Jose)
P66	-	Certified copy of CDR on 09-05-2020 proved by PW35
P67	03-07-2020	65 B certificate of P62 and P63 proved by PW35
P68	06-07-2020	65 B certificate P64 and P64(a) proved by PW35
P69	03-07-2020	65 B certificate of P65 and P66 proved by PW35
P70series	-	Certified photocopy of customer application Id proof and annexures of phone No. 9446907317 (R. Sureshkumar) proved by PW36
P71	-	Call details records from 01-12-2019 to 23-05-2020 (Ph.No. 9446907317) proved by PW36
P72	29-07-2020	65 B Certificate of P70 and P71 proved by PW36
P71(a)	-	Call details in page 88 proved by PW36
P71(b)	-	Call details and Data usage in page number 148 of Ext. P71 proved by PW36
P73	-	Customer Application Form of mobile number 8281754239 (Eldhose Jose) proved by PW36
P74	-	Customer Data Records on 09-05-2020 proved by PW36

P75	29-07-2020	65 B Certificate of P73 and P74 proved by PW36
P76	05-09-2016	Certified copy of customer application form of phone number 9207720666 (Suraj. S. Kumar) proved by PW37
P77	-	Call details record from 01/12/2019 to 23/05/2020 proved by PW37
P78	-	65 B Certificate of P76 and P77 proved by PW37
P79	17-07-2020	Tower decoded details of Vodafone Idea proved by PW37
P80	-	Customer Application Form of phone number 8589800970 (Suraj. S. Kumar) proved by PW37
P81	-	Call details Record from 01-01-2020 to 10-05-2020 proved by PW37
P82	-	65 B Certificate of P80 and P81 proved by PW37
P83	17-07-2020	Tower decoding details of Vodafone Idea proved by PW37
P84	17-01-2018	Customer Application form of phone No. 9061419459 (Sureshkumar) proved by PW37
P85	13-07-2020	Call details records from 01-12-2019 to 23-05-2020 proved by PW37
P85(a)	-	Relevant call entries in page number 39 and 40 of Ext. P85 proved PW37
P86	-	65 B Certificate of P84 and P85 proved by PW37
P87	17-07-2020	Tower decoding data list of Vodafone Idea proved by PW37
P88	06-04-2018	Customer Application Form of mobile number 9745016178 (Eldhose Jose) proved by PW37
P89	-	Call details record proved by PW37
P89(a)	-	Relevant entry in page No. 54 of Ext. P89 proved by PW37
P90	-	65 B Certificate of P88 and P89 proved by PW37
P91	17-07-2020	Tower decoded list of Vodafone Idea proved by PW37
P92	01-08-2016	Certified copy of customer Application form of mobile number 9207689666 (Sujith) proved by PW37
P93	-	Certified copy of call details record proved by PW37
P94	-	65 B Certificate of P92 and P93 proved by PW37
P95	17-07-2020	Tower decoding list of Vodafone Idea proved by PW37

P96	-	Customer application form of Mobile number 8943125527 (Raju) proved by PW37
P97	-	Call details record proved by PW37
P98	-	65 B Certificate of P96 and P97 proved by PW37
P99	17-07-2020	Tower decoding list of Vodafone Idea proved by PW37
P100	18-06-2020	Certified copy of Registration particulars of vehicle No. KL 26 K 7273 (Owner Surendran) proved by PW38
P101	18-06-2020	Certified copy of Registration particulars of vehicle No. KL. 26 K 1470 (Owner Suraj S. Kumar) proved by PW38
P102	17-12-2011	Certified copy of driving licence extract of Suraj. S. Kumar proved by PW39
P103	28-02-1983	Driving licence extract of Surendra Panicker proved by PW39
P104	09-07-2020	Scene Plan of Sreesurya house proved by PW40
P105	22-07-2020	Location sketch of Jio, Airtel, BSNL towers at Parakode proved by PW40
P106	01-06-2020	Search list proved by PW40
P106(a)	01-06-2020	Search Memo proved by PW85
P107	08-07-2020	Seizure Mahazar of Hard Disk from J & J Medicals proved by PW40
P108	21-07-2020	Location sketch of Mobile towers at Enathu proved by PW41
P109	27-07-2020	Scene Plan of House of Uthra proved by PW42
P110	27-07-2020	Mobile Tower Location sketch at Anchal proved by PW42
P111	27-07-2020	Certificate regarding details of property of Vijayasenan proved by PW42
P112	27-07-2020	Certificate regarding details of property of Manimekhala proved by PW42
P113	30-07-2020	Certificate issued from St. Joseph Mission Hospital, Anchal proved by PW43
P114 series	-	Photographs proved by PW45
P115	08-07-2020	65 B Certificate of P114 series (Photographs) proved by PW45

P 116	-	Photograph of Finger print developed from bottle proved by PW45
P117	-	Photograph of specimen finger print proved by PW45
P118 series	-	Photograph (12 Numbers) proved by PW45
P119	08-07-2020	65 B Certificate of P118 series (Photographs) proved by PW45
P120 series	-	Photographs proved by PW45
P121	08-07-2020	65 B Certificate of P120 series proved by PW45
P122 series	-	Photographs (a to f) proved by PW45
P123	08-07-2020	65 B Certificate of P122 series (Photographs) proved by PW45
P124 series	-	Photographs (a to i) proved by PW45
P125	08-07-2020	65 B Certificate of P124 series (photograph) proved by PW45
P126 series	-	Photographs (a to e) proved by PW45
P127 series	-	Photographs taken at the time of Inquest proved by PW46
P128	-	65 B Certificate of P127 series (Photographs) proved by PW46
P129	30-07-2020	Chance print- Expert Opinion Report proved by PW47
P130	18-05-2020	Complaint filed by Suraj. S. Kumar before Child Welfare Committee Chairman, Kollam proved by PW49
P131	18-05-2020	Order dated 18/05/2020 Child Welfare Committee, Kollam proved by PW49
P132	25-05-2020	Order dated; 25/05/2020 of Child Welfare Committee, Kollam proved by PW49
P133	13-06-2017	Certified copy of Customer Application Form of Phone No. 9895492625 (Premjith) proved by PW50
P134	-	Call details record from 25-2-2020 to 26-02-2020 proved by PW50
P135	-	Tower Decoding list proved by PW50

P136	01-07-2020	65 B Certificate of P133 and P134 proved by PW50
P137	09-05-2020	Call details record proved by PW50
P138	12-02-2021	65 B Certificate of P137 proved by PW50
P139	23-07-2020	Certificate issued from Govt. Medical College, Parippally proved by PW53
P140	-	Certified photocopy of relevant page (page no: 206) of Disability Register proved by PW54
PI41	24-01-2012	Certified copy of application for disability certificate proved by PW54
P142	24-01-2012	Original disability certificate of Uthra proved by PW54
P142 (a)	24-01-2012	Certified copy of office copy of disability certificate of Uthra proved by PW54
P143	27-01-2012	IQ assessment report of Uthra issued by clinical psychologist proved by PW54
P144	22-7-2020	Moonnamsthana kychit for disability register proved by PW54
P145	10-07-2020	Certificate issued from Taluk Head Quarters Hospital, Punalur proved by PW55
P146	25-07-2020	Certificate issued from Kadakkal THQ Hospital proved by PW56
P147	-	Extract of Snake bite from July, 2018 to July, 2020 proved by PW57
P148	-	Certified copy of Causality Report proved by PW57
P148(a)	-	Relevant entry in P148 Causality Report proved by PW60
P149	24-07-2020	Covering Letter producing Causality Report proved by PW57
P150	15-07-2020	Details of Snake Venom Toxic effect of Patients from 01-12-2014 to 15-07-2020 proved by PW58
P151	-	Certificate issued from Holy Cross Hospital, Adoor proved by PW59
P152	03-03-2020	Case sheet of Holy Cross Hospital, Adoor proved by PW61
P153	07-05-2020	Attested copy of relevant page with relevant entry in Brought Dead Register proved by PW62
P153(a)	-	Relevant entries in Brought Dead Rregister proved by PW62

P154	25-06-2020	Moonnamsthana Kychit for Brought Dead Register proved by PW62
P155	26-05-2020	Preliminary Necropsy Report of Cobra proved by PW63
P156	26-05-2020	Detailed Necropsy Report proved by PW63
P157	07-05-2020	Postmortem Certificate proved by PW65
P158	15-07-2020	Chemical Analysis Report proved by PW65
P159	30-07-2020	Final opinion Report proved by PW65
P160	23-07-2020	Examination report of nighty and Bed Sheet proved by PW66
P161	03-08-2020	Examination Report No. SER 287/2020/B1-5287/FSL/2020 (Nighty and Bed Sheet proved by PW67
P162	21-8-2020	Examination report number DNA-236/2020 B1- 4731/ FSL/2020 Proved by PW68
P163	21-7-2020	Report No . PHY-148/2020 B1-5287/FSL/2020 Proved by PW69
P164	10-8-2020	Examination report of fangs width report No.PHY/151/20/B1-5384/FSL/2020 Proved by PW69
P165	13-7-2020	Examination report proved by PW70
P166	6-6-2020	Sample signature of Suraj .S Kumar (S1 to S35) Proved by PW70
P167	-	FSL Report proved by PW72
P167 (a)	-	Annexure II nd proved by PW72
P168	-	FSL Report proved by PW72
P168 (a)&(b)	-	Figure no: 7 & 8 in P168 FSL report proved by PW72
P169	-	FSL report proved by PW72
P169 (a)	-	Photographs in page no: 5 of P169 FSL report proved by PW72
P169 (b)	-	Photographs in page no: 6 of P169 FSL report proved by PW72
P169 (c)	-	Photographs in page no: 7 of P169 FSL report proved by PW72
P169 (d)	-	Photographs in annexure II nd in P169 FSL report proved

		by PW72
P169 (e)	-	8 pages of written complaint and one page receipt in annexure 4 proved by PW72
P169 (f)	-	Photographs in page no: 15 of FSL report annexure II nd proved by PW72
P169(g)	-	Images in page 16 of Annexure II of FSL report proved by PW72
P170	03-03-2020	Reference letter from Adoor Govt. Hospital proved by PW73
P170(a)	-	Reference from Holy Cross Hospital (reverse side of P170 proved by PW73
P171	03-03-2020	OP case sheet of Pushpagiri Medical College proved by PW73.
P172	11-06-2020	65 B Certificate of Photograph in MO28 1.
P173series	03-03-2020	IP case sheet of Pushpagiri Medical College, Thiruvalla proved by PW74
P173(a)	-	Page Number 32 of IP Case sheet (P173) Proved by PW74
P174	22-04-2020	Discharge Summary of Pushpagiri MCH proved by PW75
P175	03-08-2020	Diagnosis report of Snake venom in blood issued by RGCB proved by PW77
P176	24-05-2020	Attested copy of occurrence report 1/2020 proved by PW78
P177	24-05-2020	Attested copy of Mahazar proved by PW78
P178	-	Attested copy of OR 2/2020 proved by PW78
P179	17-06-2020	Attested copy of Confession made by Suraj S Kumar proved by PW78
P179(a)	-	Relevant extract in page Number 1 of P179 proved by PW78
P179(b)	-	Relevant extract in page Number 3 of P179 proved by PW78
P179(c)	-	Relevant extract in page Number 4 and 5 of P179 proved by PW78

P179(d)	-	Relevant extract in page Number 6 of P179 proved by PW78
P179(e)	-	Relevant extract in page Number 6 and 7 of P179 proved by PW78
P179(f)	-	Relevant extract in page Number 7 of P179 proved by PW78
P179(g)	-	Relevant extract in page Number 8 and 9 of P179 proved by PW78
P179(h)	-	Relevant extract in page Number 9 of P179 proved by PW78
P179(i)	-	Relevant extract in page Number 12 of P179 proved by PW78
P179(j)	-	Relevant extract in page Number 13 and 14 of P179 proved by PW78
P179 (k)		Relevant extract in page Number 14 of P179 proved by PW78
P180	19-06-2020	Occurrence report number 3/2020 dated 19-06-2020 against Suresh Kumar and Suraj. S. Kumar proved by PW78
P181 series	-	Copy of RRT movement register proved by PW78
P182	-	Certificate issued from Community Health Center , Anchal, proved by PW79
P183	22-07-2020	Report of DNA Analysis issued by RGCB proved by PW80
P184	07-05-2020	Inquest Report proved by PW81
P185	19-05-2020	Mahazar of OP and IP Case sheets of Pushpagiri hospital proved by PW81
P186	08-05-2020	Scene Mahazar proved by PW82
P187	26-02-2020	Route map of Sureshkumar proved by PW83
P187(a)	26-02-2020	Route map of Premjith proved by PW83
P187(b)	26-02-2020	Route map of Raju proved by PW83
P187 (c)	26-02-2020	Route map of Lijin proved by PW83
P187(d)	26-02-2020	Combined route map proved by PW83
P188	24-04-2020	Route map of Suraj. S. Kumar proved by PW83

P189	24-04-2020	Route map of Sureshkumar proved by PW83
P190	12-08-2020	65(B) Certificate of P187 series to P189 proved by PW83
P191	-	CDR analysis Report proved by PW83
P192	17-07-2020	Inventory of Sale report of J.S Pharma proved by PW84
P193	23-05-2020	Report proved by PW85
P194	24-05-2020	Report submitted before SDMC, Punalur proved by PW85
P195	24-05-2020	Report submitted before JFMC-I, Punalur proved by PW85
P196	24-05-2020	Address Report proved by PW85
P197 (Series)	-	Arrest Memo, Custody Memo, Body Inspection Memo and Arrest intimation of Suraj S. Kumar proved by PW85
P198 (Series)	-	Arrest Memo ,Custody Memo, Inspection Memo of Sureshkumar proved by PW85
P199	25-05-2020	Seizure Mahazar (Mobile Phone of Suraj S. Kumar) proved by PW85
P200	25-05-2020	Seizure Mahazar (MO3 and MO4 mobile phone of Sureshkumar) proved by PW85
P201	26-05-2020	Mahazar (MO26 series) proved by PW85)
P202	27-05-2020	Scene Mahazar proved by PW85
P203	27-05-2020	Scene Mahazar of place of catching Viper proved by PW85
P204	29-05-2020	Observation Mahazar of Scene of Occurrence proved by PW85
P205	29-05-2020	Seizure Mahazar of Stick , Bed Sheet and Mobile Phone of Uthra proved by PW85
P206	-	Correction Report proved by PW85 (Correction of Batch No. of Monty LC Tablet)
P207	01-06-2020	Seizure Mahazar of MO35 and MO36 proved by PW85
P208	-	Inventory of Disability Certificate of Uthra proved by PW85
P209	02-06-2020	Seizure Mahazar proved by PW85
P210	03-06-2020	Seizure Mahazar of MO10 Mobile Phone proved by

		PW85
P211	03-06-2020	Seizure Mahazar of Safe deposit Locker Register proved by PW85
P212	03-06-2020	Seizure Mahazar of gold pledge Card and Loan application proved by PW85
P213	03-06-2020	Seizure Mahazar of MO12 Mobile Phone (Interim Custody) proved by PW85
P214	03-06-2020	Seizure Mahazar of Enfield Bullet of Suraj S Kumar proved by PW85
P215	03-06-2020	Seizure Mahazar of Ambassador Car of CW1 proved by PW85
P216	03-06-2020	Seizure Mahazar of Activa Scooter of PW1 proved by PW85
P217	04-06-2020	Seizure Mahazar of agreement for hiring Locker proved by PW85
P218	06-06-2020	Recovery Mahazar of Bed Sheet proved by PW85
P219	06-06-2020	Seizure Mahazar Of Bajaj Auto Cuty Vehicle proved by PW85
P220	08-06-2020	Seizure Mahazar of Nighty and Skirt (MO5 and MO6) proved by PW85
P221	09-06-2020	Inventory of photographs (Suraj S Kumar , Sureshkumar and Raju) proved by PW85
P222	-	Photograph of Sooraj S Kumar proved by PW85
P223	-	Photograph of PW1 proved by PW85
P224	-	Photograph of CW16 proved by PW85
P225	09-06-2020	65 B Certificate of P222 , P223 and P224 proved by PW85
P226	11-06-2020	Inventory of P6 complaint proved by PW85
P227	11-06-2020	Mahazar of CD having Bite mark proved by PW85
P228	11-06-2020	Mahazar of Pen drive proved by PW85
P229	11-06-2020	Inventory of statement of Account of Adoor Federal Bank proved by PW85
P230	11-06-2020	Seizure Mahazar of Case Sheet of Adoor Holy Cross Hospital (P152) proved by PW85
P231	12-06-2020	Mahazar of Causality Report Book of Adoor Govt.

		Hospital proved by PW85
P232	-	Moonnamsthana Kaichit of Causality report book of Govt. Hospital , Adoor proved by PW85
P233	12-06-2020	Mahazar of place where Viper was handed over proved by PW85
P234	13-06-2020	Mahazar of Marriage Register and Marriage Pathrika proved by PW85
P235	-	Moonnamsthana Kaichit of Marriage Register and Marriage Pathrika proved by PW85
P236	13-06-2020	Mahazar of Marriage Register proved by PW85
P237	15-06-2020	Seizure Mahazar of MO37 Pen drive proved by PW85
P238	15-06-2020	Seizure Mahazar of Pen drive proved by PW85
P239	19-06-2020	Seizure Mahazar of Statement of Account from Adoor HDFC Bank proved by PW85
P240	-	65 B Certificate of P239 proved by PW85
P241	20-06-2020	Inventory of Statement of account of Vijayasenan and Uthra Agency (P31 to P38) Vehicle Loan account proved by PW85
P242	22-06-2020	Inventory account opening form in the name of Suraj. S. Kumar (P52 series)proved by PW85
P243	24-06-2020	Seizure Mahazar of Mobile Phone of Eldhose Jose proved by PW85
P244	24-06-2020	Inventory of Attendance Register and Pay Slip proved by PW85
P245	25-06-2020	Mahazar of Brought Dead Register proved by PW85
P246	25-06-2020	Inventory of Case Sheet of St. Joseph's Mission Hospital proved by PW85
P247 series	14-05-2020	Case Sheet of St. Josephs Mission Hospital, Anchal proved by PW85
P248	26-06-2020	Mahazar of MO17 Pen drive and P45 Certificate proved by PW85
P249	29-06-2020	Inventory of Photographs of Suraj. S. Kumar (P126 series) proved by PW85
P250	29-06-2020	65 B Certificate of P249 photographs proved by PW85
P251	30-06-2020	Mahazar of RRT Register proved by PW85

P252	13-07-2020	Mahazar of Wild life Register proved by PW85
P253	13-07-2020	Mahazar of Petition addressed to Dy.S.P., Adoor proved by PW85
P254	-	Moonnamsthana Kaichit for Direct Petition Register 2020 of Dy.S.P. Office, Adoor proved by PW85
P255	14-07-2020	Inventory of Okacet tablet proved by PW85
P256	15-07-2020	Mahazar of pen drive of Mathrubhumi News Channel proved by PW85
P257	15-07-2020	65 B Certificate of P256 pen drive proved by PW85
P258	17-07-2020	Seizure Mahazar of MO15 pen drive and 65 B certificate (P13) proved by PW85
P259	22-07-2020	Seizure Mahazar of Disability Register (P140) proved by PW85
P260	22-07-2020	Inventory of photographs of Uthra take at the time of inquest and 65 B certificate (P 127 series and P128) proved by PW85
P261	24-07-2020	Mahazar of P6 complaint proved by PW85
P262	27-07-2020	Inventory of P44 series proved by PW85
P263	28-07-2020	Inventory of P130 to 132 (Complaint of Suraj S Kumar and order of Child Welfare Committee proved by PW85
P264	07-08-2020	Inventory of Photographs of Finger print and Specimen finger print proved by PW85
P265	07-08-2020	Inventory of CD of Arippa experiment with Cobra and Viper proved by PW85
P266	07-08-2020	65 B Certificate of CD of Arippa experiment with Cobra proved by PW85
P267	07-08-2020	65 B Certificate of CD of Arippa experiment with Viper proved by PW85
P268	08-08-2020	Inventory of Photographs and Videos of exhumation and postmortem of snake and 65 B certificate proved by PW85
P269	09-08-2020	Inventory of CD (MO14) and 65 B certificate proved by PW85
P270	07-08-2020	Report deleting PW1 from array of accused and adding him as approver proved by PW85

P271 series	-	Copy of Forwarding notes proved by PW85
P272series	-	CAF and Annexures of Sureshkumar (Mobile No. 9188847317) (Subject to objection) proved by PW85
P272(c)	22-03-2021	65 B Certificate of CAF of Mob No. 9188847317 of Sureshkumar proved by PW36
P273	15-06-2020	65 B Certificate of MO37 proved by PW85
P274	15-06-2020	65 B Certificate of MO29 proved by PW85
P275 series	-	Property List proved by PW85
P276	22-05-2020	Proceedings of District Police Chief, Kollam Rural proved by PW85
P277	09-05-2020	CDR of Mob. No. 9188847317 of Sureshkumar proved by PW36
P278	22-03-2021	65 B Certificate of P277 proved by PW36
P279series	19-04-2020	Reply and copies of letters issued by State Public Information Officer, Wildlife, Thiruvananthapuram proved by DW1
P280	-	Letter of appreciation issued by Forest Department proved by DW1
P281(a)	-	Photocopy of Questionnaire under RTI Act for Ext. D9 proved by DW1
P281(b)	-	Photocopy of Questionnaire under RTI Act for Ext. D10 proved by DW1
P282	09-07-2020	RC particulars of Scooter of Sureshkumar CW1 proved by PW86
P283	28-04-2018	Original R.C. Book of Scooter of Sureshkumar proved by PW86
P284 (a)	-	Printout of A.N.P.R. image proved by PW87
P284(b)	-	P Print out of enlarged image of scooter No. KL02 BE 2823 proved by PW87
P285	14-12-2020	65 (B) Certificate of P284(a) proved by PW87
P286	20-04-2021	65(B) Certificate of P284(b)proved by PW87

Exhibits marked from the side of Defence:-

D1	24-05-2020	Relevant Portion of 161 statement proved by PW1
D2	24-05-2020	Portion of 161 Statement proved by PW1
D3	08-05-2020	Portion of 161 statement proved by PW2
D4	08-05-2020	Relevant portion of 161 statement proved by PW2
D5	23-05-2020	Relevant portion of 161 statement proved by PW7
D6	28-05-2020	Relevant portion 161 statement proved by PW7
D7	-	Relevant portion of 161 statement proved by PW14
D8	11-06-2020	Relevant portion of 161 statement proved by PW61
D9	12-03-2021	Reply u/s. 2005 of Right to information Act, office of Forest Conservator, Vanalekshmi, Thiruvananthapuram proved by DW1
D10	25-02-2021	File No. KFDKQ-984/2020-CWW/WL10 of office of Forest Conservator, Vanalekshmi, Thiruvananthapuram proved by DW1
D11series		Photographs 11 in number showing CCTV Cameras installed in different places in Eanathu Town proved by DW2 .
D12	14-04-2021	65 B Certificate of D11 series proved by DW2
D13	14-04-2021	65 B Certificate of CD proved by DW2
D14	07-05-2020	Copy of detailed Postmortem Notes of Uthra (8 Pages) proved by PW65
D15	-	Photograph proved by PW65
D15(a)	-	Photograph proved by PW65
D16	23-06-2021	65 B Certificate of D15 series proved by PW65
D17 series	08-04-2021	Reply u/s. 6 of RI Act issued from the chemical examiners laboratory, Thiruvananthapuram proved by PW76
D18series	17-06-2021	Reply u/s. 6 of RI Act proved by PW76
D19series	-	Attested copy of distribution register proved by PW76
D20series	-	Photographs serially numbered from D20(a) to D20(p) proved by DW3
D20(q)	30-06-2021	65 B Certificate of D20 series proved by DW3
D21series	30-06-2021	65 B Certificate of Photos proved by DW3
D22	18-02-2021	Copy of FIR No. 0204/2021 of Soorandu Police Station

series

D23series 20-07-2009 FIR No. 584/2009 of Kottiyam Police Station
D24 - Proceedings of Covid-19 lockdown
series

Court Exhibits:-

C1 series 20-05-2020 Hard Copy of E mail message and its attachment received in Chief Minister Official email- chiefminister@kerala.gov.in and 65 (B) Certificate.

Witness for the Prosecution side:-

PW1	01-12-2020	Sureshkumar (CW1)
PW2	09-12-2020	Vijayasenana (CW3)
PW3	09-12-2020	Vishu (CW2)
PW4	21-12-2020	Manimekhala (CW4)
PW5	22-12-2020	Suresh (CW6)
PW6	22-12-2020	Syamdev (CW5)
PW7	24-12-2020	Premjith (CW8)
PW8	01-01-2021	Eldhose Jose (CW12)
PW9	01-01-2021	Sujith (CW11)
PW10	04-01-2021	Sona (CW13)
PW11	06-01-2021	Aneesh (CW19)
PW12	06-01-2021	Shibu (CW21)
PW13	06-01-2021	Anuraj (CW31)
PW14	06-01-2021	Baiju (CW33)
PW15	07-01-2021	Daimudeen (CW38)
PW16	07-01-2021	Arun (CW45)
PW17	07-01-2021	Navas (CW53)
PW18	07-01-2021	Ajeem (CW54)
PW19	18-01-2021	Mavishkumar (CW158)
PW20	30-01-2021	Thulasidharan (CW79)
PW21	30-01-2021	Jijo John (CW89)
PW22	30-01-2021	Pravitha (CW93)

PW23	30-01-2021	Aneesh Joseph (CW97)
PW24	30-01-2021	Harishkumar N.S. (CW99)
PW25	05-02-2021	Vishnu. N. (CW103)
PW26	05-02-2021	Usha Nair (CW 151)
PW27	05-02-2021	V.T. Thomas (CW 108)
PW28	05-02-2021	Geevarghese Mathews (CW 109)
PW29	05-02-2021	John Sakaria (CW 107)
PW30	08-02-2021	Jyothi.A. (CW113)
PW31	08-02-2021	Manu M.G. (CW 114)
PW32	08-02-2021	Bithindas (CW124)
PW33	08-02-2021	Dinsh.R (CW126)
PW34	08-02-2021	Ullas (CW128)
PW35	09-02-2021	Aji Sankar (CW131)
PW36	09-02-2021	Sajeev P.K. (CW132)
PW37	09-02-2021	Augustian Joseph (CW133)
PW38	10-02-2021	C. Syam (CW135)
PW39	10-02-2021	N. C. Ajithkumar (CW139)
PW40	10-02-2021	Kala. S. (CW142)
PW41	10-02-2021	Rajanimol (CW143)
PW42	10-02-2021	Santhoshkumar (CW144)
PW43	11-02-2021	Lily Thomas (CW106)
PW44	11-02-2021	Shefeeca (CW153)
PW45	11-02-2021	Spencer Bose (CW155)
PW46	11-02-2021	Ullas (CW156)
PW47	11-02-2021	Renjith Babu (CW154)
PW48	16-02-2021	Ambili Chandran (CW150)
PW49	16-02-2021	Adv. K.P. Sajinath (CW152)
PW50	16-02-2021	T. Vasudevan (CW134)
PW51	17-02-2021	Muhammed Anwar (CW160)
PW52	17-02-2021	Suresh/Vava Suresh (CW157)
PW53	18-02-2021	Dr. Habeeb Nasim (CW170)
PW54	18-02-2021	Dr. D. Vasanthadas(CW167)

PW55	18-02-2021	Dr. D. Shehirsha (CW173)
PW56	18-02-2021	Dr. Rajkaphoor (CW171)
PW57	19-02-2021	Dr. Prasanth (CW176)
PW58	19-02-2021	Dr. Abraham Varghese (CW174)
PW59	19-02-2021	Sr. Alfiya (CW177)
PW60	19-02-2021	Dr. Jaria Haneef (CW179)
PW61	19-02-2021	Dr. Chaithanya Sidhartha (CW180)
PW62	19-02-2021	Dr. Jeena Badhar (CW186)
PW63	19-02-2021	Dr. Kishore Kumar (CW163)
PW64	23-02-2021	Dr. Asha (CW172)
PW65	23-02-2021	Dr. Ragesh. R, (CW 187)
PW66	24-02-2021	N.R.Bushra Beegum (CW190)
PW67	24-02-2021	Suja (CW191)
PW68	24-02-2021	Sreevidhya (CW194)
PW69	24-02-2021	Suharamammed (CW193)
PW70	24-02-2021	Anaswara.I.P. (CW192)
PW71	24-02-2021	Dr. Sasikala (CW188)
PW72	24-02-2021	Dr. Sunil. S.P. (CW189)
PW73	25-02-2021	Dr. Bhuvaneswary (CW182)
PW74	25-02-2021	Dr. Mathew Pulikkan (CW183)
PW75	25-02-2021	Dr. Cyril Joseph (CW185)
PW76	27-02-2021	Eureka (CW195)
PW77	27-02-2021	Dr. Radhakrishnan (CW196 A)
PW78	27-02-2021	B.R, Jayan (CW161)
PW79	01-03-2021	Dr. Shameersalam (Addl. Witness I)
PW80	01-03-2021	Sureshkumar (CW196)
PW81	02-03-2021	J. Joy (CW215)
PW82	02-03-2021	Pushpakumar (CW216)
PW83	04-03-2021	Maheshmohan (CW 206)
PW84	04-03-2021	Anoopkrishna (CW214)
PW85	10-03-2021	A. Ashokan (CW217)
PW86	30-04-2021	Rajeev (CW138)

PW87 30-04-2021 Manukrishnan (Addl. Witness 2)

Witness for Defence side :-

DW1 20-04-2021 Sulaiman Sait
DW2 20-04-2021 Satheeshkumar
DW3 30-06-2021 Shanmughadas.P.

Material Objects :-

MO1 Transparent square red cap plastic Jar proved by PW1
MO2 Black coloured shoulder bag proved by PW1
MO3 Nokia Mobile phone of PW1 proved by PW1
MO4 Itel Mobile phone of PW1 proved by PW1
MO5 Night Gown proved by PW2
MO6 Skirt proved by PW2
MO7 Stick proved by PW3
MO8 Bed Sheet proved by PW3
MO9 Lava Mobile Phone of Uthra proved by PW3
MO9(a) Mobile Battery proved by PW3
MO9(b) Sim Card proved by PW3
MO10 Mobile Phone (Lava) of PW5 Suresh proved by PW5
MO11 Estrona Forte Bolus Tablets & Cover proved by PW6
series
MO12 Oppo Mobile Phone of PW7 Premjith proved by PW7
MO13 Redmi Mobile Phone & Micro Sim of PW8 Eldhose Jose proved
series by PW8
MO14 CD proved by PW11
MO15 Pen drive proved by PW12
MO16 Strip of Tablet Levocet with two tablets proved by PW16
MO17 Pen drive (Visuals from ATM Counter Ezhamkulam South Indian
Bank) proved by PW25
MO18 Pen drive (Visual from Federal band Adoor Branch) proved by
PW31
MO19 Wedding Album proved by PW40
MO20 Wedding CD proved by PW40

MO21	A strip containing ten okacet tablets and an empty strip proved by PW40
MO22	Hammer proved by PW40
MO23	CD of Photographs proved by PW45
MO24	CD of Arippa experiment with Cobra proved by PW45
MO25	CD of Arippa experiment with Viper proved by PW45
MO26 series	Samples of decomposed body parts of Cobra Collected for various Scientific Analysis proved by PW63
MO26(a)	Nightly marked by proceedings dated 30/03/2021 proved by PW66
MO27	Bed Sheet proved by PW66
MO28	CD proved by PW72
MO29	Kingston Pen drive proved by PW72
MO30	Annexure 6 Pen drive proved by PW72
MO31	Q1 Realme Mobile Phone of accused proved by PW72
MO32	Q7 Mobile Phone of Surya , Sister of Accused proved by PW72
MO33	Annexure 3 Pen drive proved by PW72
MO34 series	Orthopad & Bandage proved by PW81
MO35	Sam Sung Mobile Phone of Surendra Panicker, Father of Accused proved by PW85
MO36	Nokia Mobile Phone of Renuka , Mother of Accused proved by PW85
MO37	Pen drive proved by PW85
MO38	Hard disk proved by PW85
MO39	Pen drive proved by PW85
MO40	Pen drive proved by PW87 (APNR)
DMO1	CD proved by DW2
DMO2	Pen drive produced by the head of the broad casting division Kerala Kaumudhi
DMO3	CD proved by DW3
DMO4	CD proved by DW3

1	Serial No.	S.C. 820/2020
2.	Name of Station & Crime No. of Offence	Anchal Police Station Cr. No. 1540/2020
Description of the accused		
3.	Name of the Accused	Suraj. S. Kumar
4.	Father's Name	Surendra Panicker,
5.	Occupation	-
6.	Residence	Sree Soorya, Karakkal Junction, Parakkodu Muri, Adoor Village
7.	Age	27/2020 yrs.
Dates of		
8.	Occurrence	06-05-2020
9.	Complaint	07-05-2020
10	Apprehension	24-05-2020
11	Release on bail	-
12	Commitment	26-08-2020
13	Commencement of Trial	01-12-2020
14	Close of Trial	30-06-2021
15	Sentence or Order	13-10-2021
16	Service of copy of judgment or finding on accused	13-10-2021
17	Explanation of Delay	No Delay

Sd/-
Addl. Sessions Judge-VI,
Kollam.

Typed by : C.V. Kishor
Compared by : Manjula.S