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Crl. Appeal No.696 of 2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

WEDNESDAY, THE 30TH DAY OF OCTOBER 2025 / 8TH KARTHIKA, 1947

CRL.A NO. 696 OF 2018

CRIME NO.264/2013 OF Nadakkavu Police Station, Kozhikode

AGAINST THE JUDGMENT DATED 03.11.2016 IN SC NO.692 OF 2013 OF SPECIAL
JUDGE FOR THE TRIAL OF OFFENCES AGAINST CHILDREN, ADDITIONAL SESSIONS JUDGE
- I, KOZHIKODE

APPELLANT/RESPONDENT:

STATE OF KERALA, REPRESENTED BY THE STATE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM.

BY ADV PUBLIC PROSECUTOR: ADV.NEEMA T V

RESPONDENTS/ACCUSED NOS.1 & 2:

- 1 SUBRAMANIAN NAMBOOTHIRI
S/O. VASUDEVAN NAMBOOTHIRI, THATTAKKATT ILLAM, THIRUVAMBADI.
- 2 RAMLA BEGUM DEVIKA ANTHARJANAM
W/O. SUBRAMANIAN NAMBOOTHIRI, THATTAKKATT ILLAM, THIRUVAMBADI.

BY ADV SHRI.P.VENUGOPAL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18.09.2025, THE
COURT ON 29.10.2025 DELIVERED THE FOLLOWING JUDGMENT OF CONVICTION: THE
COURT ON 30.10.2025 PASSED THE FOLLOWING JUDGMENT ON SENTENCE:



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‘C.R.’

JUDGMENT

K. V. Jayakumar, J.

Impugning the judgment of the learned Special Judge for the Trial of Offences against Children (Additional Sessions Judge-I), Kozhikode, the State of Kerala preferred this Criminal Appeal under Section 378(1) of the Code of Criminal Procedure.

Brief facts :-

2. In this matter, the prosecution depicts a true picture of a heinous, barbarous and demonic torture by the father and stepmother on their little children.

3. One Subramanian Namboodiri (the 1st respondent herein) is a resident of Calicut, Kerala. His first marriage was solemnized with Sreeja Antharjanam. In that wedlock, two children were born, namely; Arun S. Namboodiri (PW1) and Adhithi S. Namboodiri (victim/ deceased). Later, Sreeja Antharjanam died in a road traffic accident.

4. Subsequently, the said Subramanian Namboodiri was married to the 2nd accused (Ramla Begum @ Devaki Antharjanam) in the year 2011.

5. The prosecution narrative is that, after the second marriage of the 1st accused (Subramanian Namboodiri) with Ramla Begum @ Devaki Antharjanam



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(2nd accused), they started to torture PW1 (Arun S. Namboodiri) and the victim/deceased (Adhithi S. Namboodiri) for a prolonged period. Ultimately, the continuous ill treatment, cruelty and torture, both physical and mental, has led to the death of Adhithi S. Namboodiri.

The prosecution case

6. The prosecution case, in brief, is that, the accused/respondents were residing in a house named 'Lakshmi' bearing door No.1/4283 of Kozhikode Corporation. While so, between 26.06.2012 and 29.04.2013, in furtherance of their common intention to cause the death of PW1 and the deceased, the children of the first accused born in his first wedlock, the accused subjected them to cruelty by beating them with hands and sticks, kicking them, not providing them with adequate food, compelling them to perform tiresome tasks, pouring boiled water on the private parts of Adhithi S. Namboodiri, and refusing to provide medical treatment to the deceased. The prosecution further alleges that at the time of the incident, PW1, the son was aged 10 years and the victim girl was aged 5½ years and was a student of Class I. The prosecution further alleges that due to the inhuman treatment of the accused, the girl succumbed to injuries on 29.04.2013.

The registration of FIR and investigation

7. On 30.04.2013, PW2 (Sreejith E.), the uncle of the deceased lodged Ext.P1 FIS before the Nadakkavu Police Station, Kozhikode. On the basis of



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Ext.P1 FIS, PW28 (Ramanan K.N.), the Sub Inspector of Police registered Ext.P24 FIR. On that day itself, PW29 (Santhosh P.K.), the Circle Inspector of Police, took up the investigation. He arrested the accused after preparing Ext.P25 arrest memo and thereafter, he recorded the confession statement of the 1st accused. On the basis of the disclosure statement of the 1st accused, and as led by him, PW29 recovered the wooden reaper (MO1) from the kitchen of his rented house.

8. On 02.05.2013, the Investigating Officer visited the place of occurrence and prepared Ext.P3 scene mahazar. He also seized the car used for taking the child to the hospital, as per Ext.P8 mahazar. He caused the scene of occurrence to be examined by PW17 (Mini D.), Scientific Assistant and collected samples of blood.

9. The Investigating Officer has also seized Ext.P7 rent agreement and Ext.P19 ownership certificate. During the investigation, he recorded 164 statement of PW1, Arun S. Namboodiri. He questioned all the material witnesses, recorded their statements, completed the investigation and laid the charge sheet before the Judicial First Class Magistrate Court-IV, Kozhikode. The learned Magistrate, after completing the initial steps, committed the case to the Court of Session, Kozhikode. The Sessions Court made over the case to the Court of Special Judge for the Trial of Offences against Children (Additional Sessions Judge-I), Kozhikode for trial and disposal.



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The proceedings before the trial court

10. The respondents/accused entered appearance before the Additional Sessions Court-I, Kozhikode. The learned Sessions Judge, after hearing the learned Public Prosecutor and the defence counsel, has framed charge under Sections 323, 324, 307, 302 r/w 34 IPC and under Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for the sake of brevity, 'the JJ Act'). The charge was read over and explained to the accused and they pleaded not guilty. They maintained their plea of innocence.

11. Before the trial court, PWs.1 to 29 were examined and Exts.P1 to P38 were exhibited and marked. MOs.1 to 3 were also identified and marked. After the close of prosecution evidence, the accused were examined under Section 313(1)(b) of the Code of Criminal Procedure. The accused denied the incriminating circumstances. No defence evidence was adduced. Exts.D1 and D1(a) Case diary contradictions were marked on the side of the defence.

The findings of the learned Sessions Judge

12. After a full fledged trial, the learned Sessions Judge found the accused guilty under Sections 323 and 324 r/w Section 34 of the IPC and also under Section 23 of the JJ Act.

13. The learned Sessions Judge convicted and sentenced the 1st accused to undergo rigorous imprisonment for three years for the offence punishable under



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Section 324 IPC, rigorous imprisonment for one year for the offence punishable under Section 323 IPC, rigorous imprisonment for a term of six months for the offence punishable under Section 23 of the JJ Act and also directed the 1st accused to pay a compensation of Rs.1 lakh to PW1 under Section 357(3) of the Code of Criminal Procedure.

14. The learned Sessions Judge convicted and sentenced the 2nd accused to undergo rigorous imprisonment for two years under Section 324 r/w 34 IPC, rigorous imprisonment for one year for the offence punishable under Section 323 IPC and rigorous imprisonment for six months for the offence punishable under Section 23 of the JJ Act.

15. The learned Sessions Judge allowed set off under Section 428 of Cr.P.C. It was further directed that the substantive sentence shall run concurrently.

16. However, the learned Sessions Judge acquitted the accused for the offences punishable under Sections 307 and 302 r/w 34 IPC.

17. Impugning the judgment of the learned Sessions Judge, the State of Kerala preferred this appeal under Section 378 of the Code of Criminal Procedure.

The submissions of the learned Public Prosecutor

18. Smt.Neema T.V., the learned Public Prosecutor submitted that the impugned judgment of the learned Sessions Judge is legally unsustainable. The



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trial court has failed to appreciate the prosecution evidence in its correct perspective, while acquitting the accused for the offences punishable under Sections 307 and 302 IPC. The judgment of the trial court is vitiated by manifest illegality.

19. It is further submitted that the evidence of PW1 (Arun S. Namboodiri) coupled with the evidence of PW27 (Dr.Prajith T.M.) who conducted the autopsy and issued Ext.P22 post-mortem certificate would clearly prove that accused Nos.1 and 2 have committed the gruesome murder of the younger child (Adhithi S. Namboodiri). PW27 has noted as many as 19 ante-mortem injuries on the body of the victim. Dr.Prajith opined that Adhithi S. Namboodiri died of neurogenic shock on account of severe trauma.

20. The finding of the learned Sessions Judge that the accused had no intention to cause the death of their minor child is patently wrong, erroneous and perverse.

21. The learned Public Prosecutor further submitted that the trial court erred in discarding the evidence of the neighbours and relatives, which clearly established that the victim had been subjected to untold miseries and cruelties.

22. The trial court has arrived at its conclusion on the basis of surmises and conjectures, and by non-reading and misreading of the admissible evidence adduced by the prosecution. The trial court ought to have found that the accused



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had a strong motive to commit the murder of the victim girl.

23. The learned Public Prosecutor would further submit that the chain of circumstantial evidence is fully established which would lead only to one hypothesis as to the guilt of the accused. Reliance was placed on the decisions in **Trimukh Maroti Kirkan v. State of Maharashtra¹** and **Gjanan Dasharath Kharate v. State of Maharashtra²**.

The submissions of the learned counsel for the respondents/accused

24. Sri. P. Venugopal, the learned counsel for respondents would submit that the trial court has arrived at a proper conclusion after a detailed evaluation of the evidence on record. The accused had no intention to cause the death of the victim girl. The first respondent is the father of the victim, and the second respondent is her stepmother. They are stated to have inflicted only minor corporal punishment on the children, with the intention of instilling discipline in their lives.

25. The scope of interference by this Court in a case of acquittal is limited and is to be exercised with extreme care, caution, and circumspection. In the present case, there is no manifest or glaring illegality, perversity, or miscarriage of justice warranting interference by this Court with the verdict of acquittal passed by the learned Sessions Judge for the offences punishable under Sections 302 and 307 read with Section 34 of the IPC.

¹ 2006 KHC 1469

² AIR 2016 SC 1255



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The evidence let in by the prosecution

26. The prosecution examined PWs.1 to 29 and Exts.P1 to P38 were exhibited and marked.

27. PW1 (Arun S. Namboodiri) is one of the victims in this case. He testified that now he is residing along with his paternal uncle. During the relevant period, he resided along with the accused and his deceased sister Adhithi. The 1st accused is his father and the 2nd accused is his stepmother. He stated that on 29.04.2013, his father beat his younger sister (Adhithi) stating that she had defecated in her skirt. The incident occurred on a holiday. His father beat her with his hands and also with MO1, a wooden reaper, on her legs. She cried aloud. He witnessed the incident from the passage of their house and, on seeing it, he also began to cry. Thereafter, his father went out, and Adhithi went to her room and laid down.

28. PW1 further stated that after the incident, he went out to play. When his stepmother called him back, he returned to the house. At that time, his stepmother asked him to hold his sister's legs, and together they shifted Adhithi to another room near the well. He then went out again. His father, the first accused, returned at about 8 p.m. and went out to shift house to another place, namely Kunduparambu. His father came back at about 10 p.m., and the family was about to have their dinner. On that day, his sister did not come for dinner. The 2nd accused called her 'Arche... Arche...'. The girl did not respond. The accused



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rushed to the room of Adhithi. The 2nd accused applied some massage on her hands and said something. In the meantime, the accused took Adhithi to hospital. He further stated that, on the next day, his paternal uncle came to their house and informed him that Adhithi is no more. He took him to his house at Thiruvambady.

29. PW1 (Arun S. Namboodiri) further deposed that the daughter and brother of his stepmother used to come to their house occasionally. He would add that initially, the accused had affection towards them. But, later they used to beat them and compelled them to do the household chores.

30. He further asserted that, if they failed to wake up at 4 a.m., the accused used to beat them. One day, when he came back from the temple after darshan, Adhithi was crying. On enquiry, she told that the 2nd accused persuaded her to drink hot barley water and she suffered burns in her mouth. Another day, Adhithi told him that the stepmother has poured hot water on her genital organ, thigh and anal area.

31. PW1 (Arun S. Namboodiri) further stated that during 2013, she did not go to school for about two months immediately preceding the summer vacation, as there were scars on her body due to the burns inflicted by the accused. He also gave evidence to the tune that when he came back after attending school, stepmother told him that she broke the hands of Adhithi. The teachers in their school asked him why Adhithi is not attending school, then he replied that she is going to study 'vedas', as instructed by the stepmother. He asserted that both the



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accused used to beat him using a wooden reaper and due to the forceful hit, often blood oozed out. He has not divulged it to anyone due to the fear of his stepmother.

32. PW1 would further say that sarees are tied around their compound wall in order to maintain secrecy. The accused never permitted anybody to come into their compound. There were three dogs in their house, and those dogs were left unleashed to prevent the entry of others into their house. He added that his stepmother disliked the visit of his relatives to their house. On one occasion, when the paternal grandmother of the children contacted the stepmother expressing her desire to visit the house, the stepmother dissuaded her by falsely stating that the children were not available in the house.

33. PW1 further stated that he has not seen any intake of food by Adhithi for the last two-three days, immediately prior to her death. The parents subjected them to starvation. Adhithi was given only barley water. He added that his sister could not sit due to her burn injuries. He identified MO1 reaper which was used for beating them.

34. On being cross examined, he would say that he has not seen his father after the incident. They resided at a place called Bilathikulam for about ten days. There also, the parents used to cause hurt to them. He does not remember when they visited Ootty.



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35. PW1 further stated that his stepmother used to teach him. During the course of teaching she used to beat him with a cane. He would further say that the stepmother taught him some manthras, poojas and rituals. He does not know whether his sister was suffering from Epilepsy and also denied the suggestion that the parents used to inflict blows only when they refused to study or to wake up early.

36. PW2 (Sreejith E.) is the maternal uncle of PW1. He stated that his sister (Sreeja) is the first wife of the 1st accused and she is no more. On 29.04.2013, he got information from PW8 (Govindan Namboodiri) that Adhithi was admitted in Medical College, Kozhikode. He rushed to the hospital along with his cousin Sandeep. When they reached there, Govindan Namboodiri told him that Adhithi died. Next day, he lodged Ext.P1 FIS before the Nadakkavu Police.

37. PW3 (Ramesh Kurup) is a journalist by profession. He came to know about the death of Adhithi on 29.04.2013. He is a neighbour of the accused at Bilathikulam. When he was standing in the veranda of his house, he saw the 1st accused taking the victim in a car. Once he has seen the 1st accused beating the deceased telling that her uniform was damaged. He would further say that he used to hear the cries of PW1 and the deceased. There was a discussion in the Resident's Association that the accused used to torture their children, but he could not visit the house of the accused as their house was always locked and the dogs were kept unleashed.



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38. PW4 (K. Subhash) is another neighbour of the accused. He was the Joint Secretary of Bilathikulam People Residence Association. He further stated that there was a discussion in the said association regarding the ill-treatment and torture of the children by the accused. The association entrusted PW7 (T. Andikutty) with the responsibility of taking up the matter and discussing the issue of torture.

39. PW4 further stated that the Childline workers had come to the house of the accused to enquire into the allegations of torture of the children. However, they were unable to enter the premises as they were prevented by the presence of dogs. He has also witnessed the recovery of MO1 wooden reapers at the instance of the 1st accused. He put his signature in Ext.P2 seizure mahazar and also witnessed the seizure of mobile phones, sim cards, photographs, etc. by the police as per Ext.P3 mahazar.

40. PW5 (T. P. Muralidharan) is an attestor to Ext.P4 Inquest report. PW6 (Anish T.) is another neighbour. He stated that he is residing in a house behind the rented house of the accused. PW7 (T. Andikutty), father of PW6, leased out the house to the accused. He asserted that the accused used to treat the children in a cruel manner and had also seen the secret torture on several occasions. His father, PW7, talked the matter to the 1st accused. Even thereafter, the torture continued. He informed the matter to the Childline and the Childline came to the spot and made some enquiry.



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41. PW6 further stated that on a day prior to Vishu, he heard the cries of the kids. He proceeded to the house of the accused, but could not enter, as the dogs prevented his entry.

42. PW7 (T. Andikutty) is the owner of the house wherein the accused and their family resided on lease. Police seized the rent deed from him after preparing Ext.P7 seizure mahazar. PW7 asserted that he used to hear cries of the children from the house of the accused. The accused used to obstruct the visibility to their house by using bed sheets. Even though he attempted to enquire into the matter, he was unable to enter the house of the accused as the dogs prevented his entry.

43. PW8 (Govindan Namboodiri) is the brother of the 1st accused. He testified that he had not visited the rented house of the accused at Bilathikulam. On 29.04.2013, at about 11.45 p.m., he got information that Adhithi was admitted at MCH, Kozhikode. Later, he came to know that Adhithi passed away. He met the victim in the Casualty and noted the burn injuries on her body and has also noted the scars at different parts of her body. He accompanied PW2 to Nadakkavu Police Station.

44. PW9 (Malathi) is the maternal grandmother of the victim. She stated that her daughter, Sreeja, had died in a motor accident, and that the first accused was her daughter's husband. She further deposed that when her husband attempted to enter the rented house of the accused at Bilathikulam, he was prevented from



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doing so as the accused used dogs to obstruct his entry.

45. PW10 (P. Asokan) is another neighbour of the accused. He deposed that the accused used to ill-treat and torture the children. He further stated that on one occasion, he personally witnessed the accused inflicting blows upon the deceased. He heard the cries of the children on numerous occasions. On the alleged day of occurrence, at about 2.30 to 3.30, he heard severe cries of the deceased.

46. PW11 (Dr.Ambili Aravind) is the Assistant Surgeon of Government General Hospital, Kozhikode. She examined PW1 on 08.05.2013 with a history of assault by father and stepmother. She issued Ext.P9 wound certificate.

47. PW12 (Terrance Sunderraj Michael) is the Peon of BMUP School, wherein PW1 and the victim studied. Police have seized the records from the school as per Ext.P10 seizure mahazar.

48. PW13 (Umadevi Antharjanam) is the mother of the 1st accused. She would say that the accused and their family resided in three rented houses in Kozhikode. They have resided in a rented house at Bilathikulam. She visited the first two rented houses, wherein the accused and family resided.

49. PW13 asserted that the 2nd accused used to torture the victims and never supplied food to them. PW13 has noted several scars on their body. When she enquired about the matter with the 1st accused, he told her that she need not



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interfere in such matters. Once she attempted to visit the house at Bilathikulam and called the 1st accused expressing her intention to visit their house, the 1st accused told her that nobody was there in the house and asked her to go back to Thiruvambady.

50. She would further say that when the 1st accused attempted to sell 68½ cents of land and a house at Thiruvambady, she requested that 5 cents be set apart to her so that it could be given to the children after her death. But, the 1st accused sold the entire property. Even though the 1st accused agreed that he would make a fixed deposit in the name of PW13, his mother, that was also not done.

51. PW14 (Jessy Joseph G.) was the class teacher of Adhithi at BMUP School. She stated that the deceased was a brilliant student who actively participated in recitation competitions. However, in December 2012, Adhithi did not participate in the said event. On making enquiries, PW14 was informed that Adhithi was unable to attend school due to a fracture on her hand. She further stated that the deceased had taken leave for a few days in January 2013. On being asked, PW1 told her that Adhithi is going to study 'vedas'.

52. PW15 (Sibi Jose) is the team member of Childline, Kozhikode. On 05.04.2013, at about 9.30 p.m., he got a call from one Anish and informed him that one Subramanian Namboodiri and his wife were torturing their children in a rented house at Bilathikulam. He further deposed that on 08.04.2013, he, in the company of one Hyderali, went to the residence of the accused, but the house was locked,



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and dogs had been set free within the compound, preventing their entry. Hence, they could not enter the house.

53. PW16 (Shiju P.) is the CPO of the Nadakkavu Police Station. He witnessed the seizure of the car used for taking the victim to the hospital. PW17 (Mini D.) is the Scientific Assistant, FSL, Kozhikode. She inspected the place of occurrence on 06.05.2013 and collected blood samples.

54. PW18 (K.C. Sivan) is the photographer, who captured the photographs of the dead body of Adhithi S. Namboodiri. Ext.P12 series are the photographs and Ext.P13 is the CD.

55. PW19 (Dr. Jinesh) is the Resident Doctor of Baby Memorial Hospital (B.M.H.), Kozhikode. He deposed that while he was working in B.M.H., a girl aged about 6 to 7 years was taken to B.M.H. with the history of Epilepsy at about 11 p.m. by the accused. They told him that they are the parents of the girl. The girl was brought dead. He has noted several scars of wounds on her body. They took the girl to Medical College Hospital, Kozhikode. Feeling suspicion about the cause of death, he informed the matter to the police. In cross-examination, he would say that there are no records in the hospital about the treatment of the victim.

56. PW20 (Dinesh Korothe) is the Station House Officer of the Nadakkavu Police Station. On 29.04.2013, while he was discharging night patrol duty, he got



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information from GD charge that a girl aged 6 to 7 years was taken to B.M.H. with several wounds on her body. On getting the information, he proceeded to B.M.H. and made an enquiry. He got information that the girl was taken to Medical College Hospital, Kozhikode. He went to the Medical College Hospital, Kozhikode, wherein he found the dead body of a girl in the Casualty. When he examined the body, he saw the wounds and scars on her body. He gave instructions to remove the body to the mortuary. On 30.04.2013, Additional Sub Inspector registered the case and took up the investigation. The inquest was conducted. The dress worn by the girl was seized as per Ext.P4 seizure mahazar. He interrogated the locals and relatives and came to know that the child died due to the injuries. He submitted Ext.P11 report adding Section 302 of IPC in the crime.

57. PW21 (Biju R.C.) is the Senior Civil Police Officer of Nadakkavu Police Station. He stated the Investigating Officer seized the marriage certificate of the accused through Ext.P15 mahazar and also witnessed the seizure of the marriage certificate.

58. PW23 (M. Anilkumar) is the Proprietor of CVN Kalari treatment centre, West Hill, Kozhikode. He deposed that the 1st accused approached him on 29.11.2012 for the treatment of the broken hand of his daughter. When he asked the accused how her hand was broken, he replied that it was due to a fall. Feeling suspicion about the reply of the 1st accused, he made queries to the child. But, the child did not respond.



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59. He further stated that he felt that the fracture was caused after being beaten with a stick. He bandaged her hand using some medicines and asked the 1st accused to take X-Ray of the hand. The accused then told him that he has no money with him. PW23 paid the amount. Thereafter, the accused came back with X-Ray results.

60. PW23 further asserted that he told the accused that the process of bandaging is to be repeated 14 times. Thereafter, the accused came with the girl one more time for treatment. But, thereafter, he did not approach him. Later, he visited the temple wherein the 1st accused is working as Santhi. PW23 wanted to inquire about the condition of the child, but the accused avoided him.

61. PW24 (K.Suresh Babu) issued Ext.P19 ownership certificate of the house No.I/428B of Calicut Corporation. According to him, the owner of the said house is one Andikutty (PW7). PW25 (Sabeesh K.M.) is the Village Assistant who prepared Ext.P20 site plan of the rented house of the accused.

62. PW26 (K.Vijayan) is the Executive Officer of Thrikkalanguodu Thirumanakkunnu Temple. He testified that the marriage of the 1st accused with the 2nd accused was solemnized in that temple on 20.01.2011. He stated that he had issued Ext.P21 marriage certificate.

63. PW27 (Dr. Prajith T.M.) is the Assistant Professor of Forensic Medicine, Medical College Hospital, Kozhikode. The autopsy of the deceased was



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conducted by a team of doctors namely, Dr.T.M.Prajith, Assistant Professor and Assistant Police Surgeon, Dr. Shirley Vasu, Professor and Police Surgeon and Dr. Priyatha P., Junior Resident. Ext.P22 is the post-mortem certificate and Ext.P23 is the additional post-mortem report. In Ext.P22, they have noted as many as 19 injuries.

64. PW27 further reported that the deceased died of neurogenic shock due to pain, due to blunt trauma to the back of abdomen and flanks, and prolonged ill treatment, neglect and manual labour. Injury No.16 is fatal. It could be caused by beating with a reaper like MO1. Injury Nos.15, 17 to 19 are incidental to injury No.16. Injury No.16 was fresh. It is sufficient in the ordinary course of nature to cause the death of a person. Injury No.3 could have contributed to death. It is also reported that he had issued an additional report after examining the chemical examination report, in which it was mentioned that no poison was detected in the sample.

65. In cross-examination, PW27 stated that injury Nos.1 and 2 are only scars. Injury Nos.3 and 4 are partially healed wounds. The scar of scald found at buttocks and pubic region are not simple or superficial. Depth of injury No.3 is not mentioned in the certificate. Injury Nos.15 to 19 were caused due to kicking. Injury No.16 also could be caused by kicking. He further stated that he could not say how many kicks were given to cause injury Nos.15 to 19 and that in Ext.P22 report, it was mentioned that injury Nos.15 to 19 were caused by stampede by foot



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on the back of abdomen. Injury Nos.15 to 19 are the reason for the neurogenic shock. The internal organs of the deceased were not normal. All the organs were pale but there were no injuries.

66. PW27 has also stated that neurogenic shock could be caused due to a variety of reasons. The death was not caused instantaneously. The person must have died after two or three hours. Stampede could cause injury to internal organs. He further stated that in the case of Epilepsy, there will be several minutes of uncontrolled movements of limbs and trunks. He denied the suggestion that the girl died due to Epilepsy.

Defence version

67. The defence version is that the girl died due to Epilepsy. They had no intention to cause the death of the victim.

Analysis

68. The first submission by the learned Public Prosecutor is that there is sufficient evidence on record to convict the accused under Section 302 IPC. However, the learned Additional Sessions Judge without proper evaluation of evidence, by non-reading and misreading the evidence of the material witnesses, came to the conclusion that the prosecution has only proved the charge against the accused under Sections 323 and 324 r/w Section 34 IPC and under Section 23 of the JJ Act.



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69. Before we proceed to evaluate the evidence on record, it would be appropriate to refer Section 300 of IPC.

300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. (emphasis supplied)

70. In **Virsa Singh v. State of Punjab**³, a bench of three Judges of the Apex Court had occasion to discuss about the scope and ambit of clause thirdly of Section 300 IPC. In **Virsa Singh** (supra), the Apex Court held as under:

“12. To put it shortly, the prosecution must prove the following facts before it can bring a case under S.300 "thirdly";
First, it must establish, quite objectively, that a bodily injury is present;
Secondly, the nature of the injury must be proved; These are purely

³ 1958 KHC 451



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objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

13. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S.300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional." (emphasis supplied)



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71. In **Nankaunoo v. State of U.P.**⁴, another three Judge bench reiterated and followed the principles laid down in **Virsa Singh** (supra) case. In **Nankaunoo** (supra) applying the **Virsa Singh** (supra), it was held that:

“intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of S.300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death.

XXXXX XXXXXXXX XXXXXXXXXXX XXXXXXXXXXXX

12. The emphasis in clause three of S.300 IPC is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant. Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place.”

72. In **Brij Bhukhan v. State of U.P.**⁵, the Apex Court observed that if numerous injuries found on the body of the deceased and even if none of the injuries by themselves was sufficient in the ordinary course of nature to cause the death and if cumulatively, they were certainly sufficient in the ordinary course of

⁴ 2016 KHC 6043

⁵ AIR 1957 SC 474



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nature to cause the death of the victim, soon after the assault, the offence is clearly one of murder.

73. The dictum laid down in **Virsa Singh** (supra) was followed by the Apex Court in several cases. (See **Rajwant Singh v. State of Kerala**⁶, **Sudershan Kumar v. State of Delhi**⁷, **Ram Murti v. State of Haryana**⁸, **State of A.P. v. Rayavarapu Punnayya**⁹, **Mahadeo Ganpat Badavane v. State of Maharashtra**¹⁰, **Morcha v. State of Rajasthan**¹¹, **Bakhtawar and Another v. the State of Haryana**¹², **State of Karnataka v. Vedanayagam**¹³, **Ramashraya and Another v. State of M.P.**¹⁴, **Khuman Singh and Others v. State of M.P.**¹⁵, **Suchand Bouri v. State of W.B.**¹⁶, **Aradadi Ramudu Slias Aggiramudu v. State Through Inspector of Police, Yanam**¹⁷ and **Balu Sudam Khalde v. State of Maharashtra**¹⁸.)

74. Bearing in mind the principles referred to above in **Virsa Singh** (supra) and **Brij Bhukhan** (supra), we shall proceed to evaluate the evidence on

⁶ 1966 SCC OnLine SC 50

⁷ 1975(3) SCC 831

⁸ (1976) 4 SCC 308

⁹ (1976) 4 SCC 382

¹⁰ 1977(3) SCC 264

¹¹ 1979(1) SCC 161

¹² 1979(4) SCC 698

¹³ 1995 (1) SCC 326

¹⁴ 2001(3) SCC 439

¹⁵ 2005 KHC 1632

¹⁶ (2009) 17 SCC 63

¹⁷ 2012(5) SCC 134

¹⁸ (2023)13 SCC 365



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record in order to ascertain whether the evidence adduced by the prosecution is sufficient to prove the charge under Section 302 IPC or the evidence on record is only sufficient to prove the lesser offences like one punishable under Sections 323 and 324 IPC, as held by the learned Sessions Judge.

75. The definite case of the prosecution is that PW1, Arun S. Namboodiri, and the deceased, were subjected to continuous cruelty and harassment, both mental and physical, by their father and stepmother for a prolonged period of about ten months in between 26.06.2012 and 29.04.2013, while they resided in a rented house at Bilathikulam. During the relevant time, Adhithi was aged 5½ years and Arun was aged 10 years. The inhuman and barbarous torture by the father and the stepmother as alleged by the prosecution are as follows:

- i. Beating with hands and MO1 wooden reaper, on several occasions.
- ii. Kicking on various parts of their body.
- iii. Not providing food to the children and thereby subjecting them to starvation.
- iv. Pouring of boiled water on the private parts of the victim girl, forcefully.
- v. Causing fracture to the hand of the deceased.
- vi. Denial of treatment to the victim girl during the relevant period.



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76. PW1, the injured, testified that he resided along with the accused and his deceased sister Adhithi. The 1st accused is his father and the 2nd accused is his stepmother. He stated that on 29.04.2013, his father beat his younger sister (Adhithi) stating that she defecated in her skirt. The incident was on a holiday. His father beat his sister with hands and also using MO-1 wooden reaper on legs. She cried aloud. He saw the incident from the passage of their house. On seeing the incident, he also cried. Thereafter, his father went out. Adhithi went to the room and laid down.

77. He further stated that after the said incident, he went out to play. The stepmother called him back and he returned to his house. At that time, the stepmother asked to hold the legs of his sister. They together shifted the girl to another room near the well. He again went out. His father, the 1st accused came back at about 8 p.m. and he made some arrangements for shifting of the house to another place namely Kunduparambu. His father came back at about 10 p.m. and they were about to have their dinner. His sister did not come up for dinner on that day. The 2nd accused called her 'Arche... Arche...'. The girl did not respond. The accused rushed to the room of Adhithi. The 2nd accused applied some massage on her hands and said something. In the meantime, the accused took Adhithi to hospital. He further stated that, on the next day, his paternal uncle came to their house and informed him that Adhithi is no more. He took him to his house at Thiruvambady.



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78. PW1 further deposed that the daughter and brother of his stepmother used to come to their house occasionally. He would add that initially, the accused had affection towards them. But, later they used to beat them and compelled them to do the household chores.

79. He further asserted that if they failed to wake up at 4 a.m., the accused used to beat them. One day, when he came back from the temple after darshan, Adhithi was crying. When he asked her why she was crying, she told that the 2nd accused persuaded her to drink hot barley water and she suffered burns in her mouth. Another day, Adhithi told him that the stepmother has poured hot water on her genital organ, thigh and anal area.

80. PW1 further stated that during 2013, Adhithi did not go to school for about two months immediately preceding summer vacation as there were scars on her body due to the blows inflicted by the accused. He also gave evidence to the tune that when he came back after attending school, stepmother told him that she broke the hands of Adhithi. The teachers in their school asked him why Adhithi is not attending school, then he replied that she is going to study 'vedas', as instructed by the stepmother. He asserted that both the accused used to beat him using a wooden reaper and due to the forceful hit, often blood oozed out. He has not divulged it to anyone due to the fear of his stepmother.

81. On 08.05.2013, a week after the incident, PW1 was examined by PW11 (Dr. Ambili Aravind), the Assistant Surgeon, Government General Hospital



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Kozhikode. She has issued Ext.P9 wound certificate. In Ext.P9, PW11 has noted the following scars on various parts of his body:

1. Linear scars on the left shoulder 4 cm size.
2. Linear scars on the left elbow 5 cm size.
3. Multiple small scars on the left elbow.
4. Linear scar 3 x 1 cm on the left forearm.
5. A scar 2 x 1 cm on the right elbow joint.
6. Two hypo pigmental linear scars on the back right side 5 cm long.
7. Two hypo pigmental linear scars approximately 5 cm over the left side of the neck.
8. Three linear scars over the left thigh 4 cm size.
9. Multiple hypo pigmental linear marks on the right thigh.
10. A linear scar 6 x 2 cm size over the skull on the fronto-parietal region.”

82. The evidence of PW1 (Arun S. Namboodiri), taken together with the evidence of PW11 (Dr. Ambili Aravind), clearly depicts the true extent of the inhuman, sadistic, and demonic torture to which the young children were subjected. The evidence of PW1 appears to be natural, truthful and inspires the confidence of this Court. Indeed, he is the best person to speak about the incident which occurred inside the four walls of the house, maintaining strict secrecy.

The Medical evidence

83. Now, we shall proceed to evaluate the evidence of PW27 (Dr. Prajith T.M.), the Assistant Professor of Forensic Medicine, Government Medical College, Kozhikode, who conducted the autopsy of Adhithi and issued Ext.P22



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post-mortem certificate. The autopsy of Adhithi was conducted by a team of three expert doctors consisting of Dr. T.M. Prajith, Assistant Professor and Assistant Police Surgeon, Dr. Shirley Vasu, Professor and Police Surgeon and Dr. Priyatha P., Junior Resident. At this juncture, it would be useful to extract the relevant portion of Ext.P22.

D. SCHEDULE OF OBSERVATIONS AT AUTOPSY

A. GENERAL:

1. Height : 118cm
2. Weight : 23 kg
3. Build : Moderate
4. Nourishment : Poor [DSC 05173 rib cage, DSC05178 front of trunk] DSC05217, DSC0 5218 left side of chest] Thin distribution (sparse) brownish dull straight hair 15 cm long on scalp.

Poorly nourished body with eyes sunken, flattened cheeks, superficial skin infections at multiple sites all over the body (pyoderma), superficial injuries of different ages of healing on face, trunk and limbs, unhygienic extremities with and roughened and callused skin of palms and feet, chipped and dirt ridden finger nails. Ribs and other bones stood out. There was generalized muscle wasting and loss of body fat. Severe anaemia (haemoglobin deficiency) as revealed by pallor of the body, poorly developed postmortem staining and mild oedema of both feet. Mid-arm circumference measured only 15 cm.

5. Identifying features: Identified Body

6. External appearance

Face : Pale, sunken cheeks. Marks of scalds (see below)

Eyes : Eyes sunken, closed, corneae clear, No subconjunctival bleeds.

Ears : Unremarkable

Nostrils : Unremarkable

Mouth : Lips scarred due to scalds (Hot liquid burns)



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Nails : Chipped and dirty, middle finger of right hand showed contused tip [DSC02142]

External genitalia: Female, child like with no pubertal changes, Labia majora -scalded (hot liquid burns). Hymen and vagina intact, normal. [DSC02140]

Anal Orifice: Normal, but infected scalds on either sides

7. Postmortem changes

Rigor mortis: established and getting lost from jaws and limbs.

[Body refrigerated at 2.30 am on 30.4.2013]

Postmortem hypostasis: was poorly developed due to anaemia (lack of haemoglobin, the red pigment of blood) on the back of trunk not fixed.

Other postmortem changes (delayed) were absent except commencement of greenish discolouration of left iliac fossa close to a large contusion (see below)

Artifacts if any- Nil

B. INJURIES:

a. Postmortem: Nil

b. Therapeutic/iatrogenic: Nil

c. Antemortem -Traumatic:

1. Face: Mouth and lip region- Hypo-pigmented bluish white scars of contact areas (whole extent) of both lips – Scars of scald - the lips were devoid of their natural crease lines—with ‘trickle marks’ – scars extending transversely from corners of mouth to the cheeks on both sides. The trickle areas were hypo-pigmented with hyper-pigmented borders. [DSC02134]
2. Neck region – Crescent shaped scar of superficial injury 1.2 x 0.2 cm, curved down, on upper part of right side of neck 2cm below right angle of jaw. Another linear scar of a superficial injury 4.3 cm long obliquely extended with tailing downwards and backwards placed 1 cm behind the first mark. [DSC02135, DSC 05179] There was another similar mark of same size lower down the right side of neck curved (concavity) forwards [DSC2983].

There were several similar but less prominent marks on the left



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half of upper part of front of neck and on left lower face over an area 11 x 11 cm varying from 0.8 x 0.1 cm to 3 x 0.1 cm suggestive of multiple nail imprints and scratches [DSC02143]. Few of such linear crescent shaped scars were found scattered over adjacent areas, front of chest and over left collar bone areas also. The marks were pale with hyper-pigmented borders.

3. Pubic and buttocks region – Healing and partially healed (at periphery) scar of scald (with healing changes) 11 x 6 cm (oblique) over right supra pubic region, mons pubis and labia majora of the external genitalia with two yellow deep and firm areas (1x1 cm and 2x1 cm each) yet to be healed at its middle. The yellow hard areas were surrounded by a border of white scar beyond which they were surrounded by scar of superficial scald with commencement of pigmented spots along the hair roots and a still outer border of increased pigmentation (dark). Trickle mark scars of scald extended onto both thighs from this. [DSC 0 2138].

Scald with raw red moist areas as extension from the genital scald were seen on both buttocks (6x4 cm on the left and 4x4 cm on the right) surrounded by healed scars of scalded areas leaving the anal region free of scalds. [DSC 03017, DSC05111, DSC05112, 5121, 5122, 5123, 5136, 5153, 5154, 5155 more clearly and 5163].

The scald in the front (pubic region showed better signs of healing as it was not infected and at back showed signs of failed /delayed healing due to postural disturbances being at the back and infection. There were healed scars of scalded areas on vast areas involving lower back portions of buttocks, all around thighs with gradient of prominence from front through sides to back and demarcating the pattern of fold of skirt/petticoat worn and with a lower horizontal lower border 5 cm above knee on right and 2 cm above knee on the left side.

[DSC 0302, 306, 307, 3017, 3024]



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Patterned scald-scars in the form of mat weave mesh pattern (similar to that of the common plastic folding cot), pale 2mm broad pale lines with hyper-pigmented borders were seen criss-cross on back of both lower and upper limbs.

An area of scar of scald 3x3.5 cm, hypo-pigmented with hair roots pigmented, on the back of left ankle.

5. Left armpit region– Multiple scars and skin marks (hyper-pigmentation), all linear, crescent shaped (1.2x0.1 cm each) and many of them partly overlapping one another clustered over an area 6x5 cm on the inner aspect of left upper arm just below armpit. All the crescent shaped marks showed convexity forwards and upper end being curved and prominent. Three among them were pale immature scars and about 20 of the others were patterned hyper-pigmentation of skin; all of them resembled human thumb nail marks of same healing age as to be caused by right hand holding down the person. [DSC02145, DSC 02146, DSC02147] DSC05198, DSC05199, DSC05200, DSC05201, DSC05202, DSC05203]

Remarks on Injuries Nos.1 to 5: The distribution pattern of scald of mouth region with horizontal trickle mark at corners of mouth and crescent shaped nail-mark scars around neck and face indicates attempt at forceful administration of scalding hot fluid by mouth in supine position and the nature of healing changes indicates it to be around 3-4 week old.

The scald pattern over pubis with hot liquid trickling down to buttock and soaking cloth around both thighs and between the mesh of the surface on (similar to a plastic woven mesh folding cot) which the deceased was lying or made to lie supine forcefully indicated that considerable amount of scalding hot fluid was poured onto the genital region while the child was held forcefully supine, about 3-4 week back. Nail marks indicate restraint during the assault.

6. Right forearm– Multiple marks of dark brown pigmentations, linear 2mm, transversely around lower part of right forearm, of



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different intensity.

Remark: Old marks of restraint of different ages – Over protracted period possibly from 3-4 week duration [DSC05152, DSC05175 front]

7. Multiple sites of body– Multiple small scars pale, whitish and pigmented or scab covered of different ages scattered all over the body, most of them on the upper limbs about elbows [DSC 05156 and DSC05158, DSC05160 right elbow, back of trunk, left shoulder and back [DSC05164, DSC05165, DSC05166] over the knees [DSC05170, DSC05171] right upper-arm DSC05176]

Remark: Indicative of child abuse over protracted period

8. Fingers of both hands – healed scar and pigmentation of superficial wound 3 x 1.2 cm each on back of distal segment of index and middle fingers of right hand with a small contusion (black) of tip of middle finger. (Healing changes of same duration as above.) [DSC 02994, DSC02995] and 2x1.5cm on back of distal part of left index finger and a smaller area on back of middle finger tip of left hand [DSC05167]

Remark: Of same age as injury Nos.1 to 5 and could have sustained in the same incident, 3-4 week old

9. Healed superficial injury as evidenced by two brown scars 0.3 cm round each 1.2 cm apart, on the right parietal eminence region 2 cm outer to the perimortem injury; pale epithelialized scalp around.

Remark: Blunt Contact about 3-4 weeks

The following recent injuries were found on the body.

Back of chest

10. Abrasions with interruptions (pattern of a small chain link) 9.5 x 8 cm over the back of chest 4 cm below the angle of scapula ; areas showing brown scab and areas showing pale white dermis, inflamed.



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[DSC 05119, DSC 05120, DSC 05126, DSC 05136, DSC05137, DSC0 5161, DSC0 5162]

Remark : Chain link under the body, 1-2 day old

Back of trunk and ankle

11. Superficial lacerated wound 1.5 x 1 cm on the inner aspect of left ankle [DSC 05127, DSC 05128, DSC05146] and multiple linear (scratch) abrasions of same stage of healing on lower part of back of trunk and buttock [DSC 05139, DSC 05140, DSC05142, DSC05144]

Remark: Rough contact, 1-2 days old

Right forearm

12. Linear transverse abrasion 0.3 cm across lower part and middle of right forearm [DSC05152, DSC05216] amidst old pigmentations of similar nature above and below.

Remark: suggestive of tying down (physical restraint), 1-2 days old

Right ear lobule

13. Scab (reddish in colour) covered abrasion 0.8 x 0.4 cm on the right ear lobule (back aspect) and vertical scab covered linear abrasion 3 cm long on right half of front of neck and a small one at root of neck on right side. [DSC 05179, DSC05180, DSC 05181]

Remark: pinching, 1-2 day older

Teeth loss

14. Traumatic loss of central incisors. Left upper central incisor lost during eruption stage with socket almost healed(3-4 week back) and upper right central incisor more recent with socket covered with blood clot-dull brown ; the inner aspect of lips showed traumatic hyperemia and abrasion of mucosa and frenulum tear (1-2 days) [DSC 05183, DSC05184, DSC05185]

Remark: Assault, child abuse (old and new injuries)

Left Jaw line

15. Linear abrasion and dermal contusion 2 x 1 cm with 3 cm



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vertical extension, across left jaw-line [DSC0 5204, DSC05205, DSC0 5206]

Remark: Perimortem

16. Contusion of skin and subcutaneous tissues diffusely over vast areas of lower part of back of abdomen, small of back extending to flanks and middle of thigh through buttock on left side and up to upper part of buttock on right side with thick collection of blood (haematoma) under the subcutaneous fat and overlying the muscle plane. The collection of haematoma was fresh. Left anterior superior iliac spine region showed perimortem abrasion 0.8x0.6 cm [DSC 02122 to DSC02126, DSC02988, DSC02990, DSC0 3008, 05120, 5137, 5139, 5142, 5144, 5163, 5165, 5172, 5207, 5228 (incised) to 5248 except 5242]

Remark: Fatal blunt trauma sustained to back and flanks, in prone (face down position) as indicated by the counter pressure abrasion of iliac spine, the perimortem nature of which indicates sudden death. Stampede with foot is a plausible manner in which this injury could be cause, perimortem.

17. Linear Cresentic abrasion 0.4 cm on middle of right upper arm [DSC 05210]

18. Abrasions 05 x 0.3 cm on outer and 1 x 0.3 cm inner ends of front of left elbow. [DSC05214]

Remark: Injury 17 and 18 were incidental to injury described as No.15, perimortem

19. Lacerated wound 2.5 x 0.3 x 0.3 cm, oblique, partial thickness of scalp on the left parietal eminence region, the left front end 6 cm behind top of ear with under lying bone contusion 1.3 x 1.3 cm. Similar lacerated wound 2.5 x 0.3 x 0.3 cm on the right parietal eminence region, right front end 6 cm behind top of right ear showing peri-mortem features [DSC 02127, 2128, 2152-2154, DSC03022, 5114-5116, 5143, 5223-5226, and 5242]

Remark: Injuries of about the same age as injury 16 (fatal injury) due to force full contact over edged object like door step, permortem



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C. INTERNAL EXAMINATION

1. HEAD

- (a) Scalp: Unremarkable internally (external-see injuries)
- (b) Skull : Unremarkable but for a small area of contusion (see injuries)
- (c) Meninges, meningeal spaces & cerebral vessels: Normal
- (d) Brain (weight. 900 gms) - pale
- (e) Orbital, nasal & aural cavities -findings : Normal

2. NECK

- (a) Mouth, Tongue & Pharynx : Normal
- (b) Larynx & Vocal cords : Normal
- (c) Condition of neck tissues : Normal
- (d) Thyroid & other cartilage conditions : Normal
- (e) Trachea : Normal

3. CHEST

- (a) Ribs and Chest wall : No contusions or fractures
- (b) Oesophagus : Normal
- (c) Trachea & Bronchial Tree: Normal
- (d) Pleural Cavities : Unremarkable
- (e) Lungs- Right (270g) Pale and fully distended
Left (250g) Pale and fully distended
- (f) Pericardial Sac : Unremarkable
- (g) Heart findings & Wt. : (200g)
Valves: Normal
Walls: Normal
Chambers: Normal
Coronary arteries: Origin: Normal
- (h) Large blood vessels of the body: Normal

4. ABDOMEN

- (a) Condition of abdominal wall : see injuries
- (b) Peritoneum & Peritoneal cavity : contained 200ml



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- of blood stained fluid
- (c) Stomach (Wall condition, contents & smell, weight):
contained 300 ml of brownish viscid fluid and crushed
pieces of raw mango with green skin; No unusual smell,
mucosa pale
- (d) Small intestines including appendix: pale and distended
with gas
- (e) Large intestines & Mesenteric Vessels : pale and distended
with gas
- (f) Liver including gall bladder : (800g)pale
- (g) Spleen : (60g) pale
- (h) Pancreas : pale
- (i) Kidneys : Right (80g) pale
Left (80g) pale
- (j) Adrenals : unremarkable

5. PELVIS

- (j) Bladder & Urethra: contained 100 ml of clear urine
- (k) Pelvic cavity tissues: unremarkable
- (l) Pelvic Bones: intact

6. SPINAL COLUMN & SPINAL CORD

(To be opened where indicated)-Unremarkable

E. OPINION:

1. Probable time since death (Keep all factors including
observations at inquest)

Could have occurred at about 18 hours prior to being kept
in Cold Room (about 8.30 am on 29.4.2013 or so)

2. Cause & manner of death- The cause of death to the best
of my knowledge and belief is:-

- a Immediate cause - **Neurogenic Shock due to Pain**
b Due to - **Blunt trauma to back of abdomen
and flanks**

3. Which of the injuries of ante-mortem/postmortem and duration
if ante-mortem?



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All injuries ante-mortem. Injuries Nos. 1 to 9 were 3 to 4 weeks old. Injury Nos. 10 to 14 were 1 to 2 days old. Injury Nos. 15 to 19 were received just before death.

4. Manner of causation of injuries.

Prolonged ill treatment, neglect and manual labour
Injury Nos. 1 to 9 as a result of forceful restraint and attempt to administer scalding hot water by mouth and pouring scalding hot water onto genital region

Injury Nos. 10 to 14 due to non fatal assault 1-2 days prior to death
Injury Nos. 15 to 19 fatal assault by stampede by foot on back of abdomen

5. Whether injuries (individually or collectively) are sufficient to cause death in ordinary course of nature or not?
Yes -Blunt Trauma

6. Any other:
Features of Child Neglect and Physical Abuse for prolonged period (psychological abuse assumed)

84. PW27 (Dr.Prajith T.M.) opined that the victim died of neurogenic shock due to pain, due to blunt trauma to back of abdomen and flanks, prolonged ill treatment, neglect and manual labour. He further stated that injury No.16 is fatal and that it could be caused by a weapon like MO-1, wooden reaper. He clarified that Injury No.16 was a fresh injury and was sufficient, in the ordinary course of nature, to cause the death of a person. He further opined that Injury No.3 could have also contributed to the death. During cross-examination, he denied the suggestion that the deceased had died due to Epilepsy.

85. Ext.P22 postmortem report would reveal the condition of the victim girl at the time of postmortem. The postmortem report states that her face was pale



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with sunken cheeks and marks of scalds. Her nourishment was poor and eyes were sunken.

86. The report would further state that her labia majora was scalded with hot liquid burns. The report would also reveal that the victim was subjected to prolonged ill treatment, neglect, physical abuse and manual labour.

87. The evidence of PW1 (Arun) gets corroboration on the material particulars by the evidence of PW27 (Dr. Prajith). The evidence of PW1 and PW27 would convincingly establish that the victim girl died due to prolonged physical and mental torture, neglect and manual labour for about ten months. Due to continuous ill treatment by the accused and injury No.16 blunt trauma to the back of abdomen and flanks, she developed neurogenic shock, which is the immediate cause of death.

The evidence of the neighbours and relatives

88. PWs 3, 4, 6, 7 and 10 are the neighbours of the deceased. They would say that they used to hear the cries of PW1 due to the ill treatment by the accused. They would further state that there was a discussion in the local residence association about the torture to the children and they informed the matter to the Child Line. Their evidence further indicates that, although they attempted to discuss the matter with the accused, they were prevented from entering the house by three barking dogs that were kept unleashed in the compound. The evidence of



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the neighbours would also indicate that the accused used to cover their house by some clothes above the compound wall to maintain secrecy. On getting the information, PW15 (Sibi Jose), a Child Line member, proceeded to the house of the victim on 08.04.2013, but the house was locked and he could not enter the house.

89. The evidence of PW23 (M. Anilkumar), the proprietor of CVN Kalari Treatment Centre gave evidence that the 1st accused took the victim girl to him with a fracture on her hand. He advised the accused to bandage the hand of the victim for 14 times. However, he approached him only twice for the treatment.

90. PW13 (Umadevi Antharjanam), the mother of the 1st accused, also gave evidence about the torture of the victims and the non-supply of food to them.

91. The oral evidence of the neighbours and relatives would lend sufficient corroboration to the version of PW1, on material particulars.

92. On a careful evaluation, scrutiny, weighing and testing of the prosecution evidence, both oral and documentary, we are of the considered opinion that the evidence adduced by the prosecution is sufficient to prove the homicidal death of the victim, Adhithi, by the accused. However, the learned Sessions Judge, while appreciating the evidence, has failed to consider the medical evidence in its correct perspective.



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93. We find that the prosecution has succeeded in proving that:

1. Bodily injuries were present on the body of the deceased.
2. The nature of injuries inflicted.
3. The offenders had the intention to inflict injuries.
4. The injuries inflicted are sufficient to cause death in the ordinary course.

94. The post-mortem report reveals that the six-year-old child was severely undernourished, with the ribs visibly prominent. The Doctor has recorded the distribution pattern of scald injuries in the oral region, including horizontal trickle marks at the corners of the mouth and crescent-shaped nail-mark scars around the neck and face. These findings, as noted by the Doctor, clearly indicate an attempt at the forceful administration of scalding hot fluid by mouth while the child was held in a supine position. The report further records the presence of scald patterns over the pubic region, with hot liquid trickling down to the buttocks and soaking the cloth around both thighs and through the mesh of the surface upon which the deceased was lying or had been forcibly made to lie supine. This pattern unmistakably suggests that a substantial quantity of scalding liquid was poured over the child's genital region while the victim was physically restrained. The presence of distinct nail marks further corroborates the inference of violent restraint during the assault. Multiple small scars—pale, whitish, pigmented, or scab-covered—of varying ages were observed across the body, particularly on the upper limbs near the elbows, the right elbow, the back of the trunk, left shoulder,



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back, knees, and right upper arm. These injuries are consistent with repeated and sustained acts of physical abuse inflicted over a prolonged period of time, thereby establishing the culpability of the accused in subjecting the minor child to continuous and brutal cruelty. The immediate cause of death has been determined to be neurogenic shock, arising from excruciating pain caused by blunt trauma inflicted upon the back, abdomen, and flanks. The injuries have been inflicted by both the accused and there is ample material to show the sharing of common intention. To attract Section 34 IPC two postulates are indispensable (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person. (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons. An accused who is to be fastened with liability on the strength of Section 34 IPC should have done some act which has nexus with the offence. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. In the case on hand, we find that there is ample evidence to prove the covert and overt acts committed by both the accused.

95. However, despite the existence of overwhelming medical and circumstantial evidence pointing unmistakably to the brutal and sustained acts of cruelty over a long period inflicted upon a minor child aged six years, including



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severe beatings, the pouring of boiling water on the genitals, multiple fractures, deliberate starvation, and the resulting physical and psychological trauma culminating in neurogenic shock, the Trial Court, disregarding these grave and compelling facts, has nevertheless proceeded to hold as under:

"37. Now the question is whether while causing the said injury, the accused had intention to cause death or knowledge that it is likely to cause death?. From the evidence on record, I find it extremely difficult to accept the case of the prosecution. It has to be borne in mind that back of the abdomen cannot be treated as a sensitive part of the body. Further, the evidence of the doctor would show that the internal organs of the victim had not sustained any hurt. As the back of the abdomen is not a sensitive part of the body, the 1st accused cannot be attributed with the knowledge that if a hurt is caused on that part of the body, the victim may die. So, the case of the prosecution that the accused persons had intention to cause the death of the victim or knowledge that the injuries inflicted would result in the death of the victim cannot be accepted. The evidence adduced in this case only would show that the accused inflicted hurt on PW1 and Adbithi S. Namboothiri in order to make them disciplined and to bring them up as responsible citizens. When one person does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does hereby cause hurt to any person is said "voluntarily to cause hurt". So, I find that the evidence let in this case would disclose voluntary causing of hurt within the meaning of Section 321 IPC.



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96. We are unable to accept the reasoning of the learned Sessions Judge. The learned Sessions Judge has misread and failed to appreciate the credible evidence let in by the prosecution and arrived at a perverse finding, which has resulted in grave failure of justice.

97. Therefore, applying the law laid down by the Apex Court in **Virsa Singh** (supra), we hold that the present case falls within the “thirdly” clause of Section 300 IPC. In such circumstances, it is immaterial whether the offender had the direct intention to cause the death of the victim.

98. Now, we shall consider the powers of the appellate court to set aside the acquittal under Section 302 of IPC and to convict the accused.

99. In **Shivaji Sahabrao Bobade and Another v. State of Maharashtra**¹⁹, the Apex Court had occasioned to discuss about the correct principle to be applied by the court in an appeal against an order of acquittal. It was held that the High Court has full power to review the evidence and to reverse the finding of acquittal. Paragraph No.7 of **Shivaji Sahabrao Bobade** (supra) reads thus:

“7 This Court had ever since its inception considered the correct principle to be applied by the Court in an appeal against an order of acquittal and held that the High Court has full power to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed. The Privy Council in *Sheo Swarup v. King Emperor* (1934 LR

¹⁹ AIR 1973 SC 2622



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61 IA 398 : AIR 1934 PC 227.) negated the legal basis for the limitation which the several decisions of the High Courts had placed on the right of the State to appeal under S.417 of the Code. Lord Russell delivering the judgment of the Board pointed out that there was "no indication in the Code of any limitation or restriction on the High Court in the exercise of its powers as an appellate Tribunal", that no distinction was drawn "between an appeal from an order of acquittal and an appeal from a conviction", and that "no limitation should be placed upon that power unless it be found expressly stated in the Code". He further pointed out at p. 404 that, "the High Court should and will always give proper weight and consideration to such matters as : (1) the views of the trial judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses". In *Sanwat Singh & Others v. State of Rajasthan* ((1961) 3 SCR 120 : AIR 1961 SC 715.), after an exhaustive review of cases decided by the Privy Council as well as by this Court, this Court considered the principles laid down in *Sheo Swarup's case* (supra) and held that they afforded a correct guide for the appellate Court's approach to a case against an order of acquittal. It was again pointed out by *Das Gupta, J.*, delivering the judgment of five judges in *Harbans Singh and Another v. State of Punjab* (1962 Supp 1 SCR 104 at 109 : AIR 1962 SC 439 : (1962) 1 CriLJ 479.) : "In many cases, especially the earlier ones the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on 'compelling and substantial reasons' and has expressed the view that unless such reasons are present an appeal Court should not interfere with an order of acquittal (vide *Suraj Pal Singh v. The State*, 1952 SCR 194; *Ajmer Singh v. State of Punjab*, 1953 SCR 418; *Puran v. State of Punjab*, AIR 1953 SC 459). The use of the words 'compelling reasons' embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words 'compelling reasons'. In later years the Court has often avoided emphasis on 'compelling reasons' but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a court



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must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused 'and should interfere only if satisfied after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable. (Vide *Chinta v. The State of Madhya Pradesh*, Criminal appeal No. 178 of 1959 decided on November 18, 1960; *Ashrafkha Haibakha Pathan v. The State of Bombay*, Criminal Appeal No. 38 of 1960 decided on December 14, 1960.)

..... On close analysis, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of appeal must examine the evidence with particular care, must examine also the reason on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting judge is clearly unreasonable. Once the appellate Court comes to the conclusion that the view taken by the lower Court is clearly an unreasonable one that itself is a 'compelling reason' for interference. For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

100. In **Ediga Sanjanna v. State of A.P.**²⁰, the Apex Court reiterated that the High Court has full power to reverse the finding of acquittal. But while exercising the powers, the High Court should give proper consideration to such matters as (1) the view of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any real and reasonable doubt; and (4) the slowness of an

²⁰ (1976)2 SCC 210



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appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

101. It was further observed that the High Court should also take into account the reasons given by the court below in support of its order of acquittal and must express its reasons in the judgment which lead it to hold that the acquittal is not justified. Further, if two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial court. It would follow as a corollary from that if the view taken by the trial court in acquitting the accused is not unreasonable, the occasion for the reversal of that view would not arise.

102. In **Patil Hari Meghaji v. State of Gujarat**²¹, the Supreme Court opined that the High Court is justified in reversing the order of acquittal, if the trial court has brushed aside the prosecution evidence on trivial contradictions, small discrepancies or if the acquittal is based on speculations, misreading of evidence and unsustainable grounds.

103. In **Tota Singh v. State of Punjab**²², the Apex court made it clear that the jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the

²¹ (1983)2 SCC 270

²² (1987)2 SCC 529



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consideration of the evidence in the case is vitiated by some manifest illegality or liable to be characterised as perverse.

104. In **Mohd. Aslam v. State of U.P.**²³, the Apex Court held that the appellate court will be quite justified in setting aside the order of acquittal if it appears to the court of appeal that improper consideration of the material and evidence on record was made and the reasonings of the trial Judge are wholly unjustified. It is only necessary that the court of appeal should weigh the reasonings of the trial Judge with care and caution in the light of the evidence adduced in the case by giving cogent reasons as to why such findings are unreasonable and against the evidence.

105. In **Kathavan Servai v. State of T.N.**²⁴, the Apex Court declared that the appellate court is not precluded from assessing the evidence in an appeal arising from an acquittal. High Court can analyse evidence in detail and give cogent reasons for not accepting the finding of trial court.

106. In **Ganesh Bhavan Patel v. State of Maharashtra**²⁵, the Apex Court held that the High Court while reversing the finding of an acquittal, as a rule of prudence, shall give always proper weight and consideration to such matters, namely,

(1) the views of the trial Judge as to the credibility of the witnesses

²³ (1993)3 SCC 10

²⁴ 1994 SCC (Cri) 69

²⁵ (1978) 4 SCC 371



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(2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial

(3) the right of the accused to the benefit of any doubt and

(4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

107. In **Ashok Kumar Singh Chandel v. State of U.P.**²⁶, a bench of three Judges of the Hon'ble Apex Court had elaborately discussed the scope and ambit of the powers of the High Court in appeals against acquittals. Paragraph Nos.73, 74, 75, 76 and 77 read as under:

“73. I. Jurisdiction of the High Court in Appeals Against Acquittals

This is the first preliminary submission and it is based on a principle laid down by this Court that in an appeal against acquittal, the criminal appellate court will not interfere with the acquittal unless there are **substantial** and **compelling** reasons. The common submission of all the counsels appearing for the Appellants is, therefore, that the High Court was not justified in reversing the order of acquittal.

74. The position of law with respect to the jurisdiction of the High Court in cases of appeals against acquittals is well established. After reviewing the judgments on this subject, this Court clarified in *Chandrappa and Others v. State of Karnataka* (**2007 (4) SCC 415**) that:

"3. Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language"

²⁶ 2022 KHC 7168



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to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion."

75. It is sufficient to note the principle laid down in the Constitution Bench of this Court in *M.G. Agarwal v. State of Maharashtra* (1963 (2) SCR 405):

"16. ...But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in *Sheo Swarup v. King Emperor* and *NurMohammad v. Emperor* (AIR 1945 PC 151)...

17. ...Similarly in *Ajmer Singh v. State of Punjab* (1953 SCR 418) it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so". In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of S.423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of *Sheo Swarup*, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial". Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in *Sanwat Singh v. State of Rajasthan* (AIR 1961 SC 715) and *Harbans Singh v. State of Punjab* (AIR 1962 SC 439) and so, it is not necessary that before reversing a judgment of acquittal, the High Court must



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necessarily characterise the findings recorded therein as perverse... "

76. Following the Constitution Bench, this Court in *Ghurey Lal v. State of UP* (2008 (10) SCC 450) has formulated the following principles:

"69. The following principles emerge from cases

1. The Appellate Court may review the evidence in appeals against acquittal under S.378 and S.386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well - settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when: i. The trial court's conclusion with regard to the facts is palpably wrong; ii. The trial court's decision was based on an erroneous view of law; iii. The trial court's judgment is likely to result in "grave miscarriage of justice"; iv. The entire approach of the trial court in dealing with the evidence was patently illegal; v. The trial court's judgment was manifestly unjust and unreasonable; vi. The trial court has ignored the evidence or misread the material evidence or has



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ignored material documents like dying declarations / report of the ballistic expert, etc. vii. This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts / Appellate Courts must rule in favor of the accused."

77. Keeping in mind the above - referred principles we will now proceed to examine the impugned judgment and see if the High Court has properly applied the principles while exercising the criminal appellate jurisdiction against the order of acquittal."

108. In a recent decision of the Apex Court in **Rahil v. State (Govt. of NCT of Delhi**²⁷, it is held that the appellate court would not interfere with the finding of the trial court unless the same finding is wholly perverse or against the weight of evidence on record. In the event, acquittal is based on findings which are reasonable and plausible, appellate court would be slow to interfere with the same as the presumption of innocence stands re-enforced by the acquittal.

109. We have carefully reassessed and evaluated the prosecution evidence, both oral and documentary. Upon a meticulous consideration of the materials on record, we are of the considered view that there is ample evidence to substantiate the charge against the accused under Section 302 read with Section 34 of the Indian Penal Code. However, the Trial Court, by an evident non-reading and

²⁷ 2025 KHC 6611



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misreading of the evidence, particularly that of PW27 (Dr. Prajith) and PW1 (Arun S. Namboodiri), has erroneously concluded that the prosecution evidence was insufficient to prove the charge under Section 302 IPC. Instead, the Trial Court found the accused guilty only of the offences punishable under Sections 323 and 324 IPC, and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, thereby reducing the gravity of the offence. The reasoning adopted by the Trial Court, that the accused lacked the intention to commit the murder of their children, and that their actions were merely intended to cause hurt with the supposed object of enforcing discipline, is manifestly untenable, palpably erroneous, and based on a misapplication of the settled principles of criminal law. We find that the conclusion arrived at by the learned Sessions Judge is wholly perverse, contrary to the weight of evidence, and unsustainable in law. The totality of evidence unmistakably points to the existence of a shared intention and a concerted course of conduct resulting in the death of the child, thereby fully attracting the provisions of Section 302 read with Section 34 IPC.

110. The trial court has failed to apply the dictum laid down by the Apex Court in **Virsa Singh** (supra) followed by a catena of decisions discussed above. The entire approach of the trial court in dealing with the evidence was patently illegal and the judgment rendered was manifestly unjust and unreasonable. The trial court has ignored and discarded the medical evidence altogether, in our view. Moreover, the learned Sessions Judge not only discarded and non-read the material



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evidence, but also gave undue weight to the defence version.

111. Upon a careful and comprehensive analysis of the evidence on record, we are of the considered view that there exist substantial and compelling reasons to interfere with the finding of acquittal recorded by the learned Sessions Judge. The impugned judgment suffers from glaring errors, both factual and legal, which go to the root of the case. We are constrained to observe that if such a finding of acquittal is allowed to stand, it would result in a grave miscarriage of justice. The entire approach adopted by the Trial Court in the appreciation of evidence is, in our considered opinion, patently illegal, manifestly unjust, and wholly unreasonable, thereby warranting interference by this Court.

112. The defence version that the victim died of epilepsy is found to be false, improbable, and inherently unreliable. It stands completely contradicted by the medical and circumstantial evidence on record. Admittedly, the incident occurred within the four walls of the residential house jointly occupied by the accused and the victim. In such circumstances, the accused were under a duty, as contemplated under Section 106 of the Indian Evidence Act, 1872, to offer a reasonable and credible explanation regarding the cause of death. No plausible or satisfactory explanation has been offered by the appellants in this regard, which further reinforces the inference of guilt drawn from the prosecution evidence.



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Conclusion

113. In the light of the above discussions, we overturn the finding of acquittal of the trial Judge under Section 302 IPC and hold that accused Nos.1 and 2 are guilty of the offence punishable under Section 302 r/w Section 34 IPC and they are thereby convicted. However, insofar as the charge under Section 307 IPC is concerned, we hold that it is not established by the prosecution, beyond reasonable doubt.

114. As we are reversing the finding of the Trial Court and proceeding to convict the accused, it is imperative to hear the accused on the question of sentence under Section 235(2) of Cr.P.C.

115. Post on 30.10.2025 at 10.15 am, on which day, the accused shall be produced before this Court by the Station House Officer, Nadakkavu Police Station, Kozhikode.

Sd/-

**RAJA VIJAYARAGHAVAN V
JUDGE**

Sd/-

**K. V. JAYAKUMAR
JUDGE**



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116. The respondents/accused have been produced before this Court pursuant to our direction dated 29.10.2025. They were duly heard on the question of sentence under Section 235(2) of the Code of Criminal Procedure.

117. The first respondent stated that he has not committed any offence. He submitted that he is employed as a Poojari in a temple at Palakkad and that he is suffering from epilepsy and several other ailments. The second respondent asserted her innocence, stating that she too is afflicted with various illnesses, and she earnestly pleaded for leniency from this Court.

118. We have heard the learned Public Prosecutor and the learned counsel appearing for the respondents/accused at length under Section 235 of the Code of Criminal Procedure.

119. The learned Public Prosecutor submitted that, though it is well settled that the extreme penalty of death should not be imposed except in cases of the gravest nature involving exceptional depravity and extreme culpability, the present case, by every standard, warrants the imposition of the death sentence. It was contended that a sentence of life imprisonment, in a case involving such prolonged and barbaric acts of cruelty, would be grossly inadequate and fail to meet the ends of justice. Even upon a dispassionate balancing of the aggravating and mitigating circumstances, the learned Prosecutor submitted that there can hardly be a more fitting case for the



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imposition of capital punishment. She drew pointed attention to the plight of the victim — a child of tender age — who was subjected to inhuman cruelty and sustained grievous injuries at the hands of those whom she had trusted for care and protection.

120. Sri P. Venugopal, the learned counsel appearing for the respondents/accused, on the other hand, contended that the circumstances of the case do not justify the imposition of the death penalty. He urged that the Court must accord due weight to all mitigating factors and that even upon a comprehensive evaluation of the evidence, it cannot be said that this case falls within the category of the “rarest of the rare.” The learned counsel emphasized that the normal punishment of imprisonment for life would adequately serve the ends of justice and uphold the principles of proportionality in sentencing.

121. At this juncture, it may be useful to refer to the law laid down by the Apex Court with regard to sentencing.

122. In **Bachan Singh v. State of Punjab**²⁸, the Apex Court declared that the death penalty should be imposed only in the “rarest of rare cases”, where the alternative option (life imprisonment) is unquestionably foreclosed.

123. In **Machhi Singh and Others v. State of Punjab**²⁹, the Apex

²⁸ [1980 KHC 667]

²⁹ [(1983) 3 SCC470]



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Court has interpreted the “rarest of rare” doctrine in a practical manner and laid down structured categories to determine when a case qualifies as “rarest of rare”. In **Machhi Singh** (supra), the Apex Court reiterated that the life imprisonment is the rule and death penalty is the exception. Paragraph Nos. 33 and 34 of **Machhi Singh** (supra) reads thus:

“33. In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh's 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.



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34. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?.”

124. The principles laid down in **Bachan Singh** (supra) is reiterated in **Ishwari Lal Yadav v. State of Chhattisgarh**³⁰, **Md. Mannan alias Abdul Mannan v. State of Bihar**³¹ and **Bhagchandra v. State of M.P.**³².

125. In a recent decision, **Madan v. State of U.P.**³³, the Apex Court reiterated that the normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The Court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons are required to be recorded in writing before imposing the death sentence. While considering such a question, the Court must have regard to every relevant circumstance relating to the crime as well as the criminal, the court finds, but not otherwise, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may

³⁰ [(2019) 10 SCC 423]

³¹ [AIR 2019 SC 2934]

³² [(2021) 18 SCC 274]

³³ [2023 KHC Online 6986]



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impose the death sentence.

126. After a careful consideration of the law laid down by the Apex Court in the above referred judgments, we find no reason to depart from the normal rule and impose the death penalty. We are not able to trace out any special reasons for imposing the death penalty after evaluating all circumstances projected before us relating to the crime as well as the criminal. We are in the aforementioned circumstances of the view that the respondents/accused Nos.1 and 2 are liable to be sentenced for the offence under Section 302 read with Section 34 of the IPC to undergo imprisonment for life along with fine.

127. In the result, the following sentence is passed:

- I. Crl. Appeal No.696 of 2018 is allowed.
- II. The finding of guilt, conviction and sentence imposed by the trial court under Sections 323 and 324 r/w. Section 34 IPC and under Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 are confirmed.
- III. The order of acquittal of the respondents/accused Nos.1 and 2 for the offence punishable under Section 307 IPC by the learned Sessions Judge is also upheld.
- IV. The order of acquittal of the respondents/accused for the offence



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punishable under Section 302 r/w 34 IPC is set aside and reversed.

- V. The respondents/accused are found guilty for the offence punishable under Section 302 r/w 34 IPC and they are convicted for the said offence.
- VI. The accused Nos.1 and 2 are sentenced to undergo imprisonment for life and to pay a fine of ₹2,00,000/- (Rupees Two lakhs only) each and in default, to undergo rigorous imprisonment for six months each.
- VII. If the fine amount is realised, it shall be paid to PW1 as compensation 357(3) Cr.P.C.
- VIII. The respondents/accused are entitled to set off under Section 428 of Cr.P.C.
- IX. It is made clear that the sentence shall run concurrently.

Sd/-

**RAJA VIJAYARAGHAVAN V
JUDGE**

Sd/-

**K. V. JAYAKUMAR
JUDGE**