



2024:KER:34028

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE JOHNSON JOHN
FRIDAY, THE 24TH DAY OF MAY 2024 / 3RD JYAISHTA, 1946
CRL.A NO. 639 OF 2016

CRIME NO.491/2014 OF ATTINGAL POLICE STATION, THIRUVANANTHAPURAM
JUDGMENT DATED 18.04.2016 IN SC NO.1480 OF 2014 OF SESSIONS COURT,
THIRUVANANTHAPURAM
CP NO.84 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, ATTINGAL

APPELLANT/ACCUSED NO.2:

ANU SHANTHI
D/O SHANTHA KUMARI, PRASANTH VEEDU, T.R.A. LANE NO I, MAMAM
DESOM, KIZHUVILLAM VILLAGE, FROM THUSHARAM VEEDU, AWICS,
MEVARKAL DESOM, ALAMCODE VILLAGE.
BY ADVS.
V.K.BIJU
SHYLAJA VARGHESE
SAMPATH V. TOMS

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.
BY ADV.
SMT.AMBIKA DEVI S, SPL. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27.03.2024,
ALONG WITH CRL. APPEAL NO. 683 OF 2016 AND DSR. NO. 2/2016, THE COURT ON
24.05.2024 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE JOHNSON JOHN
FRIDAY, THE 24TH DAY OF MAY 2024 / 3RD JYAISHTA, 1946
CRL.A NO. 683 OF 2016

CRIME NO.491/2014 OF ATTINGAL POLICE STATION, THIRUVANANTHAPURAM
JUDGMENT DATED 18.04.2016 IN SC NO.1480 OF 2014 OF SESSIONS COURT,
THIRUVANANTHAPURAM
CP NO.84 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, ATTINGAL

APPELLANT/1ST ACCUSED:

NINO MATHEW
S/O T.J. MATHEW, MAGGIE GARDENS, THENGUMMOOTTIL,
BACK OF MGM SCHOOL, KARIMANAL, ATTIPRA VILLAGE,
THIRUVANANTHAPURAM (UNDER CUSTODY).

BY ADVS.
SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.HARIS ALI
SRI.K.R.RAJAISH
SRI.K.S.STEJO
SRI.V.S.THOSHIN
SRUTHY K K
P.VIJAYA BHANU (SR.)(K/421/1984)

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, THROUGH THE INSPECTOR OF POLICE,
ATTINGAL POLICE STATION, THIRUVANANTHAPURAM.
BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
SMT.S.AMBIKA DEVI, SPL. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27.03.2024,
ALONG WITH CRL. APPEAL NO. 639 OF 2016 AND CONNECTED CASES, THE COURT
ON 24.05.2024 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MR. JUSTICE JOHNSON JOHN
FRIDAY, THE 24TH DAY OF MAY 2024 / 3RD JYAISHTA, 1946
DSR NO. 2 OF 2016

CRIME NO.491/2014 OF Attingal Police Station, Thiruvananthapuram
JUDGMENT DATED 18.04.2016 IN SC NO.1480 OF 2014 OF SESSIONS COURT,
THIRUVANANTHAPURAM
CP NO.84 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, ATTINGAL

PETITIONER:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR.

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA
SMT. AMBIKA DEVI S, SPL. PUBLIC PROSECUTOR

RESPONDENT:

NINO MATHEW,

BY ADVS.
SRUTHY K K
SRI.GEORGE MATHEW
P.VIJAYA BHANU (SR.)(K/421/1984)

THIS DEATH SENTENCE REFERENCE HAVING COME UP FOR ADMISSION ON
27.03.2024, ALONG WITH CRL.A.639/2016 AND CONNECTED CASES, THE COURT
ON 24.05.2024 DELIVERED THE FOLLOWING:



'CR'

P.B. SURESH KUMAR & JOHNSON JOHN, JJ.

Crl. Appeal Nos. 639 & 683 of 2016
& DSR No. 2 of 2016

Dated this the 24th day of May, 2024.

JUDGMENT

Johnson John, J.

"There is no disease so destructive as lust."

--Chanakya

Adulterous and lustful relationship between two technocrats betraying their respective spouses, children and parents resulted in the murder of Omana, the mother of PW1, and Swasthika, aged 3 ½ years, the daughter of PW1, and attempted murder of PW1 on 16.04.2014 in their residential house bearing No. 3/173 of Attingal Municipality.

2. PW1, an engineer by profession, working at Moozhiyar, is the husband of the second accused, a technocrat working in Technopark, Kazhakuttom and on the night of 15.04.2014, he reached his house at



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Attingal, where his wife, the second accused, daughter Swasthika and parents, Omana and Thankappan Chettiyar, are residing and on the next day morning, PW14, the father of PW1, left the house at about 7.45 a.m. to the place where PW1 is constructing a new house and subsequently, the second accused left the house as usual to her place of work at Kazhakuttom and since PW1 was on leave, he left the house at about 11 a.m. to the post office at Alamcode and while he was standing at Alamcode junction, he received a phone call from his mother Omana and he was told that a friend of him is waiting in the house to meet him and on his request, the mother handed over the phone to the said person and the said person told PW1 that he is Nino Mathew (first accused), who is a colleague of the second accused and that he wants to see PW1 to talk to him and accordingly, PW1 returned to his house and at that time, the front door of the house was seen closed from inside and even though he called his daughter, there was no response and since the back door of the house was also seen closed, he came back to the front side and pushed open the front door and immediately when he entered the house, the first accused who was standing behind the front door, attacked him with a chopper aiming his neck and when he evaded the attack, he sustained a cut



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injury on the left side of his head and the left ear and on sustaining the injury, he ran out of the house and then the first accused chased him for a short distance and at that time, the first accused was holding a chopper and was also in possession of a bag.

3. On hearing the cries of PW1, the neighbours came running and the first accused escaped through the back side of the house and thereafter, when PW1 entered the house along with neighbours, his mother and daughter were seen lying inside the house soaked in blood and even though the mother and daughter of PW1 were shifted to the hospital, they were declared as dead. The first accused also committed theft of the gold chain worn by the deceased Omana and the gold ornaments worn by Swasthika with an intention to mislead that the murder was committed by burglars in the course of theft.

4. It is the prosecution case that the first accused--Nino Mathew, a technocrat and colleague of the second accused, committed the act in furtherance of a criminal conspiracy between accused Nos. 1 and 2, who were in a lustful adulterous relationship to do away with PW1, his daughter, Swasthika, and the mother-in-law, Omana, to continue their sexual relationship and to live together as man and wife



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in exclusion of their spouses and children and in furtherance of this common intention and with the active connivance and persuasion of the second accused who used to inform the first accused as to what transpired between herself and PW1 in their house and transmitted photographs and video of the residential building and the pathway from the house, so as to enable the first accused to use the same for navigation, the first accused committed the act.

5. PW1, who sustained grievous injuries, was rushed to the hospital immediately and on the basis of Exhibit P1, statement of PW1 recorded by PW45, Exhibit P1(a) FIR was registered by PW46 and after completing the investigation, final report was filed by PW49, Inspector of Police, Attingal before the Judicial First Class Magistrate Court, Attingal.

6. After committal and production of the accused persons before the Sessions Court, charge was framed under Section 67 of the Information Technology Act and Sections 120B, 109, 115, 449, 302, 307, 380, 511/201 and 34 IPC and when the charge was read over and explained to them, they pleaded not guilty and thereupon, the prosecution examined PWs 1 to 49 and marked Exhibits P1 to P85 and



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MOs 1 to 41. From the side of the defence, DW1 was examined and Exhibits D1 to D7 were marked.

7. These appeals and DSR arise from the impugned judgment dated 18.04.2016 of the Sessions Judge, Thiruvananthapuram in S.C. No. 1480 of 2014, whereby both the accused were found guilty and the first accused is sentenced to be hanged by neck till he dies for the offence under Section 302 r/w 120B and 34 IPC and also sentenced to pay a fine of Rs.50,00,000/- and in default to pay the fine, to undergo rigorous imprisonment for five years.

8. The first accused is also sentenced undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,00,000/- for the offence under Section 449 r/w 120B along with Section 34 of IPC and in default of payment of fine, to undergo rigorous imprisonment for one year; rigorous imprisonment for 3 years and to pay a fine of Rs.1,00,000/- for the offence under Section 380 r/w 120B along with Section 34 of IPC and in default of payment of fine, to undergo rigorous imprisonment for one year; rigorous imprisonment for one year and to pay a fine of Rs.50,000/- for the offence under Section 511/201 r/w 120B along with Section 34 of IPC and in default of



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payment of fine, to undergo rigorous imprisonment for 6 months; rigorous imprisonment for life and to pay a fine of Rs.5,00,000/- for the offence under Section 120B of IPC and in default of payment of fine, to undergo rigorous imprisonment for 2 years; rigorous imprisonment for 10 years and to pay a fine of Rs.5,00,000/- under Section 307 r/w 120B along with Section 34 of IPC and in default of payment of fine, to undergo rigorous imprisonment for 2 years; and rigorous imprisonment for 4 years and to pay a fine of Rs. 1,00,000/- for the offence under Section 67A of the Information Technology Act, 2000 and in default of payment of fine, to undergo rigorous imprisonment for one year.

9. As per the impugned judgment, the second accused is sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,00,000/- for the offence under Section 120B r/w 449 along with 34 of IPC and in default of payment of fine, to undergo rigorous imprisonment for one year; rigorous imprisonment for 3 years and to pay a fine of Rs.1,00,000/- for the offence under Section 120B r/w 380 of IPC and in default of payment of fine, to undergo rigorous imprisonment for one year; rigorous imprisonment for one year and to



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pay a fine of Rs.50,000/- for the offence under Section 511/201 r/w 120B along with 34 IPC and in default of payment of fine, to undergo rigorous imprisonment for six months; rigorous imprisonment for life and to pay a fine of Rs.5,00,000/- for the offence under Section 120B IPC and in default of payment of fine, to undergo rigorous imprisonment for two years; rigorous imprisonment for 10 years and to pay a fine of Rs.5,00,000/- for the offence under Section 120B r/w 307 and 34 of IPC and in default of payment of fine, to undergo rigorous imprisonment for two years; rigorous imprisonment for 4 years and to pay a fine of Rs.1,00,000/- for the offence under Section 67-A of the Information Technology Act and in default of payment of fine, to undergo rigorous imprisonment for one year; and life imprisonment for the offence under Section 120B r/w 302 along with 34 of IPC and to pay a fine of Rs.50,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for 5 years. It was also ordered that if the fine amount is paid/realised from the first accused, an amount of Rs.50,00,000/- will be paid to Lijish, PW1 as compensation, and if fine amount is paid/realised from the second accused, an amount of Rs.30,00,000/- will be paid to Thankappan Chettiyar, PW14 as compensation.



10. Crl. Appeal No. 683 of 2016 is filed by the first accused and Crl. Appeal No. 639 of 2016 is filed by the second accused.

11. Heard Sri. P. Vijayabhanu, the learned Senior counsel appearing for the appellant/first accused, Sri. V. K. Biju, Smt. Shylaja Varghese, Sri. Ananthakrishnan Kartha, Smt. Raji S., Sri. Prasoon Sunny, Smt. Girija N., Smt. Surabhi V.S., the learned counsel for the appellant/second accused and Smt. Ambika Devi, the learned Special Public Prosecutor.

12. The main points that arise for consideration in this Death Sentence Reference and the Criminal Appeals are the following:

1. Whether the prosecution has succeeded in establishing beyond doubt that the first accused committed the murder of Omana and Swasthika and attempted to commit the murder of PW1 on 16.04.2014?
2. Whether the first accused committed theft of the ornaments of the deceased with the intention of causing disappearance of evidence and to mislead the investigation?
3. Whether the prosecution has succeeded in establishing a criminal conspiracy and sharing of common intention between the first and second accused for committing the act?



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4. Whether the accused persons have committed the offence under Section 67A of the Information Technology Act, 2000?

5. Whether the present case falls under the category of 'rarest of rare cases' where a sentence of death can be imposed and is liable to be confirmed?

Points 1 and 2:

13. The learned counsel for the appellant/first accused argued that there is no direct evidence to connect the first accused with the murder of Omana and Swasthika and the prosecution has not succeeded in firmly establishing the circumstances consistent with the sole hypothesis that the first accused alone is the perpetrator of these murders and all the material witnesses examined from the side of the prosecution are chance witnesses and further the alleged motive is very flimsy and against logic. It is also argued that the alleged recovery of the material objects were fabricated and concocted by the police and that the accused is entitled for the benefit of reasonable doubt.

14. The husband of the second accused is examined as PW1 and his evidence shows that their marriage was on 06.12.2007 and the



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deceased Swasthika is their daughter. According to PW1, at about 11 a.m., on 16.04.2014, while he was standing at Alamcode junction, he received a phone call from his mother Omana and he was informed that a friend of him is waiting to meet him in their house and on the request of PW1, his mother handed over the phone to the said person and then the said person informed PW1 that he is Nino Mathew, a colleague of the second accused and that he wants to meet him and talk to him.

15. The evidence of PW1 shows that when he reached the house, the front door was seen closed and even though he called his daughter, there was no response and when the back door was also seen closed, he came back to the front side and pushed open the front door and immediately when he entered the house, the first accused, who was hiding behind the door, attacked him with a chopper aiming his neck and when he evaded the attack, he sustained cut injury on the left side of his head and left ear and when he ran out of the house, the first accused chased him for a short distance and thereafter, when the neighbours came running on hearing his cries, the first accused ran away through the back side of the house.



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16. PW1 deposed that when he entered the house along with the neighbours, he saw his mother and daughter lying in a pool of blood and immediately they were taken to the hospital. The evidence of PW1 shows that his mother and child died in the occurrence and that he had undergone treatment in KIMS Hospital till 19.04.2014 and he identified his signature in Exhibit P1, First Information Statement.

17. PW1 deposed that he saw an SMS in the mobile phone of his wife (second accused) disclosing her illicit relationship with the first accused and regarding the same, he questioned his wife and also warned her not to continue the said relationship and also asked her to warn the first accused to stop his illicit relationship with her. According to PW1, in spite of his warnings, the first and second accused continued their illicit relationship and they hatched a conspiracy to commit the murder of his mother and daughter and also to finish him to continue their relationship and to live together. PW1 identified the first accused before the court and MO1, chopper used by the first accused for attacking him. He also identified MO2 as the bag seen in the possession of the first accused at the time of occurrence.



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18. PW1 identified the blouse and lungi worn by his mother at the time of occurrence as MOs 3 and 4. PW1 identified the gold chain of his mother as MO5 and the dress worn by his daughter at the time of occurrence as MOs 6 and 7. He also identified MO8 as the footwear of his daughter. The chain and bracelet of his daughter are identified as MOs 9 and 10. According to PW1, the 1st accused was wearing black pants and shirt with blue lines and he identified the same as MOs 11 and 12.

19. In cross examination, PW1 stated that he has not mentioned the name of the accused to the doctor, as the doctor has not asked him about the same. But, he would say that he told the doctor that he was attacked by a known person. According to PW1, the first accused, Nino Mathew, was previously known to him and he told the police that it was Nino Mathew who attacked him. PW1 would say that the voice and voice of Nino Mathew is known to him as he had occasion to talk to him previously and that he is 100% sure that it was the first accused, Nino Mathew, who talked to him through the mobile phone of his mother before the occurrence.



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20. Exhibit P3 is the inquest report of the deceased Swasthika prepared by PW46 and Exhibit P5 is the inquest report of the deceased Omana prepared by PW49. PW12 was the Professor of Forensic at Government Medical College Hospital, Thiruvananthapuram, who conducted the postmortem examination of the minor child Swasthika on 17.04.2014 and issued Exhibit P14 postmortem certificate noting 13 ante-mortem injuries. The evidence of PW12 and Exhibit P14 shows that the death was due to the injury sustained to head and neck.

21. PW15 was the Assistant Professor of Forensic Medicine at Medical College Hospital, Thiruvananthapuram, who conducted the postmortem examination on the body of the deceased, Omana, on 17.04.2014 and issued Exhibit P15 postmortem certificate noting 9 ante-mortem injuries. The evidence of PW15 and Exhibit P15 shows that the death was due to injury sustained to the head and neck.

22. The evidence of PWs 12 and 15 and Exhibits P14 and P15 clearly shows that the death of Swasthika and Omana are homicidal and since we concur with the reasoning and finding of the trial court in this regard, it is not necessary to elaborate too much or reiterate the ante-mortem injuries on the body of the deceased Swasthika and



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Omana and we find no reason to interfere with the finding of the trial court that the death of Omana and Swasthika are homicidal.

23. PW16 was the doctor who examined PW1 at Taluk Hospital, Chirayinkeezhu on 16.04.2014 and issued Exhibit P16 wound certificate. The evidence of PW16 and Exhibit P16 shows that PW1 sustained a lacerated injury on his left ear region and the left ear was partially cut and that the patient was referred to Medical College Hospital, Thiruvananthapuram. PW22 was the Consultant Plastic Surgeon in KIMS Hospital, who treated PW1 and issued Exhibit P20 treatment certificate. The evidence of PW22 and Exhibit P20 shows that PW1 has undergone surgical repair of the ear and that he was admitted on 16.04.2014 and discharged on 19.04.2014.

24. PW2 is a neighbour of PW1 who reached the place of occurrence on hearing the hue and cry of PW1 on 16.04.2014. According to PW2, he saw PW1 with bleeding injuries and on enquiry, PW1 told him that Nino Mathew, who is working along with his wife at Technopark, inflicted the injuries on him and at that time, the father of PW1 and other neighbours reached there and when they went inside the house, they saw the mother and daughter of PW1 lying on the



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floor with bleeding injuries and hence, they were immediately taken to the hospital. The evidence of PW2, in cross examination, shows that he can recognise the voice of PW1 and that he reached the place of occurrence on hearing the cries of PW1. According to PW2, his house is on the opposite side of the house of PW1 and therefore, it is only natural for PW2 to reach the place of occurrence on hearing the cries of PW1 and we find no reason to disagree with the finding of the trial court that the evidence of PW2 that PW1 told him that it was Nino Mathew, who is working along with his wife who inflicted the injuries on him, is admissible under Section 6 of the Indian Evidence Act, 1872 as the said statement of PW1 to PW2 was made contemporaneous so as to form part of the same transaction.

25. PW3 is another neighbour of PW1 and he deposed that on 16.04.2014, at about 12 noon, while he was proceeding to Alamcode junction, he saw a young man who is not familiar to him coming from the opposite side. According to PW3, while he was returning from Alamcode junction, at about 1 p.m., he saw people gathered near the house of PW1, Lijish, and there he also saw PW1 crying with bleeding injuries. When PW3 enquired the matter, PW1 told him that Nino



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Mathew working in Technopark along with his wife hacked him and that Nino Mathew had hacked his mother and child and they are lying in the kitchen. According to PW3, he also saw the mother and child of PW1 lying soaked in blood in the kitchen and he also assisted to shift them to the hospital. PW3 identified the first accused as the person whom he saw on 16.04.2014 with a bag on his shoulder while he was proceeding to Alamcode junction. According to PW3, at that time, the accused was wearing black pants and shirt with blue lines and he identified the said shirt and pants as MOs 11 and 12 and the bag as MO2.

26. In cross examination, PW3 stated that his house is near to the house of PW1 and that he has to pass the house of PW1 for reaching the National Highway and that he saw the first accused about 100 meters before entering the National Highway and in the evening, on that day, he told others about the stranger whom he saw and someone informed the same to the police and subsequently, he was questioned by the police about the said person. Even though, PW3 was seriously cross examined, nothing material was brought out to discredit his evidence in chief examination that he saw the first



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accused proceeding in the direction of the house of PW1 at about 12 O' clock on the date of occurrence. It is in evidence that the place of occurrence is a village area and therefore, there is nothing unusual for villagers to notice the presence of strangers in the area and therefore, we find that the evidence of PW3 that he saw the first accused on the date of occurrence at about 12 O' clock near to the place of occurrence is reliable and trustworthy.

27. PW4 deposed that on the date of occurrence, while he was in the paddy field near to the house of PW1 for grazing his cow, he heard cries from the house of PW1 at about 1 O'clock and at that time, he also saw a person coming running through the steps on the side of the paddy field leading to the road. According to PW4, the said person was wearing black pants and blue lined shirt and he was also in possession of a bag.

28. PW4 also identified the first accused as the person whom he saw on the date of occurrence and he also identified MO11, shirt, MO12, pants, and MO2, bag of the accused before the court. In cross examination, PW4 admitted that he has not chased the accused or immediately proceeded to the place of occurrence and that when he



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came to know about the murder at about 1.30 p.m., he reached the house of PW1 and at that time, he also informed the people gathered there that he had seen a person running through the paddy field and later when he was summoned to the Police Station, he also identified the first accused as the person whom he saw running through the paddy field on the date of occurrence.

29. There is nothing to disbelieve the evidence of PW4 that while he was standing in the paddy field near to the house of PW1 on the date of occurrence to graze his cow, he heard the cries from the house of PW1 and also saw the first accused running through the steps on the side of the paddy field leading to the road and we find that there is a ring of truth in the evidence of PW4 and there is no material contradiction or discrepancy in his evidence.

30. PW5 is another neighbour of PW1 who reached the house of PW1 on hearing the cries of PW1 on 16.04.2014. According to PW5, he saw PW1 standing there with bleeding injuries and he also saw the mother and daughter of PW1 lying soaked in blood. The evidence of PW5 shows that he also helped to shift the injured persons to the hospital. The evidence of PW5 shows that he also witnessed the



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recovery of MO15, chappals, by PW49 at the instance of the first accused on 24.04.2014 and he also identified his signature in Exhibit P2 mahazar.

31. The conductor of a private bus by name RKV conducting service through Madathira-Chirayinkezhu route is examined as PW18. His evidence shows that on 16.04.2014, at about 1.10 p.m., when the bus was about to proceed from Alamcode junction, a person came running and had shown signal to stop the vehicle and when the bus stopped, the said person entered through the front door of the bus and he was wearing a black pant and there was a bag on his shoulder and he was not wearing any footwear. According to PW18, the said person alighted from the bus at Attingal. PW18 identified the first accused as the person who entered the bus from Alamcode junction on 16.04.2014. According to PW18, he noticed the first accused as he was wearing pants and shirt and not wearing any footwear. Considering the circumstances in which the first accused came running and entered the bus barefoot while wearing pants and shirt, are sufficient to attract the attention of the conductor, there is nothing to disbelieve the evidence of PW18 in this regard.



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32. The conductor of KSRTC bus bearing No. RAA-255 conducting service through Attingal-Varkala route is examined as PW17 and the copy of the waybill to show that he was on duty on 16.4.2014 is marked as Exhibit P17. According to PW17, the 7th trip of the bus on that day was from Attingal to Varkala and the bus started from Attingal at 11.50 a.m. and reached Alamcode around 12 noon and a person who boarded the bus from Attingal got down at Puliylamoottil and he was the only person who alighted from the bus at Puliylamoottil and the said person was having a black bag on his shoulder and he identified the said person as the first accused in this case and also identified MO2 bag before the court.

33. In cross examination, PW17 would say that the first accused was standing near to his seat and when the bus reached Kacherimukku, the accused told the witness that he wants to alight at Puliylamoottil and when the bus reached the next stop, the accused again reminded the witness that he wants to alight at Puliylamoottil and according to PW17, since the accused repeatedly reminded him about alighting at Puliylamoottil, he noticed the accused and further before reaching the said stop, the accused reached the footboard of



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the bus. The evidence of PW17 also shows that he was the conductor in that route for the past 6 or 7 years and therefore, most of the passengers are familiar to him. It is pertinent to note that there is nothing in the evidence of PWs 17 and 18 to indicate any hatred or animosity so as to falsely depose against the first accused and they have also deposed about the strange conduct of the accused which attracted their attention and therefore, we find that the evidence of PWs 17 and 18 clearly proves that the first accused travelled in the KSRTC bus towards the direction of the house of PW1 immediately prior to the occurrence and that immediately after the occurrence, he boarded RKV Private bus from Alamcode junction and there is nothing to disbelieve the evidence of PWs 17 and 18 in this regard.

34. The learned counsel for the appellants argued that in the absence of a test identification parade, the evidence of PWs 3, 4, 17 and 18 to whom the first accused was not previously known cannot be relied upon to record a finding against the first accused. In ***Rameshwar Singh v. State of Jammu and Kashmir*** [(1971) 2 SCC 715], it was observed by the Honourable Supreme Court that the identification during a police investigation is not substantive evidence



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in law and it can only be used for corroborating or contradicting the evidence of the witnesses before the court regarding the identity of the accused persons.

35. It is well settled that failure to hold a test identification parade does not make the identification in court inadmissible and the evidence of identification in court is substantive evidence. In this case, PWs 3, 4, 17 and 18 were subjected to serious cross examination. But, nothing material was brought out to discredit their evidence in chief examination regarding the identity of the first accused and further, the above witnesses were examined before the court without much delay. The alleged occurrence was on 16.04.2014 and PWs 3 and 4 were examined on 13.10.2015 and PWs 18 and 19 were examined on 21.10.2015 and hence, it can be seen that the said witnesses were examined while the occurrence was fresh in their memory and they have also narrated the sequence of events in a convincing manner and it is also pertinent to note that the trial court, having the advantage of observing the demeanor of the witnesses before it, recorded a definite finding that the evidence of the above witnesses regarding the identity of the first accused is reliable and trustworthy and we find no valid



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reasons to differ from the views of the trial court in this regard.

36. PW45 was the ASI of Attingal Police Station who recorded Exhibit P1 statement of PW1 on 16.04.2014 and PW46 was the Sub Inspector of Attingal Police Station who registered Exhibit P1(a) FIR in this case on the basis of Exhibit P1 statement of PW1 on 16.04.2014.

37. PW49 was the Inspector of Police, Attingal, who took charge of the investigation on 16.04.2014. According to PW49, he reached the place of occurrence on getting information regarding the occurrence and made arrangements for guarding the scene of occurrence. The evidence of PW49 shows that with the assistance of PW24, Scientific Assistant, evidence was collected from the place of occurrence and with the assistance of PW36, official photographer, photographs of the place of occurrence were taken and he also prepared Exhibit P4, scene mahazar. PW49 identified the material objects recovered from the place of occurrence before the court.

38. The evidence of PW49 shows that on the basis of the information received at the initial stage, the Sub Inspector of Chirayinkeezhu Police Station has brought the first accused to Chirayinkerzhu Police Station and detained him there and



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subsequently, the first accused was produced in his office and on questioning, his involvement in the crime is revealed and hence, his arrest was recorded at 9 p.m., on 16.04.2014. The arrest memo and custody memo are marked as Exhibits P59 and P60.

39. The Samsung mobile phone recovered from the possession of the first accused is identified as MO41 and according to PW49, on examination of MO41, sexually explicit photographs of the private parts of the first and second accused are seen exchanged between the first and second accused and it is also revealed that the second accused has taken the photographs of the house and the way leading to the house and the way for escaping from the house and sent the same to the first accused to aid the first accused to carry out the object of their common intention and conspiracy to live together after murdering PW1, his mother and daughter and therefore, after obtaining permission from the court for arresting the second accused, the second accused was arrested from her house at Mammoth at 11 p.m., on 16.04.2014 in the presence of her parents and Woman Police Constables. The arrest memo and custody memo of the second accused are marked as Exhibits P62 and P63 respectively.



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40. According to PW49, he recovered a black Sony Xperia mobile phone from the possession of the second accused at the time of arrest and the same is marked as MO13. Exhibit P66 is a report filed by PW49 to add Section 120B, 115, and 379 IPC, when it is revealed that the accused committed theft of the ornaments of the deceased with the intention of causing disappearance of evidence and also to mislead the investigation that the assailant committed the act for committing robbery.

41. According to PW49, on questioning the first accused, it is revealed that the weapons used by him and the ornaments taken by him from the body of the deceased are kept in his room and accordingly, PW49 reached the house of the first accused and the first accused took out the key of his room from the bottom of a flower pot there and opened the room.

42. The evidence of PW49 shows that the first accused has made a disclosure statement that the chopper, stick and hacksaw blade used to cut the stick along with the ornaments and blood stained towel and shirt are kept in a bag in his house and that he will point out the same if he is taken to that place and when the witness reached the



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house of the accused along with the accused, the accused took out the bag containing the said items from his room and the same was seized as per Exhibit P6 mahazar and the relevant portion of the disclosure statement of the accused is marked as Exhibit P6(a).

43. The chopper recovered is identified as MO1 and the bag as MO2. The chain of the child recovered from the bag is marked as MO9 and the bracelet as MO10. The shirt of the first accused is marked as MO11 and the stick as MO21. MO22 is the portion of the stick seen cut and removed by using a hacksaw blade and the hacksaw blade is marked as MO23. The bloodstained towel recovered from the bag is marked as MO24 and the chain of the deceased Omana recovered from the bag is marked as MO5.

44. The evidence of PW49 shows that when they searched the room of the first accused, one laptop and 3 external hard disks were seen inside a bag and on satisfaction that the same belongs to the first accused and has connection to this crime, the same was also recovered by preparing Exhibit P7 mahazar. The laptop and the external hard disks recovered as per Exhibit P7 mahazar are marked as MOs 25, 26, 27 and 28 respectively.



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45. PW49 deposed that on questioning the first accused, it is revealed that he parked the car used by him in the car porch of his house and accordingly, the witness recovered the Innova car bearing registration No. KL-22-B-505 from the car porch of the house by preparing Exhibit P8 mahazar. The relevant portion of the disclosure statement of the first accused is marked as Exhibit P8(a).

46. MO29 is the shoe recovered from the said car and the evidence of PW49 shows that he also seized the dress worn by the first accused and according to PW49, from the right side pocket of the pants of the first accused, he recovered a pair of gloves and from the left side pant pocket, he recovered a letter written in a paper by preparing Exhibit P10 mahazar. The pants of the first accused is marked as MO12 and gloves recovered is marked as MO30. Exhibit P9 is the letter recovered from the pant pocket.

47. According to PW49, he obtained custody of the first accused from the court and on questioning the first accused, it is revealed that the first and second accused hatched a criminal conspiracy while sitting in the pantry of Dimension Company in Technopark and along with the first accused, he reached the said place and prepared Exhibit



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P11 mahazar. PW49 would say that the first accused has made a disclosure statement that he will point out the place where he and Anu Santhi discussed and arrived at an agreement, if he is taken to that place and accordingly, as led by the first accused, he reached the pantry of the Dimension Company and prepared the mahazar. The relevant portion of the disclosure statement of the first accused is marked as Exhibit P11(a).

48. PW49 deposed that on questioning the first accused, it is revealed that at the time of occurrence, he was wearing the footwear purchased from Bata showroom and that he abandoned the same on the side of the way while running away from the place of occurrence and that he will point out the place where he abandoned the footwear, if he is taken to that place and on the basis of the said information and as led by the accused, they reached the said place and the first accused took out a black footwear with the inscription 'spars' and the same was seized as per Exhibit P2 mahazar. The relevant portion of the disclosure statement of the first accused in this regard is marked as Exhibit P2(a) and the footwear recovered as per Exhibit P2 mahazar is marked as MO15.



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49. PW8 is the witness examined from the side of the prosecution in support of the evidence of PW49 regarding the recovery of MOs 1, 2, 5, 9 to 11 and 21 to 24 on the basis of the disclosure statement of the first accused and his evidence shows that on 17.04.2014, at about 2 p.m., while he was returning from his house after lunch to his office, he saw the first accused and police party effecting the recovery. PW8 identified his signature in Exhibit P6 mahazar and the material object recovered as per the said mahazar. PW8 also identified his signature in Exhibit P7 mahazar and the material objects recovered as per the said mahazar before the court. He also identified his signature in Exhibit P5 mahazar and MO29 shoes recovered as per the said mahazar and also the first accused before the court.

50. It is in evidence that PW8 is residing in the neighbourhood and that he witnessed the recovery while returning from his house after lunch as usual while proceeding to his office and even though PW8 was seriously cross examined, the defence has not succeeded in establishing any contradiction or discrepancy in his evidence that he witnessed the recovery as per Exhibits P6 to P8 mahazars by PW49 at



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the instance of the first accused. The recovery of MOs 1, 2, 5 , 9 to 11 and 21 to 24 on the basis of the disclosure statement of the first accused reveals his knowledge where he concealed the said items after the occurrence and therefore, the same is clearly admissible under Section 27 of the Indian Evidence Act.

51. The evidence of PWs 12 and 15, who conducted the postmortem on the body of the deceased Omana and Swasthika, clearly shows that the weapon of offence identified as MO1, chopper, and MO21, stick, would cause the injuries noted in the postmortem certificate issued by them. The evidence of PW24, who is the Scientific Assistant who inspected the scene of crime and collected blood stains from the kitchen and entrance of the house and hairs and chilli powder from the entrance of the house and chilli powder from the Innova car and the key of the vehicle shows that he also examined MO1, chopper, and MO21, stick, and issued Exhibit P22 report. The evidence of PW24 shows that blood was found on the cutting edge of the iron chopper and presence of blood was detected by chemical test on the edge of the baseball stick and that the materials collected were forwarded to the Forensic Science Laboratory for detailed examination.



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52. PW25 was the Assistant Director of Serology, Forensic Science Laboratory, Thiruvananthapuram, who issued Exhibit P23 report after examining the material objects and the evidence of PW25 and Exhibit P23 shows that human blood of group 'AB' was detected in MO1' chopper' and MO21' stick. Exhibit P23 report further shows that blood was also found in MO11 shirt of the first accused. But, the same was insufficient for determining the origin. The Assistant Director of Chemistry in the Forensic Science Laboratory, Thiruvananthapuram, is examined as PW26 and her evidence shows that MO36 and MO18 are chilly powder and that traces of chilli powder was detected in the key of the vehicle bearing No. KL-22B-505 identified and marked as MO37. The report of PW26 in this regard is marked as Exhibit P24. The presence of the same chilly powder in the key of the car used by the first accused and the place of occurrence has a definite tendency pointing towards the guilt of the first accused.

53. The learned counsel for the appellants highlighted the absence of blood stains in MO5 chain and MOs 9 and 10 ornaments worn by the deceased Swasthika as a circumstance raising reasonable doubt, but the possibility of the accused removing the gold ornaments



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while the victims were silent or unconscious before inflicting the cut injuries on their body is a reasonable possibility and in that circumstance, we find no merit in the contentions of the appellants in this regard.

54. PW11 is the owner of the Bata showroom at Kazhakuttom and his evidence shows that the Circle Inspector questioned him in connection with this case in order to obtain the details of the customers, who visited his shop on 16.04.2014. According to PW11, the first accused came to his showroom on 16.04.2014 and purchased MO15, chappals, and his evidence further shows that there is CC TV connection in his showroom and the Investigating Officer had checked the CC TV visuals and also prepared a mahazar and the witness also downloaded a copy of the CC TV visuals to a CD and handed over the same to the Circle Inspector. The CD is marked as Exhibit P12 and the certificate issued by PW11 in this regard is marked as Exhibit P13.

55. PW11 also identified the first accused before the court as the person who purchased MO15, chappals, from his shop on 16.04.2004. It is pertinent to note that the first accused is not disputing the purchase of a chappal from the showroom of PW11. But,



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the case put forward by the accused is that the chappal purchased by him from the showroom of PW11 is not MO15 and that the same is another one which is in his possession. But, the said contention of the first accused cannot be accepted in view of the clear evidence tendered by PW11 that the chappal purchased by the first accused on 16.04.2014 is MO15 and there is no reason to disbelieve the evidence of PW11 in this regard. The evidence of PW5 clearly shows that on 24.04.2014, he witnessed the recovery of MO15 chappals by the Investigating Officer at the instance of the first accused as per Exhibit P2 mahazar.

56. The evidence of PW5 in cross examination shows that he reached there on seeing the police and he saw the first accused taking out MO15 from the shrubs on the side of the property of one Shaji and that the said place is near to the house of PW1. The evidence of PW5 lends credence to the evidence of PW49 that MO15 was recovered on the basis of Exhibit P2(a) disclosure statement of the first accused and therefore, the knowledge of the first accused as to the place where he abandoned MO15, chappals, after the occurrence is admissible under Section 27 of the Indian Evidence Act.



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57. The specific case of PW1 is that he reached his house at the time of occurrence after receiving the call from the mobile phone of his mother bearing No. 9400732870, and the evidence of PW1 shows that his mobile number is 9995106184.

58. PW14 is the father of PW1 and the husband of the deceased Omana. The evidence of PW14 shows that his wife Omana was using a SIM card subscribed in his name. The evidence of PW28, Deputy General Manager of BSNL, shows that PW14, Thankappan Chettiyyar, is the subscriber of mobile No. 9400732870 used by the deceased Omana and the call details of the said mobile number is marked as Exhibit P26. As per Exhibit P26, the last outgoing call from the said mobile phone is on 16.04.2014 at 12.16.33 for 89 seconds. The evidence of PW1 shows that he has previous acquaintance with the first accused who is a colleague of his wife at Technopark and that the first accused has attended the marriage of his younger brother and at that time, he also helped the first accused in parking his Innova car there.

59. PW1 has categorically deposed in cross examination that he had occasion to talk to the first accused earlier and therefore, he is



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familiar with his voice and way of talk and according to PW1, he is 100% sure that it was the first accused who talked to him through the mobile phone of his mother at about 11 a.m., on 16.4.2014 while he was standing at Alamcode junction. The evidence of PW1 shows that when he pushed open the front door, the first accused who was hiding behind the door hacked him with MO1, chopper, aiming his neck and when he evaded the attack, he sustained cut injury on the left side of his head and left ear.

60. It is true that there is no direct evidence to show that it was the first accused who committed the murder of Omana and Swasthika. However, it is in evidence that when PW1 left the house in the morning, only his mother and child were there in the house and that his mother contacted him at about 11 a.m. to inform him that the first accused is waiting for him in the house and then, PW1 also talked to the first accused and subsequently when PW1 reached the house, the first accused hacked him by using MO1 chopper and thereafter, escaped through the road on the eastern side of the house.

61. From the above proved facts, it is clear that the murder of Omana and Swasthika occurred after the first accused talked through



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the mobile phone of the deceased and before the arrival of PW1 and since it is in evidence that the only person who was present in the said house along with the deceased persons is the first accused, we find that this is a case where it could be impossible or at any rate, disproportionately difficult for the prosecution to establish as to what transpired in the said house while the first accused was the only other person inside the house as the other two persons being dead, the burden will be on the first accused, in view of Section 106 of the Indian Evidence Act, which provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

62. It is well settled that in exceptional cases, where it is impossible or at any rate disproportionately difficult for the prosecution to establish the case which is especially within the knowledge of the accused, the burden will be on the accused since he only can prove as to what transpired in such a scenario without difficulty or inconvenience. In this case, the prosecution has adduced clear evidence to prove the presence of the first accused in the house at the time of occurrence and there is also clear evidence to show the



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presence of the accused in a bus proceeding in the direction of the place of occurrence and thereafter, the accused walking through the way towards the house of PW1.

63. The prosecution has also adduced clear evidence to show that the accused escaped from the place of occurrence through the pathway on the eastern side of the house by running through the steps on the side of the paddy field towards the road and thereafter, boarding a bus from the junction and therefore, we find that the prosecution has adduced clear evidence in this case to arrive at a conclusion that the first accused committed the murder of the deceased Omana and child Swasthika and attempted to commit the murder of PW1 and that he also committed theft of the ornaments of the deceased with an intention to mislead the investigation and to cause disappearance of evidence.

64. It is not in dispute that the first and second accused were working in a company at Technopark in Kazhakuttom and the Director of the said company is examined as PW40. According to PW40, the working time of their office is from 9 a.m. to 6 p.m. with a lunch break of one hour. The evidence of PW40 shows that there is fingerprint



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reader for entry and exit for the staff and the attendance report pertaining to 16.4.2014 is marked as Exhibit P39, and Exhibit P40 is a certificate under Section 65B of the Indian Evidence Act. The evidence of PW40 and Exhibit P39 shows that on 16.4.2014, the first accused reported for duty at 8.32 a.m. and he left the office at 10.49 a.m. According to PW40 and Exhibit P39, the second accused reached the office at 9.03 a.m. and left at 3.11 p.m. on 16.04.2014.

65. A colleague of the first and second accused is examined as PW19 and her evidence shows that the first accused was working as Project Manager and that the second accused was also working there. PW19 would say that the first accused reached the office at 9 a.m. on 16.4.2014. But, she could not say the time at which he left the office. According to PW19, the second accused reached the office in the morning as usual on 16.04.2014. But, she cannot say the time at which the second accused left the office.

66. The fact that the first accused left the office at 10.49 a.m. on 16.4.2014 is not disputed by the defence. But, the defence has a case that the first accused had gone to KSFE in connection with some chitty transaction. In this connection, it is pertinent to note that PW49



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had seized the records of the KSFE as per Exhibit P77 mahazar and thereafter, returned the original as per Exhibit P78, kaichit, and a perusal of Exhibit P77 would show that the first accused has not participated in the chitty on 16.04.2014. The explanation offered by the first accused at the time of 313 questioning is that after purchasing a pair of footwear, he had gone to his house to take the passbook and by that time, he was late for auction and hence, he could not participate in the auction. Even though the first accused has taken the defence of alibi, he has not adduced any evidence to prove his presence in the KSFE office on the date of occurrence.

67. As noticed earlier, the prosecution has adduced clear evidence to establish the presence of the accused at the scene of occurrence and further, it is also proved that the ornaments of the deceased are recovered by the Investigating Officer on the basis of the disclosure statement of the first accused and from his possession and he has not offered any acceptable explanation for his possession of the ornaments of the deceased or for his presence in the house of PW1 at the time of occurrence or about the sequence of events that had transpired inside the house after he talked to PW1 in the mobile phone



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of the deceased Omana till the arrival of PW1 and in that circumstance, the only irresistible conclusion is that the first accused has committed the double murder, theft of the gold ornaments of the deceased and also attempted to commit the murder of PW1 on 16.04.2014. and therefore, we confirm the findings of the trial court in this regard.

Points 3 and 4:

68. The adulterous relationship between the first and second accused during the subsistence of their legal marriage and the fact that they used to send videos and photographs of their sexual activities taken in their mobile phones to each other is not seriously disputed. The learned counsel for the appellant/second accused argued that the sexual relationship between accused Nos. 1 and 2 was sensationalized by the media and the findings of the trial court regarding the criminal conspiracy between the first and second accused are solely on the basis of the inference drawn from the photographs and videos transmitted between them and there is no satisfactory evidence in this case to prove that the first and second accused entered into any criminal conspiracy for the commission of



any offence.

69. The learned counsel for the appellant/second accused also argued that PW1 has not made any allegation against the second accused in Exhibit P1, First Information Statement. The evidence of PW1 in cross examination shows that prior to the occurrence, he reached his house from his place of work on 03.04.2014 and he returned to his place of work on 06.04.2014. According to PW1, on the night of 04.04.2014, he saw a message of the first accused in the mobile phone of the second accused disclosing their illicit relationship and then he warned the second accused and also directed her to inform the 1st accused not to send such messages.

70. PW1 categorically deposed in cross examination that in spite of his warning, the accused persons continued their illicit relationship and when he asked the second accused as to whether she told the first accused not to send such messages, she raised her voice against PW1 in such a manner to indicate that she does not like PW1 questioning her about the same and according to PW1, since he came to know about the relationship between the accused persons, they decided to eliminate PW1 and his family to live together. But, at the time of



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giving Exhibit P1, considering the possible harm to the reputation of his family and since he was not 100% sure about the involvement of the second accused, he has not mentioned the same to the police. PW1 would say that he suspected the involvement of the second accused in the incident at the time of occurrence itself as she was behaving in an indifferent manner towards him for the last 2-3 months and that she behaved in a cruel manner towards his daughter and parents.

71. PW1 would say that the second accused always used to give negative replies to his parents and she used to return late after work and she used to delete the messages in her mobile phone and she was also not willing to share the bedroom with him. According to PW1, after the occurrence, while he was undergoing treatment in the hospital, the second accused never came to see him and the second accused had also not attended the funeral of his daughter Swasthika and mother Omana. PW1 would say that he reached his house only during the previous night and the fact that he was there in the house was known only to the second accused and his parents and therefore, in his second statement to the police, he disclosed all these facts.



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According to PW1, the only possibility for the first accused to know his presence in the house is through the second accused and that the first accused committed the act with the knowledge and consent of the second accused.

72. The father of PW1, when examined as PW14, deposed that he saw the first accused for the first time while he was waiting near Avix junction for the second accused to return after work and to take her home and at that time, the second accused came there in a car driven by the first accused and after alighting from the front seat of the car, in a very happy mood, she was seen gesturing bye to the first accused, Nino Mathew. According to PW14, with a view to live together, the first and second accused had decided to commit the murder of his son and for the said purpose, they brought down PW1 to the house in a deceitful manner and attempted to hack him to death and also caused the death of his wife and granddaughter. In cross examination, PW14 categorically stated that PW1 came very late to the house on 15.04.2014 and apart from him, only his wife and the second accused were aware that PW1 will reach the house on the night of 15.04.2014 and the first accused who was residing at Kazhakuttom



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will be able to reach the house at 12 noon on 16.04.2014 for committing the act, only if he gets information regarding the presence of PW1 in the house from the second accused. PW14 also deposed that the second accused had not cared to visit PW1 in the hospital or to see the dead body of her daughter and mother-in-law and the said circumstances will clearly indicate that the first accused committed the crime with the knowledge and connivance of the second accused.

73. PW13, a native of Alamcode, also deposed that PW1 and his wife, the second accused, are known to him and on several occasions, he saw the second accused alighting from the Innova car of the first accused on the way towards the house of PW1.

74. The evidence of PW49, Investigating Officer, shows that MO41, Samsung mobile phone with SIM card and memory card are recovered from the possession of the first accused and that MO13, Sony Xperia mobile phone with SIM card and memory card are recovered from the possession of the second accused. It is in evidence that MO25, Lenovo Laptop, and MO26, hard disc, are also recovered from the possession of the first accused. The evidence of PW42, Assistant Director of Cyber, Forensic Division, Forensic Science



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Laboratory, Thiruvananthapuram and Exhibit P43 report and Exhibit P43(a) hard disk, which contains Annexure 9, soft copies of multimedia files recovered, shows the communications between the first accused and the second accused through SMS and WhatsApp chats. Exhibit P43 contains Annexure Nos. 1 to 8 and Annexure 4 in Exhibit P43(a) reveals the sexually explicit activities between the first and second accused.

75. The evidence of PW42 and Exhibit P43 report shows that the second accused used to intimate the first accused all that transpired between the second accused and PW1 and his parents inside their house and that the second accused took the photographs of the interior of the house of PW1 focusing the passage from the front door to the kitchen and photographs showing a remote pathway from the house of PW1 and also a video recorded specifically showing the said pathway from the house of PW1 to the road and its surroundings and the report shows that from the beginning to the end of the footage, all the deviations and surroundings were found to be captured carefully by spending ample time and capturing all the landmarks on the way and even the pavement which connects the path to the tar road was



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deliberately targeted and recorded.

76. From Exhibit P43 report, it can be seen that a close view of the tar road was also recorded and the visuals end at the compound wall of the green-painted house and that the said video footage can easily guide anyone through the path to the house depicted in the footage. A thumbnail view of the video is also shown in Exhibit P43 report. The report further shows that the path, house and the surroundings have been specifically aimed and targeted and there were no distinguished objects (living beings) in the foreground other than the path and surroundings and therefore, the same was captured solely to illustrate the set of circumstances which characterize the way to the house depicted in the video and the visuals of the footage can aid as navigation to reach the house. Exhibit P43 report shows that the video clip was recorded on 19.01.2014 by using MO13, Sony Xperia mobile phone of the second accused.

77. Some of the relevant text messages between the first and second accused saved in MO41, Laptop, and retrieved in Annexure 4 of Exhibit P43 are extracted below:



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Annexures	Sl. No.	Time	Date	Text message
P43(f)	509	18.09.20 hrs	13.11.2013	Outgoing SMS to Anu Santhi from MO 41 Samsung Mobile of A1 "Kutta innalathe pole kochu varthanathinu pokalle ... always remember I love u... prathikarikkuka"
P43 (j)	1508	22:56:43	24.02.2014	Outgoing SMS from MO41 Samsung Mobile to Anu Santhi Njan ithokke ingane parayunnathu namukku vendi aanu ... pls understand
P43(k)	1518	22:40:21	25.02.2014	Outgoing SMS from MO41 Samsung Mobile to Anu Santhi "Ninne njan arkkum vittu kodukilla ... nee ente aanu ente mathram"
P43(o)	1658	20:29:07	25.03.2014	Outgoing SMS from MO41 Samsung Mobile to Anu Santhi I love u so much kutta ... these are minor problems nammale ithu kondu onnum akattan pattilla... manassal nammal epozhum orumichanu



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P43(q)	1676	8 :24:12	26.03.2014	Outgoing SMS from MO41 Samsung Mobile to Anu Santhi
				9 days remaining ... count down
P43(r)	1679	8:27:41	26.03.2014	Outgoing SMS from MO41 Samsung Mobile to Anu Santhi
				OK Kutta... waiting 4 the count down to finish
P43 (s)	1700	19.09.11	1.4.2014	Outgoing SMS from MO41 Samsung Mobile to Anu Santhi
				"I love u Kutta, I need u, I want you in my life."

78. Some of the relevant messages between accused Nos. 1 and 2 in Exhibit P57, Supplementary Cyber Forensic Analysis Report, are extracted below:

P57(a)	Time	Date	By whom	Text Message
	14: 51	11 Jan.	A1	Nee poyi ella placeum foto eduthondu vaa ... ipo aarum illallo.
	15:06	11 Jan.	A1	Fotokal eduthu ayachum thaa.. aa thalla varum munpu
	15: 06	11 Jan.	A2	Ok
	16:46	11 Jan.	A1	Evide fotokal onnum eduthille
	16:46	11 Jan.	A1	Aa veedu muzhuvan edukku ..



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16: 47	11 Jan.	A1	Pinne avide nikkuvayirunnu ennu paranjale enikku athu kanan pattanam
16:47	11 Jan.	A1	Adukkalayum edukku
16:48	11 Jan.	A1	Pathakathil iruthi molku koduthu ennu paranjille....
16: 48	11 Jan.	A1	Ithokke enikku visualise cheyyan pattanam
16:51	11 Jan.	A1	Innu prarthikkumbo.. njan (nino) vicharikkunna pole karyangal nadakkane ennu prarthikku

79. Exhibits P58 and P58(a) contain the messages retrieved, and some of the messages between accused Nos. 1 and 2 in Exhibits P58 and P58(a) are extracted below:

P58	Time	Date	By whom	Text message
	17:33	31.12.2013	A1	I will not let anything come in between us
	17: 34	31.12.2013	A1	Will never let u down. I will always love u as I do today... this is my promise on the last day of 2013.
	19:05	31.12.2013	A1	Onnum marakkathe cheyyuka
	19:05	31.12.2013	A2	OK



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	19:06	31.12.2013	A1	I promise love not malika
	19:06	31.12.2013	A1	Orumichu namukkum undakkam oru veedu
	19:07	31.12.2013	A2	Seri
	12:58	01.01.2014	A1	I love u so much ... next year namuku pokam orumichu
P58(a)	15:34	19.01.2014	A1	Nee ente aanu ... ente maathram...
	15:34	19.01.2014	A1	Ini nammal aanu jeevikkan pone
	15:35	19.01.2014	A1	Athinu vendi ini prayathnam
	08:21	29.03.2014	A1	Nee prathikarichu avante case close cheyy
	05:47	02.04.2014	A1	3 days remaining
	05:54	02.04.2024	A1	Chummathe samsarikumbo urangi poya ok... ithu serious karyam parayumbo ... de kidakkunnu.
	06:00	02.04.2024	A1	Nammude karyam serious aayi discuss cheythu .. oridathu ethikkanam
	06:00	02.04.2014	A1	Athinu ninakku ulla pangu valuthanu
	6:00	02.04.2014	A2	Mmm



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6:00	02.04.2014	A2	Ariyam
06:01	02.04.2014	A1	And u know it has to happen fast now
06:01	02.04.2014	A1	Enikku nee venam ... illathe pattilla
06:02	02.04.2014	A2	OK samsarikkam
20:11	03.04.2014	A2	Lij ipo varum
21:49	03.04.2014	A1	Avan varatte... nee enthina pedikkunne ... avan oru pullum cheyyan ponilla... nee nannayi prathikarikkuka ... ninakku njan undu.... I love u very much ... nee enteyanu.. ente mathram ... ninne njan aarkkum vittu kodukilla.. love u lots... Ummaa
08:31	05.04.2014	A1	Entha vishesham para
16:12	05.04.2014	A1	Ninne aarkkum kodukilla njan
08:36	05.04.2014	A2	Lij ellam arinju
08:21	29.03.2014	A1	Nee prathikarichu avante case close cheyy



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80. The learned counsel for the appellant/second accused argued that the messages regarding the count down from 26.03.2014 and about the role of the second accused in the matter discussed between accused Nos. 1 and 2 are not part of any conspiracy to commit any crime and the said messages are about completing a project within the deadline and such words are usually used by technocrats. But, considering the fact that nothing is mentioned in any of the messages to indicate that the said messages are about completing any official work or project and it is evident from the messages itself that the first and second accused are discussing a plan for their future life together and that the first accused has reminded the second accused that she has a big role and since it is in evidence that the second accused continued the illicit relationship even after PW1 has warned her not to continue her relationship with the first accused on 04.04.2014, the arguments on behalf of the appellant/second accused that the messages, photographs and videos are forwarded to the first accused innocently without any knowledge about the intention of the first accused cannot be accepted.



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81. It is well settled that criminal conspiracy is incorporated beneath the category of 'inchoate crime' as commission of an offence is not required for making the accused liable under criminal conspiracy. It is also well settled that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of the agreement. But, the very agreement is an offence and is punishable. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution can rely on evidence of acts of various parties to infer that they were done in reference to their common intention and therefore, conspiracy can be proved by such evidence, direct or circumstantial.

82. Section 10 of the Evidence Act shows that when there is *prima facie* evidence that a person was a party to the conspiracy, his acts can be used against his co-conspirator. Section 10 of the Indian Evidence Act, 1872 reads thus:

"10. Things said or done by conspirator in reference to common design

Where there is reasonable ground to believe that two or more



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persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the 1[Government of India].

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it."

83. In **Major E.G. Barsey v. State of Bombay** [AIR 1961 SC 1762, the Honourable Supreme Court held thus:



"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under S. 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable."

84. It is true that in a criminal case, the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the acts or omissions attributable to the crime committed by him and that the act or action of one of the accused cannot be used as evidence against another. But, in the case of conspiracy, an exception has been carved out under Section 10 of the Indian Evidence Act. In ***Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609]***, the Honourable Supreme Court held thus:

"Section 120-A provides for the definition of criminal conspiracy and it



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speaks of that when two or more persons agree to do or cause to be done an act which is an illegal act and Section 120-B provides for the punishment for a criminal conspiracy and it is interesting to note that in order to prove a conspiracy it has always been felt that it was not easy to get direct evidence. It appears that considering this experience about the proof of conspiracy that Section 10 of the Indian Evidence Act was enacted.”

85. In ***Suresh Chandra Bahri v. State of Bihar*** [1995 (SCC (Crl.) 60)], the Honourable Supreme Court held as under:

“Thus, a cursory look to the provisions contained in Section 120-A reveals that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is



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enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn."

86. In the case of offences that are committed in secrecy, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused and therefore, the law does not cast a duty on the prosecution to lead evidence which is almost impossible to be led, or at any rate, extremely difficult to be led and the duty of the



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prosecution in such circumstance is only to lead evidence which it is capable of leading, as held by the Honourable Supreme Court in **Wazir Khan v. State of Uttarakhand** [(2023) 8 SCC 597] and **Trimukh Maroti Kirkan v. State of Maharashtra** [(2006) 10 SCC 681].

87. At the outset, it has to be noted that inasmuch as it was admitted by the accused that they were maintaining an intimate extra-marital relationship and inasmuch as there is overwhelming evidence to hold that they decided to live as man and wife, there is absolutely no reason to think that the first accused would resort to an act which would jeopardise the extra-marital relationship which he was maintaining with the second accused, without her knowledge and consent. As such, since the first accused came to the house of the second accused duly prepared, attempted to cause the death of PW1 and committed murder of the mother of PW1 and his daughter, it cannot be said that the said acts were committed by him without the connivance of the second accused. Be that as it may, the evidence of PWs 1 and 4 shows that the 1st accused escaped after committing the crime through the pathway and steps seen in Exhibit P52 series photographs and it is in evidence that the said pathway and steps is on



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the eastern side of the house of PW1. The evidence of PW42 further shows that the video footage in Exhibit P43A, hard disc, also contains the visuals of the said pathway and that the same was recorded by using MO13, mobile phone of the second accused and therefore, it is clear that the second accused transmitted the said photograph and video footage of the pathway as an act in aid to the first accused to reach the place of occurrence and to escape from there after committing the crime.

88. The learned counsel for the appellant/second accused argued that it is in evidence that the first accused used to visit the house of PW1 stealthily to indulge in sexual activities with the second accused and that it is in evidence that the first accused participated in the marriage of the brother of PW1 and therefore, it can be seen that the first accused is quite familiar with the way leading to the house of PW1 and therefore, there was no necessity to forward the photographs and video footage as navigation aid.

89. The fact that the first accused attended the marriage of the brother of PW1 or that he had previously entered the house of PW1 during night to indulge in sexual activities with accused No. 2, by



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itself, will not indicate that he is familiar with the interior of the said house or the remote pathway from the eastern side of the house leading to the road and the messages of the first accused to the second accused asking her to take all the photographs before her mother-in-law Omana reaches the house and his direction to capture the full 360⁰ photo from the first door and asking the position of the chairs, the position of the front door and the photograph of the other side of the kitchen and asking the second accused to take the photograph by using panorama shoot in her mobile, will clearly show that the photographs and the video with minute details of the remote pathway and position of the door and furniture from the front door to the drawing room and to the kitchen are obtained by the first accused from the second accused secretly for the accomplishment of their conspiracy and that the first accused was able to commit the crime and escape from the place of occurrence through the pathway on the eastern side of the house of PW1 only because the second accused has sent the said photographs and video to him and there is no reason to disagree with the finding of the trial court that the only reason for the second accused in taking the photographs of the interior portion of the house as well as the pathway from the eastern side of the house



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leading to the road through the steps on the side of the paddy field is only to help the first accused to have an idea about the interior portion of the house and the escape route and also to show where her mother-in-law and the child are usually present and no other reasonable explanation is possible and hence, all these circumstances taken together at face value would clearly indicate the meeting of minds between the first and second accused to commit the crime.

90. The learned counsel for the appellant/second accused argued that the messages sent by the second accused to the first accused will clearly disclose her love and affection towards her child and under no circumstances, she would agree with the first accused for committing the murder of her child.

91. The learned counsel for the appellants argued that PW42, Assistant Director of Cyber Forensic Division of the Forensic Science Laboratory, Thiruvananthapuram, is not an examiner of electronic evidence as contemplated under Section 79A of the Information Technology Act, 2000 and therefore, his evidence is not legally admissible.

92. But, the learned Public Prosecutor pointed out that no



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notification has been issued by the Central Government or the State Government in the Official Gazette declaring any person as examiner of electronic evidence during the relevant period and in the absence of such a notification for appointment of an examiner of electronic evidence as contemplated under Section 79A of the Information Technology Act, 2000, the evidence of PW42, Assistant Director of Forensic Science Laboratory, is admissible under Section 293 Cr.P.C and Section 45 of the Indian Evidence Act. It is not in dispute that either the Central Government or the State Government has not issued any notification for appointing any person as the examiner of electronic evidence during the relevant period.

93. It is also pertinent to note that even after the introduction of the Information Technology Act, 2000, there was no amendment to Section 293 Cr.P.C. It cannot be disputed that PW42, Assistant Director of the Forensic Science Laboratory, is having expertise in the field of electronic evidence and therefore, there is no reason to disagree with the finding of the trial court that the evidence of PW42 is admissible and relevant under Section 45 of the Indian Evidence Act and therefore, the contention of the appellants in this regard cannot be



accepted.

94. The evidence of PW42 and Exhibit P43 report reveals the contents of Exhibit P43A, hard disc, which was played in the trial court in in-camera proceedings and the evidence of PW42 shows that Exhibit P43A contains nude photographs of the second accused transmitted in electronic form to the mobile phone of the first accused and vice versa and that they have taken the images of them indulging in sexually explicit acts in their office at Techno Park, inside the innova car of the first accused and also at the residence of the second accused and that they have exchanged the same through their mobile phones. Since it is proved beyond reasonable doubt that the accused persons transmitted sexually explicit images in electronic form, the findings of the trial court that they committed the offence under Section 67A of the Information Technology Act requires no interference.

95. From the various WhatsApp messages between accused Nos. 1 and 2 as revealed from Exhibit P58 and text messages revealed from Exhibit P43, Cyber analysis report, it can be clearly inferred that the said messages are part of their conspiracy to do away with PW1 and to have a life of their own and that as a result of the criminal



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conspiracy between the accused persons, the first accused reached the house of PW1 after preparation to commit the murder of PW1, and even though PW1 sustained grievous injuries, he managed to escape by raising alarm and inviting the attention of the neighbours. Inasmuch as it is established beyond reasonable doubt from the circumstances brought out in evidence that accused Nos.1 and 2 have conspired to cause the death of PW1 to lead a life of their own, it is unnecessary to consider the question whether there was a conspiracy to cause the death of the child and also the mother of PW1, for even if there was no conspiracy to cause the death of the child and the mother of PW1, the same will not have any impact on the conviction of the second accused for the offence punishable under Section 120B IPC, for mere proof of an agreement between the accused for commission of a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by anyone of them would not be necessary. We take this view also for the reason that it is trite that in order to constitute the offence of conspiracy, it is not necessary that all persons involved should know all the stages of the action and mere knowledge of the main object of conspiracy would warrant the attraction of the relevant penal



provision.

96. In the light of the discussion aforesaid, there is no reason to interfere with the findings of the trial court that the prosecution has succeeded in establishing the criminal conspiracy and sharing of common intention between accused Nos. 1 and 2 in committing the crime.

Point No.5:

97. The learned counsel for the appellant/first accused argued that the case against the first accused regarding the murder of Omana and Swasthika is based entirely on circumstantial evidence and the Mitigation Investigation Report in compliance to the order dated 11.05.2023 of this Court would show that the first accused is leading peaceful and law-abiding life in jail and that he is maintaining cordial relationship with the officials and prisoners and his aged parents and family members have been visiting him in jail in regular intervals. The report further shows that the accused has faced many adverse experiences and traumatic events early in his life and that he is not having any criminal antecedents and that now he has been working hard to make the best of his time in prison and has sustained a



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relationship with his daughter and that he has the ability to re-integrate into the society.

98. The learned Public Prosecutor argued that the appellant/first accused in a most cruel, diabolic and inhuman manner committed the murder of the minor child Swasthika and her grand-mother Omana only to satisfy his lust with the second accused, and therefore, he deserves capital punishment and that the present case falls under the category of 'rarest of rare cases' warranting a death sentence.

99. In ***Bachan Singh v. State of Punjab*** [(1980) 2 SCC 684], it was held by the Honourable Supreme Court that the courts should make a balance sheet of aggravating and mitigating circumstances before taking a decision on the crucial question and the courts should also examine whether the alternative option being unquestionably foreclosed was fulfilled or not. In this case, the aggravating circumstances highlighted was the prior planning and the murder of the minor child and her grandmother in a most cruel manner and the nature and the number of injuries inflicted on the deceased Omana and Swasthika.

100. The learned Public Prosecutor pointed out that the



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appellant/first accused, who committed the murder of the minor child Swasthika, aged 3 ½ years, is a potential danger to the society and therefore, this would be a fit case where imposition of death sentence would be justified. The learned counsel for the appellant/first accused argued that the accused was in love with the second accused and he was in an extremely agitated and excited state of mind and there is no satisfactory evidence to show any element of pre-meditation to cause the death of Omana and Swasthika and the available evidence of pre-meditation, even if any, could only indicate the intention of the accused to cause the death of PW1 and therefore, considering the facts and circumstances, the accused cannot be seen as a menace to the society and his liquidation would be totally unnecessary and uncalled for.

101. In paragraph 209 of the decision in ***Bachan Singh*** (supra), it was held that a real and abiding concern for the dignity of human life postulates resistance to take a life through the law's instrumentality and the same cannot be done except in the rarest of rare cases when the alternative option is unquestionably foreclosed.

102. In ***Swamy Shraddananda (2) v. State of Karnataka***



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[(2018) 13 SCC 767, the Honourable Supreme Court held thus:

“**49.** In *Aloke Nath Dutta v. State of W.B.* [(2007) 12 SCC 230 : (2008) 2 SCC (Cri) 264 : (2006) 13 Scale 467] Sinha, J. gave some very good illustrations from a number of recent decisions in which on similar facts this Court took contrary views on giving death penalty to the convict (see SCC pp. 279-87, paras 151-78 : Scale pp. 504-10, paras 154-82). He finally observed (SCC para 158) that “courts in the matter of sentencing act differently although the fact situation may appear to be somewhat similar” and further “it is evident that different Benches had taken different view in the matter” (SCC para 168).”

103. It is now well settled that the personal element has to be eliminated totally and completely while considering the two alternative sentences permissible under Section 302 IPC and that only in the rarest of rare cases, a sentence of death can be imposed.

104. The judgment of the Honourable Supreme Court in ***Swamy Shraddananda*** (supra) shows that to avoid a sentence of death, it is possible for the courts to device a graver form of sentence of imprisonment for life which will virtually ensure that the society is insulated from the criminal for such a period as the court may specify in a case where the lesser alternative of an ordinary sentence of life is



found to be grossly inadequate.

105. On a careful consideration of the mitigating circumstances highlighted by the learned counsel for the appellant/first accused and as seen from the Mitigation Investigation Report and also the aggravating circumstances highlighted by the Public Prosecutor, we are of the view that this is a fit case to substitute the death sentence by a sentence of imprisonment for life by fixing a term in excess of 14 years with a direction not to release the convict before the actual term to be specified in the order, as we are convinced from the Mitigation Investigation Report and the antecedents of the accused that imposition of death sentence is not warranted in this case, especially in view of the fact that the accused did not have any criminal antecedents. Therefore, considering the facts and circumstances, we find that the death sentence for the offence under Section 302 IPC against the appellant/first accused can be converted to imprisonment for life, with a direction that he shall not be released from the prison for a period of 25 years, including the period already undergone with set off under Section 428 Cr.P.C

106. In the result, Crl. Appeal No. 639 of 2016 is dismissed and



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DSR No. 2 of 2016 and Crl. Appeal No. 683 of 2016 are disposed of as under:

- 1) The conviction and sentence of the appellant/first accused under Section 67 of the Information Technology Act and Sections 120B, 109, 115, 449, 307, 380, 511/201 and 34 IPC are confirmed.
- 2) The conviction of the appellant/first accused under Section 302 IPC is also confirmed.
- 3) The death sentence against the appellant/first accused for the offence under Section 302 of IPC is converted to imprisonment for life and it is made clear that the appellant/first accused shall not be entitled for any remission for a period of 25 years. The fine imposed and default sentence are confirmed.
- 4) The period of detention, if any, undergone by the appellant/first accused in connection with this case, shall be given set off under Section 428 Cr.P.C. The sentences shall run concurrently.

**P.B.Suresh Kumar, J. (Concurring)**

107. I am in complete agreement with the findings rendered by my learned Brother on the various points formulated for decision. However, I wish to supplement the finding on the sustainability of the sentence imposed on the first accused. In DSR No.2 of 2018, another Division Bench of this Court, of which one of us was a party, while considering the case, summarized the principles to be borne in mind as regards the imposition of death sentence thus:

“54. Law relating to award of death sentence in India has evolved through policy reforms as also judicial pronouncements including the judgments of the Apex Court in the celebrated decisions, viz, **Jagmohan Singh v. State of U.P.**, (1973) 1 SCC 20 and **Rajendra Prasad v. State of U.P.**, (1979) 3 SCC 646. The expression “rarest of rare cases” was one coined by the Apex Court in **Bachan Singh v. State of Punjab**, (1980) 2 SCC 684, in the context of awarding death sentence. **Bachan Singh** was a case where the questions considered were whether the death penalty is unconstitutional and if not, whether the sentencing procedure provided in Section 354(3) of the Code is unconstitutional, for it invests the court with unguided and untrammelled discretion and allows death sentence to be arbitrarily or freakishly imposed on a person found guilty of an offence punishable with death or, in the alternative, imprisonment for life. Both questions aforesaid were answered in the negative in **Bachan Singh**. The principles laid down in **Bachan Singh** were summarized by a Three Judge Bench of the Apex Court later in **Machhi Singh v. State of Punjab**, (1983) 3 SCC 470, thus:

“38. In this background the guidelines indicated in Bachan Singh case will have to be culled out and applied to the facts of each individual case where the question of



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imposing of death sentence arises. The following propositions emerge from Bachan Singh case:

(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, and only provided, 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.”

In **Machhi Singh**, the Apex Court has gone into the reasons why the society as a whole does not endorse the humanistic approach reflected in “death sentence-in-no-case” doctrine, and held that the society would crave for death penalty only in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death sentence, irrespective of their personal opinion as regards the desirability or otherwise of retaining death sentence. The Apex Court has also broadly classified such cases under categories; (i) manner of commission of murder (ii) motive for commission of murder (iii) anti-social or socially abhorrent nature of the crime (iv) magnitude of the crime and (v) personality of victim of murder. Paragraphs 32 to 37 of the judgment of the Apex Court in **Machhi Singh** dealing with this aspect read thus:



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“32. The reasons why the community as a whole does not endorse the humanistic approach reflected in “death sentence-in-no-case” doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of “reverence for life” principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by “killing” a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so “in rarest of rare cases” when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:

I. Manner of commission of murder

33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to



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bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-



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a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.”

55. The principles laid down in **Bachan Singh** and **Machhi Singh** governed the field for quite a long period. It was, however, felt that the list of categories of rarest of rare cases crafted in **Machhi Singh** cannot be exhaustive and ought to be given an even more expansive adherence owing to the changed social and legal scenario. The observation made by the Apex Court in this regard in **Swamy Shraddhananda (2) v. State of Karnataka**, (2008) 13 SCC 767, is worth referring to. Paragraph 43 of the judgment reads thus:

“43. In Machhi Singh the Court crafted the categories of murder in which “the community” should demand death sentence for the offender with great care and thoughtfulness. But the judgment in Machhi Singh was rendered on 20-7-1983, nearly twenty-five years ago, that is to say a full generation earlier. A careful reading of the Machhi Singh categories will make it clear that the classification was made looking at murder mainly as an act of maladjusted individual criminal(s). In 1983 the country was relatively free from organised and professional crime. Abduction for ransom and gang rape and murders committed in the course of those offences were yet to become a menace for the society compelling the legislature to create special slots for those offences in the Penal Code. At the time of Machhi Singh, Delhi had not witnessed the infamous Sikh carnage. There was no attack on the country’s Parliament. There were no bombs planted by terrorists killing completely innocent people, men, women and children in dozens with sickening frequency. There were no private armies. There were no mafia cornering huge government contracts purely by muscle power. There were no reports of killings of social activists and “whistle-blowers”. There were no reports of custodial deaths and rape and fake encounters by police or even by armed forces. These developments would unquestionably find a more pronounced reflection in any classification if one were to be made today. Relying upon the observations in Bachan Singh, therefore, we respectfully wish to say that even though the categories framed in Machhi Singh provide very useful guidelines, nonetheless those cannot be



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taken as inflexible, absolute or immutable. Further, even in those categories, there would be scope for flexibility as observed in *Bachan Singh* itself.”

As could be seen from the extracted passage, the change in the approach as regards the awarding of death sentence that was brought about is that even though the categories formulated in **Machhi Singh** provide very useful guidelines, the said guidelines cannot be taken as inflexible, absolute and immutable and that there would be scope for flexibility as observed in **Bachan Singh** itself. That apart, in **Swamy Shraddananda**, the Apex Court laid down a jurisprudential basis for the concept of 'life imprisonment till the remainder of the natural life' to take care of situations where the court finds that life imprisonment which, in the light of the power of remission conferred on the executive, is only imprisonment for a period of 14 years, is grossly inadequate and at the same time, having regard to the facts and circumstances of each case, death sentence cannot be imposed in the light of the principles laid down in **Bachan Singh** and **Machhi Singh**. Paragraph 92 of the judgment in **Swamy Shraddananda** dealing with the said aspect reads thus:

“92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment



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and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.”

The approach made in **Swamy Shraddananda** has been affirmed by the Constitution Bench of the Apex Court in **Union of India v. V. Sriharan**, (2016) 7 SCC 1. In the said case, it was also held that if the court finds in a given case that the imposition of death sentence may not be warranted and at the same time, imprisonment for a period of 14 years is grossly inadequate, it is free to decide the number of years of imprisonment to be awarded to the accused beyond the period of 14 years, in the place of imprisonment for life or death penalty provided for, for the offence, by taking into account, apart from the crime itself, from the angle of the commission of such crime or crimes, the interest of the society at large or all other relevant factors which cannot be put in any straitjacket formulae. Paragraph 98 of the said judgment reads thus:

“98. While that be so, it cannot also be lost sight of that it will be next to impossible for even the lawmakers to think of or prescribe in exactitude all kinds of such criminal conduct to fit into any appropriate pigeonhole for structured punishments to run in between the minimum and maximum period of imprisonment. Therefore, the lawmakers thought it fit to prescribe the minimum and the maximum sentence to be imposed for such diabolic nature of crimes and leave it for the adjudication authorities, namely, the Institution of Judiciary which is fully and appropriately equipped with the necessary knowledge of law, experience, talent and infrastructure to study the detailed parts of each such case based on the legally acceptable material evidence, apply the legal principles and the law on the subject, apart from the guidance it gets from the jurists and judicial pronouncements revealed earlier, to determine from the nature of such grave offences found proved and depending upon the facts noted, what kind of punishment within the prescribed limits under the relevant provision would appropriately fit in. In other words, while the maximum extent of punishment of either death or life imprisonment is provided for under the relevant provisions noted above, it will be for the courts to decide if in its conclusion, the imposition of death may not be warranted, what should be the number of years of imprisonment that would be judiciously and judicially more appropriate to keep the



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person under incarceration, by taking into account, apart from the crime itself, from the angle of the commission of such crime or crimes, the interest of the society at large or all other relevant factors which cannot be put in any straitjacket formulae.”

56. After referring to a *catena* of judicial pronouncements, post **Bachan Singh** and **Machhi Singh**, the Apex Court has laid down in **Ramnaresh v. State of Chhattisgarh**, (2012) 4 SCC 257 a nearly exhaustive list of aggravating and mitigating circumstances. Paragraph 76 of the said judgment reads thus:

“76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in Bachan Singh and thereafter, in Machhi Singh . The aforesaid judgments, primarily dissect these principles into two different compartments—one being the “aggravating circumstances” while the other being the “mitigating circumstances”. The court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the court. It will be appropriate for the court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) CrPC.

Aggravating circumstances

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the



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public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.



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Mitigating circumstances

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.”

57. In **Sangeet v. State of Haryana**, (2013) 2 SCC 452, a Two Judge Bench of the Apex Court took the view that the application of aggravating and mitigating circumstances needs a fresh look, for aggravating circumstances relate to the crime while



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mitigating circumstances relate to the criminal and therefore, a balance sheet cannot be drawn up for comparing the two, as consideration for both are distinct and unrelated. It was also held in the said case that in the sentencing process, both “crime” and “criminal” are equally important. It was also observed by the Apex Court in the said case that as the courts have not taken the sentencing process as seriously as it should be, with the result that in capital offences, it has become Judge-centric sentencing rather than principled sentencing. After referring to the decision in **Sangeet**, in **Shankar Kisanrao Khade v. State of Maharashtra**, (2013) 5 SCC 546, the Apex Court has held that to award death sentence, the “crime test” that is, the aggravating circumstances favouring capital punishment has to be fully satisfied, that is, 100% and “criminal test” 0%, that is, no mitigating circumstance favouring the accused. In other words, the view was that if there is any mitigating circumstance, the criminal test may favour the accused to avoid the capital punishment. It was also held in the said case that even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the “rarest of the rare case test” which depends upon the perceptions of the society and must not be Judge-centric. Paragraph 52 of the said judgment read thus:

“52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, the tests that we have to apply, while awarding death sentence are “crime test”, “criminal test” and the “R-R test” and not the “balancing test”. To award death sentence, the “crime test” has to be fully satisfied, that is, 100% and “criminal test” 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the “criminal test” may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is “society-centric” and not “Judge-centric”, that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While



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applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges.”

In **Shankar Kisanrao Khade**, the Apex Court has also taken the pain to indicate the factors that weighed with the Apex Court in commuting death sentence to sentence for imprisonment for life as also in confirming the death sentence. Young age of the accused, the possibility of reforming and rehabilitating the accused, the accused having no prior criminal record, the accused not likely to be a menace or threat or danger to the society or community, the accused having been acquitted by one of the courts, the crime was not premeditated, the case was one of circumstantial evidence etc. are some of the factors that weighed with the Apex Court in commuting the capital sentence to imprisonment for life while the cruel, diabolic, brutal, depraved and gruesome nature of the crime, the crime resulting in public abhorrence, shocking the judicial conscience or the conscience of society or the community, the reform or rehabilitation of the convict, defencelessness of victims, the crime was either unprovoked or that it was premeditated etc. are some of the factors that weighed with the Court in affirming the death sentence. ”

108. In the light of the decision of this Court in DSR No.2 of 2018, let us first consider whether there are any aggravating circumstances in the case on hand, favouring the death penalty. True, going by the exhaustive list of aggravating circumstances enumerated in **Ramnaresh v. State of Chhattisgarh** [(2012) 4 SCC 257] referred to in DSR No.2 of 2018, inasmuch as the victims, namely the child and mother of PW1 in the case on hand were innocent and



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helpless, the case would fall in the category of cases where the court could consider grant of death penalty to the accused. Be that as it may, let us now deal with the mitigating circumstances. The Mitigating Investigator appointed by this Court as per order dated 11.05.2023, after conducting an exhaustive investigation, came to the following conclusion:

“57. The mitigating circumstances identified and presented in this report have no bearing on the guilt and are no justification for crime. However, they are meant to understand the circumstances and life history of the accused to assess their extreme culpability and probability of reformation - two principles which need to be satisfied before a court can sentence the accused to death. The court below has erred by not considering the probability of reform and rehabilitation that Nino has displayed consistently. In Nino's case, clear evidence of his reformation is evident by looking at his life circumstances before and after the arrest. Despite the adverse experiences that Nino was put through during his life like physical abuse, neglect and trauma, he has continued to consistently emerge from setbacks by focussing on positive aspects in his life.

58. Currently Nino is in his 9th year of incarceration and has strived to do the best he can in all these years. The findings of the mitigation investigation exercise revealed that there is more to Nino and his life than what one can glean from the outside. Contrary to what has been published by a number of newspapers, he is not a hardened criminal as evidenced by the lack of any criminal antecedents. Nino has in fact faced many adverse experiences and traumatic events early in his life. These events have impacted Nino deeply on a psychological level and he continues to struggle with it. Despite being put through such difficult circumstances, Nino has constantly strives to identify positive factors around him. These last 9 years have been much more onerous for Nino because of the amount



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of misleading information and sensationalization by the media but he continues to work hard in prison and make the best out of his circumstances. This indicates that he is not 'extremely culpable' and does not deserve to be sentenced to death.

59. From his early years, Nino displayed prosocial personality traits and has a record of working hard towards making a positive contribution to society and community. Even though Nino has always been psychologically vulnerable, he has the ability to hold on to positive factors in his life and utilise them so that he can protect himself. Now, in his early 50s now, Nino wants to be able to support his family at the time that they need him the most. The Hon'ble Supreme Court has consistently held in a number of cases that it is the duty of the State to provide evidence on why there is no probability of reformation. However, in the present case, no such evidence on the probability of reform has been provided by the prosecution. It is well recognized that the probability of reform is a cardinal part of the 'rarest of rare' doctrine. The court has held on a number of occasions that life imprisonment as a punishment can only be set aside when the aim of reformation is said to be unachievable. In Ninos case, clear evidence of her reformation is evident by looking at his life circumstances before and after the arrest. He has been working hard to make the best of his time in prison and has sustained a relationship with his daughter. Nino demonstrates the ability to reintegrate into society, where he has his family and community for any support required. The majesty of the law would be preserved in granting a prisoner like Nino who is already going through immense pain and suffering a sentence less than death. Despite all the negativity he is faced with, Nino has continued to use every opportunity he could have to be a more productive member of the society.”

As evident from the conclusion arrived at by the Mitigating Investigator, the case of the first accused cannot be said to be a case where the possibility of reformation can be ruled out. Even assuming that there are no mitigating circumstances favouring the accused to



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avoid the capital punishment, in the light of the law laid down by the Apex Court in **Shankar Kisanrao Khade v. State of Maharashtra** [(2013) 5 SCC 546], it is necessary to apply the “rarest of the rare cases test”, namely whether the society will approve the awarding of death sentence in the case on hand. If that be so, this case falls short of the rarest of rare category and I am reluctant in endorsing the death sentence. As held by the Apex Court in **Shankar Kisanrao Khade**, while applying the said test, the court has to look into a variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls suffering from physical disability, old and infirm women with those disabilities, etc. Having regard to the totality of the facts and circumstances of the case, I am unable to hold that this is a case where the society would approve awarding of death sentence.

109. Even while holding that this is not a case for death penalty, I am in complete agreement with the view taken by my learned Brother that in a case of this nature, imprisonment for a period of 14 years is grossly inadequate and that therefore, the court has to decide



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the number of years to be awarded to the accused beyond the period of 14 years, in the place of imprisonment for life. The said course is permissible in the light of the decisions of the Apex Court in **Swamy Shraddananda (2) v. State of Karnataka** [(2008) 13 SCC 767] and **Union of India v. V. Sriharan** [(2016) 7 SCC 1]. Reverting to the facts again, inasmuch as the deceased in this case were an innocent child and a helpless woman, I am also in complete agreement with the view taken by my learned Brother that imprisonment for a period of 25 years without remission would be the appropriate punishment to be imposed on the accused.

sd/-

**P.B. SURESH KUMAR,
JUDGE.**

sd/-

**JOHNSON JOHN,
JUDGE.**

Rv/ds



APPENDIX of CRL. APPEAL NO. 639 OF 2016

APPELLANT'S ANNEXURES:

ANNEXURE A1	TRUE COPY OF THE TREATMENT CERTIFICATE ISSUED BY THE ASSISTANT PROFESSOR OF GOVERNMENT REGIONAL INSTITUTE OF OPHTHALMOLOGY HOSPITAL, TRIVANDRUM DATED 13.07.2021 WITH ITS TRUE TYPED COPY.
ANNEXURE A2	TRUE COPY OF THE DISCHARGE SUMMARY OF THE APPELLANT FROM SREEDHAREEYAM AYURVEDIC EYE HOSPITAL& RESEARCH CENTRE DT. 27.04.2002.
ANNEXURE A2(a)	TRUE COPY OF THE REVIEW SHEET OF THE APPELLANT DT. 20.06.2022 ISSUED BY DR. VIDYA SUGUNAN, SREEDHAREEYAM AYURVEDIC EYE HOSPITAL & RESEARCH CENTRE.
ANNEXURE A3	TRUE COPY OF THE CERTIFICATE ISSUED BY THE SUPERINTENDENT OF WOMAN'S JAIL DATED 17.09.2021.
ANNEXURE A4	TRUE COPY OF THE ORDER DATED 18.08.2015 IN BAIL APPLICATION NO. 4740 OF 2015 DELIVERED BY THE HON'BLE HIGH COURT OF KERALA.
ANNEXURE A5	TRUE COPY OF APPLICATION PREFERRED BY THE FATHER OF THE APPELLANT UNDER RTI ACT, 2005 DT. 03.11.2021.
ANNEXURE A5(a)	TRUE COPY OF THE REPLY UNDER RTI ACT, 2005 ISSUED BY THE STATION HOUSE OFFICER, ATTINGAL POLICE STATION DT. 07.11.2021.
ANNEXURE A6	TRUE COPY OF THE REPORT OF DISTRICT PROBATION OFFICER, AS OBTAINED UNDER RTI ACT, DATED 07.02.2017.
ANNEXURE A7	TRUE COPY OF THE LETTER DATED 20.11.2017 ISSUED BY THE DISTRICT POLICE CHIEF, TRIVANDRUM.
ANNEXURE A8	TRUE TYPED COPY OF THE LETTER DATED 15.09.2018 ISSUED BY THE DISTRICT POLICE CHIEF, TRIVANDRUM.
ANNEXURE A9	TRUE COPY OF THE LETTER DATED 02.03.2019 ISSUED BY THE DISTRICT POLICE CHIEF, TRIVANDRUM.
ANNEXURE A10	TRUE COPY OF THE REJECTION ORDER DATED 10.03.2020 ISSUED BY THE ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT.



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ANNEXURE A11	TRUE COPY OF THE LETTER DATED 05.05.2020 ISSUED BY THE DISTRICT POLICE CHIEF, TRIVANDRUM.
ANNEXURE A12	TRUE COPY OF THE LETTER DATED 21.12.2020 ISSUED BY THE DISTRICT POLICE CHIEF, TRIVANDRUM.
ANNEXURE A13	TRUE COPY OF THE ORDER DT. 05.03.2021 IN CRL. M.A. NO. 1 OF 2021 IN CRL. APPEAL NO. 639 OF 2016 OF THE HON'BLE HIGH COURT OF KERALA.
ANNEXURE A14	TRUE COPY OF THE PAROLE APPLICATION OF THE APPELLANT BEFORE THE GOVERNMENT DATED 18.05.2021.
ANNEXURE A14(a)	TRUE COPY OF THE PAROLE REJECTION ORDER DT. 16.08.2021 OF THE ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT.
ANNEXURE A15	TRUE COPY OF THE ORDER DT. 06.07.2021 IN CRL. M.A. NO. 2 OF 2021 IN CRL. APPEAL NO. 639 OF 2016 OF THE HON'BLE HIGH COURT OF KERALA.
ANNEXURE A16	TRUE COPY OF THE ORDER DATED 15.11.2021 OF THE HON'BLE SUPREME COURT IN SLP (CRL.) NO. 8566/2021.
ANNEXURE A17	TRUE COPY OF THE ORDER DATED 17.12.2021 OF THE HON'BLE SUPREME COURT IN SLP(CRL.) NO. 8566 OF 2021.
ANNEXURE A18	TRUE COPY OF THE ORDER DATED 16.02.2022 OF THE HON'BLE SUPREME COURT IN CRL. APPEAL NO. 1654 OF 2021.
ANNEXURE A19	TRUE COPY OF THE ORDER DATED 18.02.2022 OF THE HON'BLE SUPREME COURT IN CRL. APPEAL NO. 1654/2021.
ANNEXURE A20	TRUE COPY OF THE ORDER DATED 18.04.2022 OF THE HON'BLE SUPREME COURT IN CRL. APPEAL NO. 1654/2021.

RESPONDENTS' ANNEXURES: NIL

/True Copy/

PS to Judge.