

IN THE COURT OF SESSION, PALAKKAD DIVISION

**Present: Sri. Muralee Krishna. S, Ist Addl. Sessions Judge
(Special Judge)**

Monday, the 30th day of September, 2019
8th day of Aswina, 1941 S.E.

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SESSIONS CASE No. 401 OF 2017

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

Name of accused : Pradeep Kumar, S/o Muraleedharan Nair,
aged 32 years, Kadapallil House, Nagam
Kulangara, Wayalar East Village,
Cherthala Taluk, Alappuzha District.

Charge : Under Sections 376(2)(i) and (n), 377, 305
and 354 of IPC, Sec. 5(l) and (m) r/w Sec. 6
and Sec. 7 r/w Sec. 8 of the Protection
of Children from Sexual Offences Act, 2012
and Sec. 3(l) (w) (i) and 3(2)(va) of the
Scheduled Castes / Scheduled Tribes
(Prevention of Atrocities) Act.

Plea of the accused : Not guilty.

Finding of the judge : Not guilty.

Sentence or Order : The accused is not found guilty of the offences
punishable under Sec. 376(2) (i) and (n), 377,
305 and 354 of IPC, Sec. 5(l) and (m) read
with Sec. 6 and Sec. 7 read with Sec. 8 of the
Protection of Children from Sexual Offences
Act and Sec. 3(1) (w) (i) and Sec. 3(2) (va) of
the Scheduled Castes / Scheduled Tribes
(Prevention of Atrocities) Act and he is
acquitted under Sec. 235(1) Cr. P.C.

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

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

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

Accused defended by : Adv. S. Suresh.

Date on which copy of judgment :
given to the accused

J U D G M E N T

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

Another final report was filed before the Juvenile Justice Board against a child in conflict-with-law. The above Sessions Case is in respect of the death of younger girl.

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

and 306 of IPC and Sec. 5 r/w Sec. 6 of the Protection of Children from Sexual Offences Act and proceeded with the investigation. But due to public agitation, a Special Investigation Team headed by the Deputy Superintendent of Police, Narcotic Cell, Palakkad was constituted as per the order of the Additional Director General of Police, North Zone and investigation was handed over to the Deputy Supdt. of Police, Narcotic Cell, Palakkad. In his investigation he reached to a conclusion that the girls were repeatedly subjected to unnatural sexual intercourse and the intolerable pain in the anal region lead the girls to commit suicide. He arrested the accused in this case on 10.03.2017 and he was remanded in judicial custody. On completion of investigation, he filed separate charge sheets against each of the accused. One of the accused was a minor and hence the charge sheet against him was filed before the Juvenile Justice Board. Against the accused in this Sessions Case, final report was filed for the offences punishable under Sec. 376 (2) (i) and (n), 305 and 354 of IPC, Sec. 7 r/w Sec. 8 and Sec. 5(1) r/w Sec. 6 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (v) of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act.

3. The prosecution case is that the accused, who is not a member of Scheduled Caste / Scheduled Tribe from January 2016 till 12.09.2016, from the rented house bearing No. XI/739 of Pudussery Grama Panchayat situated at the place called Selvapuram, Pudussery East Village, in the ownership of one Unnikannan, S/o Krishnan which was rented out to the accused, repeatedly committed rape and carnal intercourse against the victim, who is a minor girl aged 9 years and a member of Scheduled Caste. Because of the intolerable sexual assault and harassment of the accused in the above Sessions Case and other persons, who were charge sheeted by the police, the victim committed suicide on 04.03.2017 between 16.30 hours and 18.00 hours by hanging herself on the rafter of her one room shed bearing No. XI/666 of Pudussery panchayat wherein she was residing with her parents and brother.

4. On receipt of the final report, it was taken cognizance and after numbering the case as S.C 401/2017, the Principal Sessions Judge made over the case to this court for trial and disposal.

5. On production of the accused, he was served with copies of all relevant prosecution records as provided under Sec. 207 of Cr. P.C. After hearing both sides under Sec. 227 of Cr. P.C, charge was framed for the offences punishable under Sec. 376(2) (i) and (n), 377, 305 and 354 IPC,

Sec. 5(l) and 5(m) read with Sec. 6 and Sec. 7 read with Sec. 8 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (va) of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act against the accused. The accused pleaded not guilty, when charge was read over and explained to him in Malayalam. The accused was thereafter released on bail.

6. From the side of the prosecution, PWs 1 to 25 were examined and Exts. P1 to P33 documents were marked. During cross-examination of prosecution witnesses, Exts. D1 and D2, the contradictory portions of the statements of prosecution witnesses recorded by the police under Sec. 161 of Cr. P.C were marked from the side of the accused. MO1 to MO3 material objects were also identified by the prosecution witnesses. The remaining witnesses were given up by the prosecution. On completion of the prosecution evidence, the accused was examined under Sec. 313(1) (b) Cr. P.C. He denied all the incriminating circumstances brought out in the evidence and further filed a written statement contending that none of the independent witnesses have given any evidence as stated in the police charge. There is no direct or indirect evidence against him. It is due to the personal grudge of the investigating officer namely Sojan, a false case is foisted against him. At the time of death of the victim girls, the accused was not even present in

Palakkad District. He had filed a petition before the Deputy Supdt. of Police, Cherthala requesting him to investigate regarding the circumstance under which the girls died. Regarding that complaint, the Deputy Supdt. of Police, Cherthala informed to Walayar police station and it is due to that grudge, a false final report is filed against him. For the death of the victim in this case, her mother Bagyavathy and father Shaji are responsible. It is without investigating that, a false case is foisted against the accused.

7. Subsequently, both sides were heard under Sec. 232 Cr. P.C. Having found the case as unfit for acquittal under Sec. 232 Cr. P.C, the accused was called upon to enter into his defence. Though the accused filed a petition to call for some documents from the Registrar of Kerala State Commission for Protection of Child Rights as CMP 2026/2019, this court has dismissed the same, finding it as unnecessary for the decision of this case and it was filed only for the purpose of protracting the proceedings. No other defence evidence was adduced from the side of the accused.

8. Heard both sides.

9. The points for consideration are:-

1. What is the cause of death of victim girl in this case ?

2. Whether prosecution has succeeded in proving that the deceased girl was aged 9 years, at the time of her death ?
3. Whether the accused committed rape on the victim girl, as alleged by the prosecution?
4. Whether the accused subjected the victim girl to carnal intercourse against the order of nature, as alleged by the prosecution?
5. Whether the accused sexually assaulted the victim girl, as alleged by the prosecution?
6. Whether the accused abetted the victim girl to commit suicide, as alleged by the prosecution?
7. Whether the accused outraged the modesty of the victim girl as alleged by the prosecution?
8. Whether the accused has committed the offence of outraging the modesty and sexual assault against the victim girl, aged 9 years, who is a member of Scheduled Caste, as alleged by the prosecution?
9. What offences, if any, committed by the accused?
10. The offences, if proved, what should be the punishment?

10. **Point Nos. 1 to 8:-** All these points are considered together as they are interconnected and also for the purpose of convenience. As said above, prosecution has examined altogether 25 witnesses in this case. It

would be appropriate to briefly narrate their evidences before entering into the merits of the contentions raised by the learned Special Public Prosecutor and the learned defence counsel.

11. PW1 is the person, who had given First Information regarding the death of the victim girl involved in this case. He identified Ext.P1 as the First Information Statement given by him on 04.03.2017. According to him, on hearing the hue and cry from the house of Bagyavathy, he went there at about 6.30 pm and on reaching there, he found the victim in a hanging position. Immediately he went to the police station and gave Ext.P1 First Information Statement.

12. PW2 is another neighbour of the victim girl. He identified his signature in Ext.P2 inquest report and deposed that since two minor girls were died within a short span of period, he requested the police to rule out the suspicious circumstances.

13. PW3 is the father of the deceased girl. He deposed that on 04.03.2017 his wife came back from her work place at first. On reaching to their home she found their daughter in a hanging position. PW3 also reached behind PW4 and he found that his daughter's legs are touching the floor. When he tried to take the daughter, the knot in the ligature loosened and the girl fell on his shoulders. His daughter was going to the house of the accused

for playing. Since the girl was going to the house of the accused alone, he had suspicion against the accused.

14. PW4, the mother of the deceased girl deposed that on 04.03.2017 at about 5.00 pm, she reached back to her house from her work place. Front door of the house was kept open at that time. She felt that his daughter is standing inside the house. On verification it is found that there is a ligature on her neck. PW4 shouted aloud and on hearing that some neighbours gathered. But she does not remember as to what happened subsequently. She showed the place of occurrence to the police and handed over the dress of the girl, when they came for investigation. This witness identified MO1 petticoat as the dress of her daughter. According to PW4 the deceased girl was going to the house of the accused alone and hence she had suspicion against the accused.

15. PW5 is a relative of the victim girl, who is examined by the prosecution to prove that the victim girl had disclosed about the misbehaviour of the accused to her. But this witness turned hostile to the prosecution and denied her statement to the police. She further deposed that the victim girl had not stated anything about the accused to her.

16. PW6 is a friend of the deceased girl. He deposed that he used to go to the house of the victim and playing with her. PW6 is a boy

aged 15 years now and he further deposed that the deceased girl is his cousin sister. However this witness also turned hostile to the prosecution and deposed that he has not stated anything about the accused to the police.

17. PW7 is the Police Surgeon, who conducted postmortem examination of the girl on 05.03.2017 from District Hospital, Palakkad and issued Ext.P5 certificate. In the said certificate, he stated the opinion and further deposed before the court that the postmortem findings are consistent with the history of death due to hanging. However, it is further deposed by this witness that in view of the age of the girl and the length from sole of heel to the tip of right middle finger with right upper limb fully extended upwards, the possibility of homicidal hanging needs to be ruled out by correlating with measurements at scene of crime and through investigation.

18. PW8, the Civil Police Officer of Walayar police station identified his signature in Ext.P6 seizure mahazar of the materials collected from the place of occurrence by the Sub Inspector at the time of conducting inquest of the dead body.

19. PW9 is the Grade A.S.I of Chittur police station. He deposed that he was a Member of the Special Investigation Team headed by the Deputy Supdt. of Police, Narcotic Cell, Palakkad. He identified his signature in Ext.P7 seizure mahazar of the articles seized by the Scientific Officer

from the place of occurrence on 09.03.2017 and further deposed that he had received the samples handed over by the doctor after examining the accused from District Hospital and entrusted the same to the Deputy Supdt. of Police.

20. PW10 deposed that while working as Civil Police Officer of Chittur police station, he was a Member of the Special Investigation Team constituted for the purpose of investigation of this case and identified his signature in Ext.P8 seizure mahazar of the samples collected by the doctor at the time of postmortem examination of the deceased girl, in Ext.P9 seizure mahazar of the samples collected from the accused by his medical examination from the District Hospital, Palakkad and also in Ext.P10 seizure mahazar of the blood samples of the deceased girl produced before the investigating officer by the Forensic Surgeon of District Hospital.

21. PW11, another Team Member of the Special Investigation Team identified his signature in Ext.P11 seizure mahazar pertaining to the school admission register of the deceased girl.

22. PW12 is the village officer of Pudussery East village. He deposed that he visited the place of occurrence in this case and prepared the scene plans. He identified Ext.P12 as the scene plan of the house and appurtenant land of building bearing No. XI/739 and Ext. P13 as the scene plan of the house and appurtenant land of building bearing No. XI/666. He

issued Ext.P14 income certificate of the mother of the victim girl.

23. PW13 deposed that while working as the Secretary of Pudussery Grama Panchayat, he issued Ext.P15 ownership certificate of the house bearing No. XI/739, which stands in the name of one Unnikannan, S/o Krishnan and Ext.P16 ownership certificate of the house bearing No. XI/666, which stands in the name of Bagyavathy, who is the mother of the deceased girl. He further deposed that as per Ext.P17 ownership certificate issued by him, the house bearing No.12/242 stands in the name of one Valli, SC Colony, Kallamkadu, Attapallam.

24. PW14 deposed that while working as Sub Inspector of Police, Walayar police station, on 04.03.2017, PW1 appeared in the police station and gave Ext. P1 First Information Statement regarding the death of the victim in this case. Accordingly, after recording that statement, he registered Ext.P1(a) F.I.R under Sec. 174 Cr. P.C. On 05.03.2017, he visited the place of occurrence and in the presence of Police Surgeon, Scientific Assistant, Department photographer and Fingerprint Expert, prepared Ext. P2 inquest report. The dress of the deceased girl and the ligature were seized as per Ext. P6 seizure mahazar and produced before the Sub Divisional Magistrate.

25. PW15 deposed that while he was working as Assistant Surgeon in District Hospital Palakkad, on 10.03.2017 at 2.15 pm, he examined the

accused in this case and collected blood samples for DNA examination and conducted potency examination. Ext.P18 is the potency certificate issued by PW15 showing that the accused is potent and Ext.P19 is the certificate issued by him regarding collection of samples.

26. PW16 deposed that while working as Scientific Assistant at Regional Forensic Science Laboratory, Thirssur, as per the request of the investigating officer, he examined the scene of occurrence in this case on 09.03.2017 and collected 31 items which were described in Ext. P7 seizure mahazar. Those articles were packed, sealed and labelled and then handed over to the investigating officer with specimen seal impression.

27. PW17 is a neighbour of the victim. He identified his signature in Ext.P20 scene mahazar and in Ext.P2 inquest report.

28. PW18 deposed that while he was working as Tahsildar of Palakkad Taluk, he issued Ext.P21 caste certificate showing that the deceased girl is belonging to Scheduled Caste, Hindu- Cheruman.

29. PW19 deposed that while working as Tahsildar of Cherthala, he issued Ext.P22 caste certificate of the accused showing that he is a member of Hindu Nair community.

30. PW20 deposed that in the year 2016, he rented out his house situated at Selvapuram to the accused. At the time of death of the girl, the

accused was residing in that house, which bears the number 11/739.

31. PW21 deposed that he signed as a witness in Ext.P23 scene mahazar.

32. PW22 deposed that while working as Headmistress of G.L.P.S, Pampampallam, she issued Ext.P24, the extract of school admission register showing the date of birth of the victim as 31.08.2007.

33. PW23 is yet another neighbour of the deceased girl. He identified his signature in Ext.P25 seizure mahazar of the dress and note books of the girl. He identified MO2 series as the note books and MO3 as the papers seized by the police. He identified MO1 petticoat also.

34. PW24 deposed that while working as Deputy Supdt. of Police in Narcotic Cell, Palakkad, he took charge of the investigation of this case on 09.03.2017 as per Ext.P26 order of the Additional Director General of Police, North Zone and Ext.P27 order of the District Police Chief, Palakkad. As a part of investigation, he recorded statements of witnesses and visited the place of occurrence with the assistance of Scientific Officer. The Scientific Officer has collected 31 material objects and two documents from the place of occurrence and they were seized by preparing Ext. P7 seizure mahazar. On 10.03.2017 at 8.00 am the accused was arrested from the Circle Inspector's Office at Kasaba by preparing Ext.P28 arrest memo and Ext.P29 inspection

memo. On 09.03.2017 itself, PW24 filed Ext.P30 report to alter the penal provision in the case. Thereafter the accused was produced before the Medical Officer for potency examination and obtained Ext.P18 certificate. He was then produced before the court and remanded in judicial custody. Ext.P31 is the report filed by PW24 to add the full name and address of the accused in the case. On 14.03.2017 the accused was obtained in police custody from the court and on his questioning he confessed the guilt and stated that if he is taken, he would show the room and produce the dresses. The relevant portion of the confession statement of the accused is marked as Ext. P20(a) through PW24. As lead by the accused on 15.03.2017 at 4.40 pm, PW24 went to the house bearing No. XI/739 wherein the accused was residing with his wife and prepared Ext. P20 scene mahazar. The accused produced his dresses and they were seized by him. Again Ext. P32 report was filed by PW24 to alter the penal provision. Then he collected the caste certificate of the victim, the caste certificate of the accused and the extract of school admission register of the victim. The statements of the parents of the victim girl were recorded under Sec. 164 Cr. P.C. and on completion of investigation, he filed the final report against the accused.

35. PW25, the Circle Inspector of Police, Hemambika Nagar Circle deposed that while holding Addl. charge of Kasaba Circle, as per the order of

the Assistant Superintendent of Police, he took charge of the investigation of this case on 06.03.2017. Immediately he visited the place of occurrence and prepared the scene mahazar. On 07.03.2017, he seized the material objects produced by the mother of the girl by preparing Ext.P25 seizure mahazar. On recording the statement of the Police Surgeon, it was found that the girls were subjected to sexual abuse and accordingly, he filed Ext.P33 report to incorporate penal provisions under the Indian Penal Code and under the Protection of Children from Sexual Offences Act. Then he filed report before the Sub Divisional Magistrate Court to transfer the case records to this court. The samples produced by the Police Surgeon were seized by preparing Ext.P8 seizure mahazar. When the Special Investigation Team headed by PW24 was constituted, the investigation was handed over to him by PW25.

36. The learned defence counsel addressed extensive argument and pressed on the point that the accused was at first arrested by the investigating officer and then he manipulated statements of witnesses with a view to create evidence against the accused. The laches and the contradictions in the prosecution case are highlighted by the learned counsel. On the other hand, the learned Special Public Prosecutor argued that there are circumstantial evidences which unerringly pointing towards the guilt of the accused and it is

due to the passive abettment of the accused, the girl committed suicide. I will come to those arguments in detail, in the later parts of this judgment, at the relevant places.

37. There is no dispute that the girl, who died in this case was aged only nine years at the time of her death. More over, there is evidence in the form of Ext. P24, the extract of school admission register issued by PW22 to prove the same. From his evidence it is proved that the date of birth of the girl as per the school records is 31.08.2007. The girl died on 04.03.2017. Therefore it can be concluded that she was of the age of nine years at the time of her death.

38. Now coming to the cause of death of the girl, the evidences available to ascertain the cause of death of the girl are the oral evidence of PWs 3 and 4, the parents of the girl, the medical evidence obtained by the postmortem conducted by PW7, the Police Surgeon and Ext. P2 inquest report of the dead body prepared by PW14, the Sub Inspector of Police, who conducted initial part of the investigation of this case.

39. It is deposed by PWs 3 and 4 that their daughter committed suicide by hanging herself on the roof of their one room shed. PW14 deposed that he conducted inquest of the dead body of the girl on 05.03.2017 and prepared Ext.P2 inquest report. In that report it is stated that the girl was

found hanging in the house by the mother of the girl at about 6.00 pm, when she returned from her work place. It is argued by the learned defence counsel that at the time of Ext. P2 inquest report, PW7, the Police Surgeon was present at the place of occurrence. In Ext.P5 certificate, he opined that in view of the age of the child and the length from the sole of heel to tip of right middle finger with right upper limb fully extended upwards (151 Cm.) the possibility for homicidal hanging needs to be ruled out by correlating with measurements at the scene of occurrence and through investigation. As per Ext. P2 inquest report, the total height of the shed from floor to roof is 260 Cms. During cross-examination PW24, the investigating officer deposed that the height from floor to the rafter is 246 Cms and the gap to the tiles from rafter is 17 Cms. It is in the said rafter the ligature was tied by the victim for committing suicide. How the girl who is having a height of only 131 Cms. as shown in Ext. P2 inquest report could able to fix the ligature on the rafter is not at all investigated by the investigating officer. According to the learned defence counsel the accused had doubt regarding the death of the girl and he suspected it as a homicide. Therefore he filed a petition before the Deputy Supdt. of Police, Cherthala and that prompted the investigating officer to foist a false case against the accused. In short, the possibility of homicidal death is not ruled out by the investigating officer is the argument of the

learned defence counsel.

40. While going through the evidence adduced by the prosecution, there is no material either by way of oral evidence or by way of documentary evidence to say that the death of the girl was a homicidal one. It is deposed by PWs 3 and 4, the parents of the girl that their daughter has committed suicide by hanging herself on the roof of their one room shed. PW14, the Sub Inspector of Police deposed that he conducted inquest of the dead body of the girl on 04.03.2017 and prepared Ext.P2 inquest report. In the report it is stated that the girl was found hanging in the house by her parents at the evening when they returned from their work place. PW7, the Police Surgeon, who conducted postmortem examination of the dead body, noted only the following antemortem injuries on the body.

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

After the post mortem examination, PW7 gave the finding that the death was due to hanging. True that, he suggested to rule out the possibility of homicidal hanging. However there is no finding or opinion given by PW7 that any

injuries noted by him are correlating with the homicidal death. During investigation, no other reason was found by the investigating officer to say that the girl died other than by way of suicide. None of the prosecution witnesses have a case that the death of the girl is a homicide. No suspectable presence of any person at the time of death of the girl was found in the investigation. From the scene mahazar as well as from the deposition of PW24, it can be gathered that a partly broken chair was also found at the place of occurrence. Wooden cot was also found at the place of occurrence. The girl might have used any of these items to access the rafter for fixing the ligature. The failure on the part of the investigating officer to clarify this point is not a ground to disbelieve the other evidences regarding the death of the girl tendered by the prosecution witnesses. Therefore, from the available evidence it can be concluded that the victim in this case, who is aged only nine years committed suicide by hanging herself by making use of a lungi as the ligature, in the one room shed wherein she was residing with her family.

41. The definite case of the prosecution is that the girl was subjected to rape and carnal intercourse against the order of nature repeatedly by about five persons including the accused in this case and the intolerable pain suffered on the anal canal lead the girl to commit suicide. How far the prosecution succeeded in proving the offence alleged against the accused,

who faced trial in this Sessions Case is the main point to be decided now. Only if the commission of sexual offence by the accused is proved, there is necessity of entering into the point whether the said sexual abuse prompted or abetted the girl to end up her life. At this juncture, the learned counsel for the accused argued that as per the prosecution version, there are five persons involved in the commission of the offence. Though the exact time and period of the offence committed by each of the accused is not specified, the definite case of the prosecution is that those persons have committed independent sexual offences against the girl at different points of time. Prosecution has no case that the offences were committed by the accused in the course of same transaction or with common intention. Hence according to the learned counsel, separate F.I.Rs ought to have been registered by the police in respect of each of the accused, whenever it has come to the knowledge of the investigating officer that more than one person have committed separate offences against the girl. In support of said argument, the learned counsel relied on the judgment of the Hon'ble Supreme Court of India in **Anju Chaudhary v. State of U.P. and Another (2012 KHC 4760)**, **Sreekumar P v. State of Kerala and Others (2018 KHC 6196)** and **Pattu Rajan v. State of Tamil Nadu (2019 KHC 6361)**.

42. On going through the decisions relied by the learned defence counsel, I am of the opinion that the facts of those cases are different from the facts of the case in our hand. In **Anju Chaudhary's** case (referred supra), the Hon'ble Supreme Court held that *“On the plain construction of the language and scheme of S.154, S.156 and S.190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of S.154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in - charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of S.173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered”*. In **Sreekumar's** case also (referred supra) the Hon'ble Supreme Court held that *“In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being*

taken note of and tried on merits in accordance with law". Similarly, in Pattu Rajan's case (referred supra) the Hon'ble Supreme Court held that "In case a fresh offence is committed during the course of the earlier investigation, which is distinct from the offence being investigated, such fresh offence cannot be investigated as part of the pending case, and should instead be investigated afresh. It is pertinent to note that the facts on hand are similar to the facts in the case of Awadesh Kumar Jha v. State of Bihar, 2016 KHC 6017 : 2016 (3) SCC 8 : 2016 (1) KLD 276 : 2016 (1) SCALE 200 : AIR 2016 SC 373 : 2016 (1) KLT SN 84 : 2016 CriLJ 1129, wherein this Court held that the case arising out of a second FIR, if relating to a separate transaction, cannot be investigated along with a previous FIR under the clause 'further investigation' as contemplated under Sub-S.8 to S.173 of the Cr.P.C".

43. In all the above cases, the Hon'ble Supreme Court held that when a fresh offence was committed during the course of investigation of the crime which is distinct from the offence being investigated, the registration of fresh F.I.R is not barred. But in none of the above decisions it is held by the Hon'ble Supreme Court that it is mandatory to register fresh F.I.Rs when the commission of similar offence by another accused has come to the knowledge of investigating officer during the course of investigation on the basis of the first F.I.R. Fresh investigation and fresh registration of F.I.Rs are mandated

by the Hon'ble Supreme Court only in the case where a distinct and different offence has been committed during the pendency of the earlier crime or commission of a distinct offence has come to the knowledge of the investigating agency after the filing of final report. Is it necessary to register a fresh F.I.R in a particular case is a matter which depends upon the facts and circumstances of the case. In the case in our hand, the prosecution case is that during an interval of about two years all the accused have intermittently committed similar offences against the deceased girl. The F.I.R in this case was originally registered under Sec. 174 of Cr. P.C for unnatural death of the girl. The involvement of several persons in the commission of the offence against the deceased girl came to the knowledge of the investigating officer when he recorded the statements of witnesses. Therefore, on completion of investigation he filed split charges against each of the accused. Statements of witnesses were collected in respect of each of the accused separately. Therefore it cannot be said that the moment involvement of another accused had come to the knowledge of the investigating officer, he had to register new F.I.Rs one after another. More over, nothing was brought out during cross-examination of the material witnesses or during argument to show that any prejudice has been caused to the accused due to the non-registration of separate F.I.Rs against him. It is settled position of law that the registration of

F.I.R is the first stage by which the criminal law was set into motion. In this case, the F.I.R was registered on the basis of information regarding unnatural death of the girl received by PW14, the Addl. Sub Inspector from PW1. He registered the F.I.R. under Sec. 174 Cr. P.C and subsequently investigation was proceeded with. The alleged involvement of the accused in the commission of the crime came into light only during the investigation conducted by PW24, the Dy. Supdt. of Police, who headed the Special Investigation Team. Therefore, I find no merit in the argument of the learned defence counsel regarding non-registration of separate F.I.Rs by the investigating officer.

44. When going through the evidence of prosecution witnesses and from the arguments of learned Special Public Prosecutor, it is clear that there is no direct evidence regarding the involvement of the accused in the commission of the offences alleged. The prosecution is mainly relying on the circumstantial evidences to contend that the accused has committed grave sexual offence against the victim girl and it is due to that reason, she committed suicide. It is settled position of law that in a case wherein circumstantial evidence only is available against the accused, then the chain of circumstances must in all probability leads towards the guilt of the accused. The golden rules to be followed in the case of circumstantial evidence is laid

down by the Hon'ble Supreme Court in **Hanumant Govind Nargundkar V. State of M.P. (AIR 1952 SC 343)**. The court held that *“It is well to remember those in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused”*.

In **Bhagat Ram v. State of Punjab (1954 KHC 533)**, the Hon'ble Supreme Court held that *“where a case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt”*.

In **Sharad Birdhichand Sardar Vs. State of Maharashtra, (AIR 1984 SC1622)**, the Hon'ble Supreme Court held that *“A close analysis of this*

decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793 : 1973 SCC (Cri) 1033 : 1973 CriLJ 1783) where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused”.

The Hon’ble Supreme Court in **Chengal Reddy v. State of A.P, (AIR 1996 SC 3390)** held that *"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."*

It is in the light of the above principles; the evidence adduced by the prosecution in this case has to be analyzed.

45. The Prosecution is mainly relying on the postmortem findings to say that the girl was subjected to carnal intercourse against the order of nature repeatedly and she suffered intolerable pain. The evidence of PWs 3 and 4 are relied by the prosecution to contend that the girl had been going to the house

of the accused and that gave opportunity for the commission of the offence by the accused. The evidence of PW20 is also relied to prove that the accused had been residing near to the house of the victim girl. Whether these evidences relied by the prosecution sufficiently proves the guilt of the accused is to be analysed now.

46. The accused did not dispute the fact that he had been residing with his wife in a rented house situated near to the house of the victim girl. More over, it is deposed by PW20 that he rented out his house to the accused in the year 2016. From the evidence of PWs 3 and 4, the parents of the victim and PW20, the house owner of the accused, it is proved that the accused had been residing in that house. It is proved from the evidence of PWs 3 and 4, the parents of the victim girl that she had been visiting the house of the accused. This evidence given by PWs 3 and 4, the parents of the victim and PW20, the house owner of the accused is not rebutted by bringing out any contradicting circumstances and hence it can be accepted as far as the first circumstance that the victim girl had been visiting the house of the accused and thus he obtained an opportunity to commit the offence against the girl.

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

girl to sexual abuse or carnal intercourse. PWs 5 and 6, who are examined by the prosecution to prove that the victim girl had disclosed about the bad behaviour of the accused to them, turned hostile to the prosecution and denied their statements allegedly made to the police. Hence, there is no evidence either direct or substantial to say that the accused committed rape and carnal intercourse against the victim girl as alleged by the prosecution is the argument of the learned defence counsel. During the examination of PWs 5 and 6, the contradictory portions of their Sec. 161 Cr. P.C. statements were marked at the instance of the learned Special Public Prosecutor as Exts. P3 and P4 respectively. In Ext.P3, the portion of the statement of PW5, who claimed that she was a friend of the deceased girl, it is stated that the victim had told her that the accused took the victim girl to his house on several occasions by offering chocolate and after making her to sit on his lap doing something. In Ext.P4 portion of the statement of PW6, it is stated that when the victim girl and himself had been going to the house of the accused, the accused scolded PW6 and did not permit him to enter into his house. Though these portions were put to the investigating officer and proved as contradictions, they cannot be relied as substantive evidence. The contradiction in Sec. 161 Cr. P.C. statement of the prosecution witnesses can be used to discredit the witnesses to say that they are deposing falsehood

before the court. The said contradictions cannot be accepted as proved evidence. Therefore even if it is proved that PWs 5 and 6 are deposing falsehood with a view to help the accused, there is nothing to rely in their evidence to say that the accused has committed sexual offence against the victim girl.

48. After taking over the investigation, PW24 collected thirty one items from the scene of death of the girl for chemical analysis. Similarly, he seized the clothes of the accused. He collected samples for DNA profiling also. All the material objects collected from the scene of death and the clothes of the accused were sent for chemical analysis. But there is no chemical analysis report to show that any semen or human spermatozoa was found in the items collected by the investigating officer. Though PW7, the doctor, who conducted postmortem examination opined that there was evidence suggestive of unnatural sexual offence on the girl in the form of multiple episodes of anal penetrations in the past, said opinion given by the expert is not a conclusive proof to say that the girl was subjected to anal penetration. An expert evidence can only be used for the purpose of corroboration. In this case there is absence of substantive evidence to be corroborated by the opinion evidence given by PW7. Therefore, absolutely there is absence of scientific evidence to connect the accused with the alleged offence.

49. During cross-examination of PW25, it has come out that he handed over the investigation to PW24 on 09.03.2017. From 06.03.2017 to 09.03.2017, PW24 did not get any piece of evidence against the accused. Admittedly, none of the witnesses named the accused, till PW24 took over the investigation. It is admitted by PW24 in his cross-examination that though he arrested the accused on 10.03.2017, even on 09.03.2017 the accused was in his custody. According to PW24, the accused was arrested only on the basis of his confession statement. But what prompted PW24 to take the accused into custody when none of the witnesses named him to the police till 09.03.2017 is unknown. Even though PW24 deposed that the accused had confessed the guilt and hence he was arrested on 10.03.2017, it has come out in evidence that the confession of the accused was recorded by PW24 only after obtaining his police custody from the court after his arrest and remand in judicial custody. If the accused had given a confession statement to PW24, what prevented him to record that confession before arresting the accused is not explained. In none of the statements of witnesses recorded under Sec. 161 Cr. P.C, the time of recording of those statements were noted by the investigating officer. If the accused was in the custody of PW24 on 09.03.2017 as admitted by him, then there is force in the argument of the learned defence counsel that it is after taking into custody of the accused, the

statements of witnesses were manipulated by the investigating officer to suit his case.

50. Some of the clothes of the accused were seized on the basis of Ext.P20(a) recovery statement of the accused. According to the investigating officer, the accused confessed that if he is taken, he would show the room and produce the clothes. The relevant portion of the confession statement of the accused is marked as Ext.P20(a) through PW24. There is absolutely no relevancy for this alleged confession of the accused for the purpose of completing the chain of circumstance put forward by the prosecution. In order to accept the confession made to a police officer as provided under Sec. 27 of the Indian Evidence Act, the facts disclosed and thereby discovered should be within the exclusive knowledge of the accused and it should be connected with the crime committed. But in this case, prosecution case itself is that prior to Ext. P20(a), the investigating officer had come to know from the statements of witnesses about the place of commission of the offence. Hence the disclosure of the place of commission of offence as his house by the accused as claimed by PW24 cannot be taken as a new disclosure which is coming under the purview of Sec. 27 of the Indian Evidence Act. Even though some clothes were claimed as discovered on the basis of the confession of the accused, there is nothing in evidence to show that the

clothes were worn by the accused while committing the offence against the victim girl. There is no scientific or other evidence to say that the accused was wearing those dresses at the time of commission of the offence and he concealed them in a place within his exclusive knowledge. Hence the alleged disclosure statement of the accused is also not helpful for the prosecution.

51. On analysing the entire evidence adduced by the prosecution as discussed above, it is clear that in the chain of circumstances only two circumstances are proved by the prosecution. First one is that the accused had been residing near to the house of the victim girl in a rented house and the second one is that the accused had an opportunity to commit an offence against the victim girl when she had visited his house either for playing or for obtaining tuition. But there is absence of any other circumstance to link the accused with the commission of the alleged offences. Therefore, I have no hesitation to hold that prosecution has miserably failed to prove the alleged offences against the accused beyond reasonable doubt. The accused is therefore entitled to be acquitted of the offences charged. Points answered accordingly.

52. **Point Nos. 9 and 10:-** In the light of my findings on points 1 to 8, the accused is entitled to be acquitted of the offences punishable under sections 376(2) (i) and (n), 377, 305 and 354 of IPC, Sec. 5(l) and (m) read

with Sec. 6 and Sec. 7 read with Sec. 8 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (va) of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act. Points answered accordingly.

In the result, the accused is not found guilty of the offences punishable under Sec. 376(2) (i) and (n), 377, 305 and 354 of IPC, Sec. 5(1) and (m) read with Sec. 6 and Sec. 7 read with Sec. 8 of the Protection of Children from Sexual Offences Act and Sec. 3(1) (w) (i) and Sec. 3(2) (va) of the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act and he is acquitted under Sec. 235(1) Cr. P.C. The bail bond of the accused stands cancelled and he is set at liberty.

Disposal of MO1 to MO3 series can be considered after ascertaining the status of the case pending against the child in conflict-with-law before the Juvenile Justice Board.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court on this the 30th day of September, 2019.

Special Judge/ Ist Additional Sessions Judge

APPENDIX

The following witnesses were examined for the Prosecution :

PW1 : Radhakrishnan.

- PW2 : Arumughan.
PW3 : Shaji @ Sheri.
PW4 : Bhagyavathi
PW5 : Sumathi
PW6 : Akhil Prasad.
PW7 : Dr. P.B. Gujaral, Police Surgeon, District Hospital, Palakkad.
PW8 : Pushpadas, Civil Police Officer.
PW9 : Jayakumar.M.K., Grade Assistant Sub Inspector of Police.
PW10 : V. Dharmarajan, Civil Police Officer.
PW11 : Ajumudheen, Team Member, Special Investigation Team.
PW12 : K. Chandrakumar, Village Officer, Pudussery East Village.
PW13 : Balachandran, Secretary, Pudussery Grama Panchayat.
PW14 : P.C. Chacko, Sub Inspector of Police.
PW15 : Dr. Aboobacker, Asst. Surgeon, District Hospital, Palakkad.
PW16 : Unnikrishnan.K., Scientific Assistant, Regional Forensic Science Laboratory, Thrissur.
PW17 : Murukesan.
PW18 : Kaverikutty.P., Tahsildar, Palakkad Taluk.
PW19 : P.M. Mohammed Shareef, Tahsildar, Cherthala.
PW20 : Unnikannan..K.
PW21 : Sunil
PW22 : Ratnamma, Headmistress, G.L.P School, Pampampallam.
PW23 : Sreejesh.
PW24 : M.J. Sojan, Deputy Superintendent of Police, Narcotic Cell, Palakkad.
PW25 : Premanandakrishnan, Circle Inspector of Police.

For the Defence : Nil

The following Exhibits were marked for the Prosecution :

P1 : 04.03.2017 : Certified copy of F.I.S.

P1(a)	: 04.03.2017	: Certified copy of F.I.R.
P2	: 05.03.2017	: Certified copy of Inquest Report.
P3	: 09.03.2017	: Certified copy of Relevant portion of 161 statement of PW5.
P4	: 20.04.2017	: Certified copy of Relevant portion of 161 statement of PW6.
P5	: 05.03.2017	: Certified copy of Postmortem Certificate.
P6	: 05.03.2017	: Certified copy of Seizure Mahazar.
P7	: 09.03.2017	: Certified copy of Seizure Mahazar.
P8	: 09.03.2017	: Certified copy of Seizure Mahazar.
P9	: 10.03.2017	: Certified copy of Seizure Mahazar.
P10	: 31.03.2017	: Certified copy of Seizure Mahazar.
P11	: 19.05.2017	: Certified copy of Seizure Mahazar.
P12	: 19.04.2017	: Scene Plan.
P13	: 19.04.2017	: Certified copy of Scene Plan.
P14	: 17.05.2017	: Certified copy of Income Certificate
P15	: 17.04.2017	: Ownership Certificate
P16	: 17.04.2017	: Certified copy of Ownership Certificate
P17	: 20.04.2017	: Certified copy of Ownership Certificate
P18	: 10.03.2017	: Potency Certificate.
P19	: 10.03.2017	: Certificate of collection of material objects from the body of a person for chemical examination, DNA profiling, examination at FSL, etc.
P20	: 15.03.2017	: Certified copy of Scene Mahazar
P20(a)	: 15.03.2017	: Certified copy of Relevant portion of confession statement of the accused.
P21	: 26.04.2017	: Community Certificate.
P22	: 09.05.2017	: Caste Certificate
P23	: 06.03.2017	: Certified copy of Scene Mahazar
P24	:	: Certified copy of Extract of Admission Register.
P25	: 07.03.2017	: Certified copy of Seizure Mahazar.

- P26 : 08.03.2017 : Certified copy of Proceedings of the Director General of Police, North Zone, Kozhikkode.
- P27 : 09.03.2017 : Order No. 1963/DCRB/09 P (received through E-Mail Message) from the District Police Chief, Palakkad.
- P28 : 10.03.2017 : Copy of Arrest Memo.
- P29 : 10.03.2017 : Copy of Inspection Memo.
- P30 : : Certified copy of Section alteration report.
- P31 : : Certified copy of Report for adding name and address of accused.
- P32 : 28.03.2017 : Certified copy of Section alteration report.
- P33 : 07.03.2017 : Certified copy of Section alteration report.

For the Defence :

- D1 : 09.03.2017 : Certified copy of Relevant portion of 161 statement of PW3.
- D2 : 06.03.2017 : Certified copy of Relevant portion of 161 statement of PW4.

Material Objects marked:

MO1 - Petticoat

MO2 Series - Note Book (2 Nos.)

MO3 - Papers.

Special Judge/ Ist Additional Sessions Judge

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

1. Serial No. :

2. Name of Police Station and : Walayar Police Station
Crime No. of the offence : Crime No. 240-A/2017.
3. Description of the accused : Pradeep Kumar, S/o Muraleedharan
Nair, aged 32 years, Kadapallil
House, Nagam Kulangara, Wayalar
East Village, Cherthala Taluk,
Alappuzha District.
4. Date of :
Occurrence : On several occasions from January,
2016 till 12.09.2016
Complaint : 07.06.2017
Apprehension : 10.03.2017
Released on Bail : 25.01.2019
Commitment :
Commencement of trial : Charge framed on 24.11.2018
and evidence commenced on
05.03.2019
Close of trial : 30.07.2019
Date of Judgment : 30.09.2019

Explanation for the delay : Pending of old cases.

Special Judge/ Ist Additional Sessions Judge

Typed by: Radhika. P.S.
Compared by: Bindhu.K.

Fair/copy of Judgment in

S. C. No. 401/2017

Dated : 30.09.2019

