

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE,
ERNAKULAM**

(For the trial of cases relating to Atrocities & Sexual Violence against
Women and Children)

PRESENT:

Sri. K.Soman, Addl. District & Sessions Judge

Tuesday, the 14th day of November, 2023/ 23rd Karthika 1945

Sessions Case No. 1385 of 2023
Aluva East Police Station Crime No. 720/2023

Complainant:-

State of Kerala represented by the Inspector of Police,
Aluva East Police Station.

By Special Public Prosecutor : Sri. G.Mohan Raj

Accused:-

Asafak Alam, aged 28 /2023,

**By Advs: Adeep M., Santhy S., Sandhya Rani, Dency P.V.,
Surjith S.R., Akhil George, Shalu Jose,
Aparna Somarajan, Anjumol C.A., Deepthy B.**

Offences : U/s. 366A, 364, 367, 328, 376AB, 376 (2)
(j), 376 (2) (m), 376 (2) (n), 377, 302, 297,
201 of Indian Penal Code, Sec. 5 (i), (l) (m)
r/w.6 of the Protection of Children from
Sexual Offences Act, 2012 and Sec.77 of
the Juvenile Justice (Care and Protection
of Children) Act, 2015.

- Plea of the accused : Not guilty
- Finding : The accused is found guilty of the offences punishable u/s. 366A, 364, 367, 328, 376AB, 376 (2) (j), 376 (2) (m), 376 (2) (n), 377, 302, 297, 201 of Indian Penal Code, Sec. 5 (i), (l) (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 and Sec.77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and he is convicted thereunder.
- Sentence or Order : 1) The accused is sentenced to undergo rigorous imprisonment for 5 (five) years and pay a fine of Rs.10,000/- (Rupees Ten thousand only) for the offence u/s.201 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 3 (three) months.
- 2) The accused is sentenced to undergo rigorous imprisonment for 1 (one) year for the offence u/s.297 of Indian Penal Code.
- 3) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and pay a fine of Rs.25,000/- (Rupees

Twenty five thousand only) for the offence u/s.364 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 6 (six) months.

4) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and pay a fine of Rs.25,000/- (Rupees Twenty five thousand only) for the offence u/s.366A of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 6 (six) months.

5) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and pay a fine of Rs.25,000/- (Rupees Twenty five thousand only) for the offence u/s.367 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 6 (six) months.

6) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years

and pay a fine of Rs.25,000/- (Rupees Twenty five thousand only) for the offence u/s.328 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 6 (six) months.

7) The accused is sentenced to undergo rigorous imprisonment for 3 (three) years and pay a fine of Rs.10,000/- (Rupees Ten thousand only) for the offence u/s.77 of the Juvenile Justice (Care and Protection of Children) Act, 2015. In default of payment of fine, the accused shall undergo rigorous imprisonment for 3 (three) months.

8) For the offence u/s.376 (2) (j) of Indian Penal Code, the accused is sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused

shall undergo rigorous imprisonment for 1 (one) year.

9) The accused is further sentenced to undergo imprisonment for life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only) for the offence u/s.377 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.

10) For the offence u/s.5 (i) r/w.6 of the Protection of Children from Sexual Offences Act, 2012, the accused is sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.

11) For the offence u/s.5 (l) r/w.6 of the Protection of Children from Sexual

Offences Act, 2012, the accused is sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.

12) For the offence u/s.5 (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012, the accused is sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.

13) For the offence u/s.302 of Indian Penal Code the accused is sentenced to death

and I direct that he be hanged by the neck till he is dead. Further, he is sentenced to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year for the said offence.

This proceedings shall be submitted before the Hon'ble High Court of Kerala for confirmation of the death sentence u/s.366 Cr.P.C and the death sentence shall not be executed unless it is confirmed by the Hon'ble High Court.

After the fine amount is realised it shall be paid to PW.1 and PW.37 the parents of the deceased as compensation u/s. 357 (1) Cr.P.C.

The term sentences imposed as above shall run concurrently. The accused shall first undergo the term sentences before the

commencement of his life sentences which run concurrently. Set off is allowed.

Description of the accused

Name of the Police Station and Crime No.of the offence	Name	Father's Name	Occupation	
Crime No. 720/2023 Aluv East P.S.	Asafak Alam	Naimul Hak	--	
Residence	Age	Occurrence	Date of Complaint	
	28/2023	28.07.2023	28.07.2023	
			29.07.2023	
Release on Bail	Committal	Commencement of Trial	Close of trial	Sentence or Order
Custody	Nil	04.10.2023	30.10.2023	14.11.2023
Service of copy of Judgment or finding on accused	Explanation for delay			
14.11.2023	No delay			

The Sessions case coming on for hearing before me, upon perusing the records of evidence and proceeding and upon duly considering the same after hearing the Public Prosecutor and Counsel for the accused on 30-10-2023, I do adjudge and deliver the following.

JUDGMENT

This is a case charge sheeted by the Inspector of Police, Aluva East Police Station in crime No.720/2023 alleging offences u/s. 366A, 364, 367, 328, 376 (2) (n), 376AB, 376A, 377, 302, 297, 201 of Indian Penal Code and Sec. 4(2) r/w.3 (a), 6 r/w.5 (m), (l) (j) (iv) (i) of the Protection of Children from Sexual Offences Act, 2012.

2. The prosecution case in brief is as follows : The victim girl aged 5 years originally belonged to Bihar was residing with her parents and siblings in a rented house on the side of a road parallel to the railway track near garage railway gate at Thayikattukara in Choornikkara Village. The accused is residing in another building nearby the rented building of the victim's family. On 28.07.2023 at about 3.00 pm the accused enticed and taken the victim girl offering sweet drink to the nearby shop by name Najiya stores and from there the accused purchased mango juice for the victim. Thereafter they have crossed the road and travelled in a KSRTC super fast bus bearing No.KL-15-A-2082 and alighted at a stop near Seemas Textiles, Aluva. Thereafter the accused has taken the victim to South-Western corner of Aluva Municipal market wherein waste materials are being dumped. It is a vacant area and having bushes. The accused was having intention to sexually abuse the victim girl and he realised that the victim may cry and create noise when he sexually abuse her. Therefore,

between 3.15 pm and 5.33 pm on 28.07.2023 the accused has administered liquor to the victim and made her to be semi conscious. Thereafter he has committed rape and aggravated penetrative sexual assault on the victim by penetrating his penis into her vagina and also by inserting his fingers and penis into her anus causing injury to her private parts. After satisfying his sexual lust, in order to keep the incident as secret the accused has used the T-shirt of the victim girl as a ligature and murdered the victim girl by strangulation. Having confirmed the death of the victim girl the accused has caused injury on the face of the victim by pressing with a granite stone. In order to make the evidence of the alleged offences disappear the accused has put waste material like cloths, plastic waste etc. on the dead body along with granite stone pieces. The accused has concealed a sandal and the remaining part of the dress of the victim in a gap of the compound wall and the other sandal was thrown into the Periyar river situated on the western side of the place of occurrence. After returning from the place of occurrence the accused has washed his hands, legs and face using soap and water by taking water from the tap on the road side in order to remove the evidence of the offences committed by him. Therefore the accused is alleged to have committed the above mentioned offences.

3. The accused was arrested on 29.07.2023 and he was remanded to judicial custody since 30.07.2023. He is in judicial custody even now. As he was

not able to arrange a lawyer of his own choice, he was provided with legal aid by the District Legal Services Authority, Ernakulam during crime stage itself. Advocate Adeep M., the Chief Defence Counsel of the Legal Aid Defence Counsel System, Ernakulam and his team of lawyers in the Legal Aid Defence Counsel System appeared for the accused.

4. The police filed final report in this case on 01.09.2023. On 07.09.2023 the accused was produced before this Court and he was furnished with copies of prosecution records through his lawyer. Advocate G.Mohan Raj was appointed by the government as Special Public Prosecutor to conduct this case on behalf of the prosecution. Advocates Sandhya Raju and Thanuja George were appointed by District Legal Services Authority, Ernakulam u/s.40 of the Protection of Children from Sexual Offences Act, 2012 to provide legal assistance to the victim family. After hearing both sides and perusing the prosecution records a charge U/s. 366A, 364, 367, 328, 376AB, 376 (2) (j), 376 (2) (m), 376 (2) (n), 377, 302, 297, 201 of Indian Penal Code, Sec. 5 (i), (l) (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 and Sec.77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 was framed read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

5. PWs.1 to 43 were examined on the side of the prosecution and

Exts.P1 to P95 series were marked. M.O.s 1 to 10 also were marked.

6. Throughout the days of recording the oral evidence of the prosecution witnesses Advocate Bini Elizabeth the interpreter was present and she explained the oral evidence of the witnesses in Malayalam to the accused in Hindi language in compliance with Sec.279 of the Criminal Procedure Code.

7. After the prosecution evidence, the accused was questioned u/s. 313 (1) (b) of Cr.P.C. and he denied all the incriminating evidence adduced against him. Here also, Advocate Bini Elizabeth interpreted the questions u/s.313 Cr.P.C. to the accused in Hindi language and she translated his answers to Malayalam. Moreover, a written statement u/s.313 (5) of Cr.P.C prepared by the counsel for the accused in Malayalam was translated and explained to the accused in Hindi by the translator in open court and thereafter obtained his signature in the statement. In the statement the accused contended that he was falsely implicated in this case. He was apprehended by police while he was wandering on a derailed mental condition. One Pathan Sheik and his men are the real culprits in this case and this accused was implicated in order to save the real culprits. After the accused was taken into custody Cws.3 to 45 were brought to the accused to identify him and they were permitted to take his photos in the mobile phone. Moreover his photos and videos were transmitted in electronic and social media and also in the newspapers.

8. After hearing both sides and perusing the prosecution evidence I did not find any reason to acquit the accused u/s.232 Cr.P.C and therefore the accused was called upon to adduce defence evidence if any. DWs.1 and 2 were examined on the side of the accused and Exts.D1 to D9 also were marked. The oral evidence of DWs.1 and 2 also were interpreted to the accused in Hindi.

9. Heard both sides.

10. The points that arise for determination are:-

1. Whether the accused is guilty of procurement of victim girl aged 5 years by inducing her to go along with him from the premises of her residence as alleged ?
2. Whether the accused is guilty of abducting the victim girl aged 5 years for the purpose of murder as alleged ?
3. Whether the accused is guilty of abducting the victim girl aged 5 years in order that the girl may be subjected to grievous hurt and unnatural lust of the accused as alleged ?
4. Whether the accused is guilty of administering liquor to the victim girl aged 5 years with an intention to facilitate the commission of rape, unnatural offences and murder as alleged ?
5. Whether the accused is guilty of committing rape on the victim girl aged 5 years as alleged ?

6. Whether the accused is guilty of rape on the victim girl aged 5 years who was incapable of giving consent due to tender age and intoxication as alleged ?
7. Whether the accused is guilty of committing rape on the victim girl aged 5 years resulting grievous bodily harm to her vagina and anus as alleged ?
8. Whether the accused is guilty of repeated commission of rape on the victim girl aged 5 years as alleged ?
9. Whether the accused is guilty of committing carnal intercourse against the order of nature with the victim girl aged 5 years by penetrating his penis and inserting his finger into her anus as alleged ?
10. Whether the accused is guilty of murder of the victim girl aged 5 years by strangulation as alleged ?
11. Whether the accused is guilty of showing indignity to the dead body of the victim girl aged 5 years by covering the body with waste materials, putting granite stones on the body and deface with granite stone having knowledge that the feelings of the parents, relatives and well-wishers of the victim girl are likely to be wounded or the religion of the victim is likely to be insulted as alleged ?

12. Whether the accused is guilty of causing disappearance of the evidence of the murder of the victim girl aged 5 years by hiding the dead body, dress and sandal of the victim as alleged ?
13. Whether the accused is guilty of penetrative sexual assault on the victim girl aged 5 years causing grievous hurt and injury to her sexual organs as alleged ?
14. Whether the accused is guilty of repeatedly committing penetrative sexual assault on the victim girl aged 5 years as alleged ?
15. Whether the accused is guilty of committing penetrative sexual assault on the victim girl aged below 12 years as alleged ?
16. Whether the accused is guilty by administering liquor to the victim girl aged 5 years a juvenile as alleged ?
17. If so, what is the punishment to be awarded to the accused ?

11. **Point Nos.1 to 16** :- For the sake of convenience these points are being discussed together. This case was registered by police on 28.07.2023 at 20.07 hours on the basis of the F.I.Statement given by PW.1 the mother of the victim girl in this case. Her F.I.Statement was marked as Ext.P1 and it was given

by her at 7.10 pm on the same day after approaching Aluva West Police Station. Ext.P1 was prepared in Malayalam and it reveals that PW.1 belong to Bihar State knowing Hindi had given statement to the police and it was translated to Malayalam with the help of translator and prepared in the official Laptop of the police. In Ext.P1 it was stated that her 5 year old daughter was missing from 2.00 pm onwards on 28.07.2023 from her rented house at Garage side. She has no employment and her husband is employed in Gypsum interior work at Palakkad. They have four children and PW.1 and the children are residing in the rented building belong to one Mohammed Salim at Thayikkattukara Garage side in Chornikkara Village. It was alleged in Ext.P1 that while PW.1 went for collecting cloths kept for drying at about 2.00 pm a person called as Bangalee residing in the upstairs of the building taken away the child. PW.1 inquired about the child in the surroundings and a person who is conducting a chicken shop nearby informed that a person aged about 28 years with a height of about 5 feet and having beard was found going with the child. On further inquiry she could realise that that man with the child had moved towards Thrissur side in a bus after boarding from Garage bus stop. The child was wearing a blue coloured T-shirt and blue coloured pant. The person who taken the child is a stranger to her. She was inquiring for the child in the nearby places and that was stated as the reason why she delayed in reporting the matter to the police.

12. In the box PW.1 deposited in support of Ext.P1 statement and it was marked through her which contains her signature. The age of PW.1 is 28 years now. She deposed that the victim girl in this case is her second daughter and she was born in a hospital at Uchaikot in Bihar State on 14.05.2018 and her age is 5 years now. She was admitted in first standard in the Thayikkattukara Pipe Line School Complex.

13. PW.37 is the husband of PW.1 and the father of the victim girl. He is aged 34 years. He also deposed in the same manner as deposed by PW.1 that the victim girl is their second daughter and she was born in Bihar on 14.05.2018. PW.37 also deposed that the child was admitted for the first time in Thayikkattukara Pipe Line School complex. During re-examination PW.37 clarified that he has four children and the elder three children including the victim were born in Bihar and the younger son was born at Kalamassery. In this case there is charge against the accused alleging offences u/s. 5 (i),(l) r/w.6 of the Protection of Children from Sexual Offences Act, 2012, Sec.77 of the Juvenile Justice (Care and Protection of Children) Act and Sec.366A of Indian Penal Code. In all these offences it is the duty of the prosecution to prove that the age of the victim involved in this case is below the age of 18 years. Age below 12 years is to be proved in respect of the offences u/s.376AB of Indian Penal Code and Sec.5(m) of Protection of Children from Sexual Offences Act, 2012 included

in the charge.

14. There is no provision in the Protection of Children from Sexual Offences Act, 2012 or Indian Penal Code or in the Juvenile Justice (Care and Protection of Children) Act as to the mode of proof of the age of victims of a crime. Sec.34 (2) of the Protection of Children from Sexual Offences Act, 2012 mandates that if the question of juvenility is raised by the person produced in connection with an offence under the POCSO Act or if a question raised whether such person is a child or not, such question shall be determined by the Special Court after satisfying about the age of such person and it shall record in writing its reasons for such determination. Still the procedure to be followed to determine the question is not mentioned in the POCSO Act. In **Jarnail Singh v. State of Haryana, AIR 2013 SC 3467** the Apex Court has considered this aspect with reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 framed under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and held that, *“even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime”*. The same view was taken by the Apex Court in **Mahadeo v. State of Maharashtra (2013) 14 SCC 637** and in **State of Madhya Pradesh v. Anoop Singh (2015) 7 SCC 773** also.

15. The Juvenile Justice (Care and Protection of Children) Act 2000 has been repealed by the Juvenile Justice (Care and Protection of Children) Act 2015. Sec.94 (2) of the said Act deals with the evidence that can be relied on by the Child Welfare Committee or the Juvenile Justice Board for ascertaining the age of a child in conflict with law. In view of the dictum of the Apex Court in **Jarnail Singh** and other decisions mentioned above, the evidence or documents mentioned in Sec.94 (2) of the Juvenile Justice (Care and Protection of Children) Act 2015 has to be relied on by this court for ascertaining the age of the victim girl. In **Sofikul Islam v. State of Kerala, 2022 (7) KHC 252** the Hon'ble High Court of Kerala has held that *"It is relevant to note that under S.94 of the JJ Act of 2015, a marked departure is made from the erstwhile statute and not only the certificate from the school but a date of birth certificate from the matriculation or equivalent certificate from the concerned examination Board is also acceptable as proof of age. The JJ Act of 2015 does not mandate that a certificate from the school first attended is required. With effect from 01.01.2016, proof of age is to be determined in the event of a dispute by relying upon the date of birth certificate from the school or the matriculation or the equivalent certificate from the Examination Board as the first step. Only in the absence of the above documents, the age can be determined by reference to the birth certificate of the local authority. The decisions in **Alex v. State of Kerala, 2021 (4) KLT 480** and*

Rajan v. State of Kerala, 2021 (4) KLT 274, therefore, have no application as they both related to incidents prior to the coming into force of the JJ Act of 2015”.

The Hon'ble High Court has also held that the age in Aadhaar card can never be accepted as proof of age.

16. In this case, as already mentioned PW.1 the mother and PW.37 the father have deposed that the victim girl in this case is their second daughter and she was born on 14.05.2018. They have also deposed that their child was admitted in the first standard in Thayikkattukara School Complex. The alleged incident in this case was on 28.07.2023 and she joined in the first standard in the present academic year.

17. PW.20 is the Head Mistress incharge of Thayikkattukara School Complex L.P.School and she deposed that their school is situated in Aluva Pipe Line road. She has stated that the child murdered in this case is the student of their school in the first standard. As required by the Court she had produced the admission register maintained in their school. In the admission register, it is revealed that the victim girl the daughter of PW.37 has been admitted in their school on 22.05.2023 in the first standard with an admission No.1721 and the date of birth of the child was recorded as 14.05.2018. PW.20 further stated that this register was taken into custody by the police during the course of investigation and it was returned to her on Ext.P22 Kachit. The relevant entry

mentioned above was recorded in page number 55 of the register and the true copy of the said page was marked as Ext.P23. The relevant entry was marked as Ext.P23(a). Moreover, PW.20 deposed that she had given admission extract of the said register relating to Ext.P23 to the police and that document was marked as Ext.P24. She further stated that Ext.P23(a) entry was made by her.

18. During cross examination PW.20 deposed that the Assistant Education Officer had visited their school on 10.08.2022 and at that time he has signed in page No.49 of the said register. It shows the authenticity of the register maintained by PW.20 in their school. She denied Ext.D3 found in her statement u/s.161 of Cr.P.C that she had stated before the Investigating Officer that the date of birth of the child is 18.05.2018. She clarified that 14.05.2018 was the date of birth stated by her to the Investigating Officer. This version of PW.20 was admitted by PW.43 the Investigating Officer stating that the date was mistakenly noted by him as 18.05.2018 instead of 14.05.2018.

19. The learned Special Public Prosecutor relied on the decision of the Hon'ble High Court of Kerala in **Maju v. State of Kerala, 2020 (3) KLT 373** which held that *"the first among the certificates made mention of in the said provision is the date of birth certificate from the school. If the date of birth certificate from the school can be relied on for determining the age of the child*

for the purpose of the Juvenile Justice (Care and Protection of Children) Act, 2015, in the light of the decisions of the Apex Court in Jarnail Singh and Mahadeo, according to me, in the absence of evidence to the contrary, such certificates can be accepted as conclusive proof of age of the victim in a criminal proceedings as well”.

20. In **P.Yuvaprakash v. State represented by Inspector of Police, AIR 2023 SC 3525**, the Apex Court held that *“Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court”.* Thereafter the Hon’ble Supreme Court found that a transfer certificate produced in proof of date of birth and age of the victim cannot be relied on as it was not a document mentioned in Sec.94(2) of the Juvenile Justice (Care and Protection of Children) Act.

21. Kerala Education Act 1958 was enacted by the State Legislature to

provide for the better organisation and development of educational institutions in the State providing a valid and comprehensive educational services throughout the State. Kerala Education Rules 1959 were made by the Government of Kerala in exercise of the powers conferred by Section 36 of the Kerala Education Act, 1958. Chapter VI of the Rules deals with the admission of students in school. Rule 1 in Chapter VI shows that “the application signed by the parent or guardian of the pupil shall be accompanied by a certified extract from the Register of Births showing the date of birth of the pupil, but in case where it is satisfactorily explained to the Headmaster why the said extract cannot be produced, a declaration from the parent/guardian or in the case of an orphan a certificate from a registered medical practitioner regarding the date of birth of the pupil shall be accepted. All such applications shall be filed separately in the records of the schools”. This provision is relevant because PW.20 has answered to a Court question that their school is an aided school and they are given salary by the Government. She has also stated that the Assistant Education Officer has conducted the visit of their school. It indicate the fact that the school wherein the victim was studying and PW.20 is the Head Mistress incharge is governed by the provisions of the Kerala Education Rules and the admission register is maintained under the Kerala Education Rules. It follows that PW.20 was performing her duty under the provisions of the Kerala

Education Rules while admitting the student through the admission register. In **Harpal Singh v. State of Himachal Pradesh AIR 1981 SC 361** the Hon'ble Supreme Court has held that, *"Entry made by the concerned official in the discharge of his official duties, that it is therefore clearly admissible under S.35 of the Indian Evidence Act and that is not necessary for the prosecution to examine its author"*. Therefore the admission register is a relevant piece of evidence under section 35 of the Indian Evidence Act apart from its evidentiary value u/s.94 (2) of the Juvenile Justice (Care and Protection of Children) Act.

22. On 30.10.2023, in **Manak Chand @ Mani v. State of Haryana, 2023 KHC OnLine 6962**, a three judge bench of the Apex Court observed that date of birth in the register a school will not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth. In this case PW.20 made the entry in the register and PW.37 is the person who gave the date as seen from Ext.P23(a). So there cannot be any dispute on the date of birth of the victim shown in Ext.P23(a).

23. Section 2 (d) of the Protection of Children from Sexual Offences Act, 2012 defines a 'child' as a person below the age of 18 years. The date of birth of the victim is 14.05.2018 and the alleged incident in this case was on 28.07.2023. That means, the victim was just above 5 years at the time of the

alleged incident. Exts.P23 and P24 also show the date of birth of the child as 14.05.2018 and it is an admissible document in the first category under section 94 (2) of the Juvenile Justice (Care and Protection of Children) Act. Therefore the prosecution has proved that the victim girl in this case is a child u/s.2 (d) of the POCSO Act and also a girl below the age of 12 years for the purpose of section 376AB of Indian Penal Code and Section 5 (m) of the Protection of Children from Sexual Offences Act, 2012.

24. The learned Special Public Prosecutor submitted that in Ext.P38 post-mortem certificate PW.26 the doctor has reported that the dead body of the child was found to be having 20 teeth. Relying on this aspect the learned Prosecutor submitted that the number of teeth of an adult person is 32 and 20 numbers of teeth found in the dead body can be considered to find out the dental age of the child and it would show that she was aged 5 years at the time of the alleged incident. The learned Prosecutor relied on the decision of the Apex Court in **Dilip v. State of Madhya Pradesh (2013) 14 SCC 331** and **Kailash v. State of Madhya Pradesh (2013) 14 SCC 340** in support of this contention. However, in view of section 94 (2) of the Juvenile Justice (Care and Protection of Children) Act the scientific method of ascertaining the age can be adopted only if the document mentioned in the first two categories are not available and such test should be conducted under the orders of the Court. In this case, Ext.P23 and

P24 satisfied the requirement of age proof in the first category itself as envisaged u/s.94 (2) of the Juvenile Justice (Care and Protection of Children) Act.

25. In the box PW.1 the mother of the victim deposed that on 28.07.2023 at about 2.00 pm she went out of the house for taking cloths kept outside for drying. At that time her children including the victim were playing near their gate. It was a holiday for the school on 28.07.2023. While she was taking the cloths she felt itching as infected by insects. Therefore she returned home with cloths and went to bathroom. By that time her husband had called her over her mobile phone. After taking bath she found the missed call of her husband in her mobile phone and therefore she called him back. At that time her husband informed that he had received information that somebody took the victim girl through road. Thereafter PW.1 started searching for the child but she could not be located. PW.1 called her husband again asking as to who informed this message to him. The husband of PW.1 was working at Palakkad in connection with the sale of Gypsum sheets. PW.1 was informed by her husband that Guljar working in the chicken stall nearby communicated this message to him.

26. PW.37 is the husband of PW.1 and the father of the victim girl. He has also stated that the victim girl was studying in the school in the

Thayikattukara Pipe Line Complex and she was missing on 28.07.2023. He was in work place at Palakkad at that time and in the afternoon PW.8 Guljar called him over phone informing that somebody taking away his daughter. Immediately after knowing about this he called PW.1 over phone but she did not respond. Thereafter PW.1 called back and this message was passed to PW.1. In the night PW.37 returned to Aluva.

27. PW.37 deposed that his mobile number is 7970677080 and the mobile number of his wife is 8714577081. He further stated that both mobile connections are in his name. PW.1 also has given evidence in the same manner about the mobile numbers used by herself and her husband. PW.35 is the Nodal Officer of Bharti Airtel company and he deposed that the customer of the mobile number 7970677080 is Manjay Kumar (PW.37). Ext.P60 is the customer application form and Ext.P60(a) is the Aadhaar card copy of PW.37. Ext.P61 is the call details record (CDR) in respect of this number on 28.07.2023. He has also produced a certificate under section 65 B of Evidence Act marked as Ext.P62.

28. PW.35 has also given evidence to the effect that the mobile number 8714577081 stands in the name of Manjay Kumar (PW.37) and Ext.P58 is the customer application form. Here also the Aadhar card copy of PW.37 is

the ID proof and it was marked as Ext.P58(a). Ext.P59 is the call details of this number on 28.07.2023. PW.35 deposed that there was incoming call from 8714577081 to 7970677080 on 28.07.2023 at 15:42:24 hours. Ext.P61 further shows incoming call from 8714577081 to 7970677080 at 16:33:08 hours. Similar calls are shown in Ext.P59 also as outgoing calls. So the contact between PW.1 and PW.37 as deposed by them is proved by Ext.P59 and P61 and also by the oral evidence of PW.35.

29. PW.8 deposed that he is working as a sales man in Quality chicken shop at Aluva Garage for the last 7 years and he is a native of Assam State. One Paulson is his employer. He know PW.37 and his family as they are residing nearby his residence. He identified the accused herein as the person who approached him 2-3 days prior to the alleged incident seeking an accommodation for him and PW.8 had arranged accommodation for him in that locality. He further stated that on 28.07.2023 Friday at about 2.00 – 3.00 pm he found the accused herein in front of his shop with the victim girl herein the daughter of PW.37 and he was found crossing the road with the child. He was busy with work in the shop and after some time he contacted PW.37 over phone and informed that somebody taken his child. Thereafter PW.1 the wife of PW.37 came to his shop and inquired about it. PW.1 also deposed that as informed by PW.37 she had contacted PW.8 in the chicken shop and witnessed the CCTV

visuals there which revealed that a man was taking away her child.

30. PW.8 identified the accused with reference to his name and he deposed that his mobile number is 6001315890. PW.35 deposed that as per Ext.P61 CDR there was call from this number to the mobile number of PW.37 7970677080 at 15.09.37 hours on 28.07.2023. This also connects and corroborates oral testimony given by PWs.1, 8 and 37. PW.36 is the Nodal Officer of Reliance Jio Infocom Limited and he deposed that he had given the customer application form copy of the mobile number of 6001315890 in respect of Guljar Hussian to the police and that document was marked as Ext.63. Ext.P63(a) is the Election ID card copy of PW.8. The CDR of this number dated 28.07.2023 was produced by PW.36 and it was marked as Ext.P64. Ext.P65 is the certificate u/s.65B(4) of the Evidence Act. PW.36 also deposed that at 15.09.37 hours there was call from 6001315890 to the mobile number 7970677080 on 28.07.2023 as recorded in Ext.P64 CDR. This also corroborates the prosecution case that PW.8 called PW.37 informing the incident of kidnapping or abduction of the victim girl by a man later on identified as the accused herein and thereafter PW.1 and PW.37 were contacted.

31. In the box PW.1 identified M.O.1 a black small chappal of her daughter and M.O.2 black pant worn by the victim girl on 28.07.2023. She has

also identified a part of a T-shirt with a cap as worn by her daughter on that day and it was marked as M.O.3. The Investigating Officer had filed a petition seeking permission to get M.O.3 identified by PW.1 in the office of this Court and it was allowed. Accordingly, M.O.3 was identified by PW.1 on 04.08.2023. M.O.3(a) was identified by PW.1 as part of M.O.3 T-shirt of her daughter. According to the prosecution M.O.1 and M.O.3(a) were discovered subsequently from the gap of the compound wall near the place where the dead body of the victim girl was found after the accused was given in police custody whereas M.O.2 and M.O.3 were found on the dead body.

32. In the open court visuals from CCTV footages collected by the Investigating Officer from various shops were played while PW.1 was examined. She stated that she can identify her child from the CCTV visuals. The case of the prosecution is that they had collected the DVRs (Digital Video Recorder) with hard disk from various shops nearby the place of occurrence. Moreover, they had collected NVR (Network Video Recorder) relating to the CCTV network in Aluva market area and kept in the Aluva Municipal office for the purpose of proving the fact that the cameras had captured the visuals of the accused and the victim girl on 28.07.2023 as both of them were moving from the premises of her house to the waste dumping area behind Aluva market. These records and also two pen drives were sent to the Forensic Science Laboratory. After

examination the hard disks from the DVR and also the pen drives the Forensic Science Laboratory, Thiruvananthapuram had sent two reports marked as Ext.P27 and P29 which are admissible u/s.293 Cr.P.C. Along with Ext.P27 report the Forensic Science Laboratory had annexed a pendrive of the visuals copied from the hard disk. Later on, those hard disks taken out from the respective DVRs were identified by PW.21 the Assistant Director of State Forensic Science Laboratory, Thiruvananthapuram as M.Os.6 to 9. The pendrive sent by PW.21 along with Ext.P27 report was marked as Ext.P28. Similarly two DVDs were annexed with Ext.P29 report marked as Exts.P30 and P31. According to the prosecution a certificate under section 65 B of the Evidence Act is not required for Ext.P28 as it is part of Ext.P27 report of the Expert and Ext.P30 and P31 DVDs are part of Ext.P29 report. Moreover as per the standard operating procedure of the Forensic Science Laboratories these types of pen drive or DVDs which are part of their reports of examination need not be accompanied by a certificate u/s.65B of the Evidence Act. The Forensic Science Laboratory reports itself explained hold the visuals were copied and that itself is sufficient compliance of Section 65B of Evidence Act.

33. In the open court Ext.P28 pendrive was played while PW.1 was examined. She identified her daughter in the visuals in Ext.P28. Ext.P28 contained video clippings in five separate files marked as Q1 to Q5. PW.1

identified her daughter in the visuals played in the video clippings marked in Q1 to Q4. The markings of the visuals were done while PW.21 the Expert from Forensic Science Laboratory was examined. PW.1 has also identified four photographs of her daughter shown to her in the Court and these photos were subsequently marked as Ext.P25 series.

34. PW.1 has deposed that the factum of missing of her daughter was first reported to the police by their landlord and another person by name Benny. She was searching for her daughter in the surroundings and the neighbourhood. She has also deposed that at the time while she saw her child when she was going out for taking cloths the victim was playing with her younger sister. PW.2 another eye witness also stated that the victim was found playing with one or two children. It was argued by the learned counsel for the accused that the non-examination of the child or children who were found with the victim just before she was taken into custody by the accused is suspicious. It was replied by the learned Special Public Prosecutor that the victim girl is aged 5 years and her younger sister is aged about 3 years only. Due to her tender age the child who is the younger sister of the victim was avoided by the Investigating Officer as she is incapable of giving oral testimony either before the police or in Court.

35. According to PW.1 the police party came there and they were also in search of the child. They asked for the photographs of the child and thereafter

she was directed by the police to go to the police station. Accordingly at 7.10 pm she went to the police station and gave Ext.P1 F.I.Statement. On the basis of Ext.P1, Ext.P66 F.I.R was registered by PW.38 the Sub Inspector of Police. He recorded Ext.P1 also with the assistance of a translator in the laptop in Malayalam language. PW.13 is the landlord of both PW.1 and the accused as two buildings adjacent to each other situated in Garage area near Pulinchodu Metro Station belong to his father Zakkir Hussain. He stated that he was called as Shalu also. This is relevant because PW.8 says that he arranged accommodation for the accused through Shalu his landlord. PW.13 deposed that PW.1, PW.8, PW.12 and the accused are residing in his building. He further stated that on 28.07.2023 he was informed that a child residing in his building is missing and accordingly he along with one Benny went to the police station for reporting the matter.

36. PW.38 the Sub Inspector who recorded Ext.P1 and registered Ext.P66 F.I.R deposed that after registering F.I.R u/s.363 of Indian Penal Code the matter was informed to his higher officials and also to the police control room in his district as well as in other districts. PW.43 the Investigating Officer who is the Inspector SHO attached to Aluva West police station also deposed that on 28.07.2023 he came to know about the missing of a five year old girl belong to Bihar State and accordingly he sent wireless message to different police stations

and control rooms to search for the child. Moreover he rushed to the Aluva Garage side and checked the CCTV cameras in different shops. Accordingly he identified the visuals of abduction of child in the CCTV camera of Quality chicken shop on the road side. He collected the visuals and accordingly he circulated it to the police net work through whatsapp for the purpose of locating the child and also the culprit. He has also stated that he contacted PW.1 and thereafter she was sent to the police station for the purpose of registering F.I.R. PW.38 had answered during cross examination that before Ext.P1 F.I.Statement two persons had informed the police about the missing of the girl as deposed by PW.1 and PW.13. So all these evidence corroborates with each other and confirms the genuineness of the prosecution case to that extent.

37. PW.2 is the loading worker of Garage area in Thayikkattukara. He deposed that he know the victim residing nearby and he has seen her going to school and shop. That child was found missing on 28.07.2023 and on that day he has seen the child at about 2.50 pm playing with other children in the way in front of her house. At that time PW.2 was standing nearby the railway cross. He has witnessed the accused taking custody of the child and moving towards Najiya Stores nearby and the accused was holding the hand of the child. Thereafter they have crossed the railway track and the public road. The accused taken the child in his hands and moved towards the Garage bus stop and from

there boarded in a transport bus stopped there when a lady gave hand signal to stop it. Later on, he has found the mother of the child inquiring and searching for the child in the nearby premises and he informed her that he has seen the child going with a man. PW.2 further stated that they did not prevent the accused while going with the child because he thought that they are relatives. He has shown the place from where the child was taken by the accused and also the bus stop to the Investigating Officer. Moreover, he has given statement to the learned Magistrate u/s.164 Cr.P.C regarding the incident narrated by him and that statement was marked as Ext.P3.

38. PW.2 further stated that on 31.07.2023 he has seen the police party collecting a pendrive from the shop by name 'Ideal Systems' after copying the CCTV visuals and at that time a seizure mahazar was prepared in which he signed as a witness. He identified Ext.P2 the seizure mahazar. During cross examination he denied Ext.D1 statement in his u/s.161 Cr.P.C that he came to know about the kidnapping or abduction of the child after viewing the CCTV visuals. In re-examination PW.2 clarified that he had given statement to the Investigating Officer that he had seen the accused holding the hand of the child and crossing the road. Thereafter he was found boarding a KSRTC bus towards Aluva side along with the child.

39. PW.15 is the person conducting a computer service shop by name

'Ideal Systems' near Aluva Garage. He deposed that on 31.07.2023 afternoon PW.43 the Investigating Officer and two policemen came to his shop and wanted CCTV visuals in their shop of 28.07.2023 afternoon. Accordingly PW.15 shown the visuals to the police and he has also noted the visuals that the accused identified by him in the box walking along the road with a child and thereafter crossing the road. As required by the police PW.15 copied the CCTV visuals in a pen drive and handed over to PW.43 with a certificate u/s.65 B of Evidence Act. Ext.P13 is the certificate and Ext.P14 is the pen drive handed over to the police by PW.15. Ext.P2 seizure mahazar was prepared by PW.43 at that time and it was signed by PW.2 as a witness.

40. As stated earlier, Ext.P14 pen drive also was sent to the Forensic Science Laboratory from this Court for examination and thereafter along with Ext.P27 report PW.21 the Expert has copied the visuals from Ext.P14 pen drive also in Ext.P28 pen drive along with other visuals copied from hard disks marked as M.Os.6 to 9. Video clippings in Q2 shown in Ext.P28 relates to Ext.P14 visuals. During cross examination of PW.15 the video clipping in Q2 in Ext.P28 was played and he identified the visuals there as the visuals from his shop copied in Ext.P14. In the visuals it was found the accused walking along the road and crossing the road with the child at 2.56 pm and 3.00 pm respectively. As already mentioned PW.1 has identified her child in the video clipping in Q1 to Q4

in Ext.P28. Ext.P14 pen drive was also played in the open court while PW.15 was in the box for the purpose of identification and comparison of Q2 videos in Ext.P28 and the videos in Ext.P14. During cross examination PW.15 deposed that it was the Circle Inspector who handed over Ext.P14 pen drive to him for copying the CCTV visuals.

41. PW.3 is the salesman in Najiya Stores near railway level cross at Aluva Garage. He deposed that he is selling fruits, vegetables, groceries and cooldrinks in his shop. He identified the accused in the box and stated that on 28.07.2023 the accused had visited his shop and purchased articles from there. He further stated that he know the victim girl murdered in this case as she is residing nearby his shop and used to come to his shop for purchasing goods. He has given the name of the child also to show his proper understanding about the identity of the child. PW.3 further stated that on 28.07.2023 after about 2.45 pm the accused came to his shop with the victim girl and the victim wanted the accused to have 'kinder joy' a chocolate. As instructed by the accused PW.3 gave 'kinder joy' to the child and accused gave him a currency note of Rs.50/-. PW.3 returned Rs.5/- and then the accused realized the cost of the item purchased. He wanted PW.3 to have some drinks having less price. Accordingly PW.3 sold a mango juice packet namely Maaza worth Rs.10/- and then 'kinder joy' was returned to PW.3. After collecting Rs.5/- from the accused he gave

Rs.40/- as balance. Thereafter PW.3 has found the accused giving the juice packet to the child and they crossed the railway track and then went to the main road.

42. In the evening PW.3 found PW.1 searching for the child. PW.3 remembered that the accused was wearing a saffron colour dhoti and blue T-shirt. The T-shirt was identified by PW.3 as M.O.4 and the dhoti was identified as M.O.5. PW.3 further stated that the child was in a baniyan and nicker. Najiya Stores wherein PW.3 is working is having CCTV coverage and PW.3 deposed that on 30.07.2023 police came to their shop and verified the CCTV visuals. Thereafter they have seized the visuals from there. He has given statement to the learned Magistrate u/s.164 Cr.P.C regarding these matters and that statement was marked as Ext.P4. PW.17 is a person supplying drinking water to the shop and he deposed that on 02.08.2023 at about 4.00 pm he found the police party led by PW.43 in Najiya Stores near Aluva Garage and taking custody of the DVR after sealing it. He has witnessed in the seizure mahazar of the DVR marked as Ext.P17. PW.43 also deposed about the seizure of DVR with M.O.9 hard disk as per Ext.P17 from Najiya Stores. The time displayed in M.O.9 was 17 minutes slower than IST as per Ext.P17 mahazar. It was mentioned in Ext.P27 report of Forensic Science Laboratory also.

43. Video clippings Q5 in Ext.P28 pen drive supplied by Forensic Science

Laboratory, Thiruvananthapuram along with Ext.P27 report relates to Najiya Stores recorded in M.O.9 hard disk in the DVR. It was played in open court while PW.3 was examined. PW.3 identified the visuals in Q5 video clippings as the visuals from his shop and he has identified himself in the visuals engaged in sale of articles from the shop. He has identified the accused in the box as the person found in the visuals with M.O.4 T-Shirt and M.O.5 Saffron colour dhoti. It was at 14:24:19 hours on 28.07.2023 as displayed in the visuals. These answers were given by PW.3 while file No.3 in the video clippings in Q5 was played.

44. Thereafter file No.2 in Q5 video clippings in Ext.P28 was played. The time in that visuals starts at 13:58:30 hours on 28.07.2023. Its view is towards fruits and vegetables in the shop of PW.3. There also the accused was found in the visuals and PW.3 has identified him. The time was 14:23:35 hours at that time. PW.3 explained that the accused had purchased rice, tomato etc from his shop before he visited his shop along with the child. At 14:23:41 hours the accused was found holding tomatoes in the shop of PW.3. At 14:33:55 the child was found along with the accused and that was also seen in the visuals. He has given statement to the learned Magistrate regarding this matter and the statement was marked as Ext.P4.

45. In this context it is relevant to consider the oral testimony of PW.12, Chandra who is a neighbour of the accused in the Mukkath building. She

deposed that she know PW.1, PW.37 and the victim child as residing in the nearby building. She also know the accused residing in the same building wherein she is residing. She deposed that on 28.07.2023 the accused approached her at her residence in the afternoon seeking permission to use the electricity for his purpose because there was no electric supply to the room of the accused. The accused was found drunk at that time and PW.12 refused to supply electricity to him and she closed the door. Then the accused who was holding tomato, chicken, onion etc put these articles on the front side of her door and left the place. Thereafter at about 2.45 pm PW.1 came to her residence searching for her child because the child usually visits her house and nearby places.

46. PW.4 is the gate keeper working in the level cross at Aluva Garage side and he is an employee under Indian Railway. He know the victim girl as residing nearby and usually going to that area for playing. On 28.07.2023 Friday PW.4 was on duty from 2.00 pm till 10.00 pm and at about 3.00 pm he has found the child walking along with another man crossing the railway track. PW.4 identified the accused herein as the person who was found along with the child at that time. At about 4-5 pm he found the mother of the child walking here and there and talking over phone. During cross examination he deposed that he came to know about the news about the missing of the child on the next day

morning while perusing his mobile phone. PW.31 the Section Engineer of Southern railway, Aluva is the superior officer of PW.4 and he deposed that PW.4 was on duty at Garage gate railway level cross on 28.07.2023 from 2.00 pm till 10.00 pm and issued Ext.P47 certificate to that effect.

47. PW.5 is also a loading worker at Aluva Garage and he deposed that on 31.07.2023 after 1.00 pm he found the police party in the chicken stall near Aluva Garage. PW.43 the Investigating Officer also deposed that he had visited Quality chicken center, Aluva Garage and taken custody of the DVR of CCTV camera from there as per Ext.P5 seizure mahazar. PW.5 has witnessed in Ext.P5 seizure mahazar and he deposed that he signed in Ext.P5 in front of the chicken stall. PW.1 the mother of the child has identified the victim girl in the visuals from Quality chicken wherein PW.8 Guljar Hussian was working and it is the video clipping Q1 in Ext.P28 pen drive played while PW.1 was examined.

48. PW.14 is the son of Paulson Thomas who is conducting Quality chicken at Aluva Garage wherein PW.8 is working as a salesman. He deposed that on 28.07.2023 he was at his house as it was a holiday for his college. At that time he was asked by his father to come to their chicken stall to check the CCTV visuals there because there is a complaint of missing of a child. Accordingly he went to the chicken stall and checked the CCTV visuals. In the CCTV visuals from their shop he found a man walking along the road with a child

and the man was wearing a blue shirt and saffron colour dhoti. It was also found in the visuals that that man boarded in a KSRTC bus with the child. Another important fact deposed by PW.14 is that on verification he has found the date and time shown in the CCTV visuals different. Instead of 28.07.2023 the visuals in the shop displayed the date 08.05.2023. Similarly the time shown in the visuals was one hour 10 minutes faster than the normal time. He has handed over the copy of the visuals to the police on the same day. In this context, it is to be noted that PW.43 deposed that he had collected visuals from the chicken stall and circulated among police officials in search of the child as well as the assailant. PW.14 further stated that he had corrected the time and date in the DVR on the same day night. Later on, the DVR and adaptor were taken possession of by PW.43 and they have seized it after sealing the same. As referred earlier Ext.P5 dated 31.07.2023 the seizure mahazar prepared by PW.43 and witnessed by PW.5.

49. While PW.14 was in the box also Ext.P28 pen drive was played. According to the prosecution Q1 video clippings in Ext.P28 is the CCTV visuals from Quality chicken. When it was played PW.14 also identified the visuals from their shop and he found the date as 08.05.2023 Mon 15:53:47 displayed in the visuals. According to PW.14 this description is incorrect and he has corrected it

as mentioned earlier. He has also deposed that the visuals displayed the presence of a person wearing saffron colour dhoti and blue shirt crossing the road with a child and boarding a KSRTC bus on the other side of the road. He has identified his father and PW.8 in the visuals.

50. PW.6 is a lady residing at Paravur Kavala. She deposed that on 28.07.2023 it was a holiday due to Muharam and therefore she went to meet her mother residing on the backside of Pulinchodu Metro Station along with her three children. She had reserved tickets for a show at 3.30 pm at Karnival theatre at Kariyad near Athani. Therefore, at about 2.50 pm she started from the house of her mother along with her three children and two children of her brother. They walked along the road towards Garage side from Pulinchodu Metro Station. At that time a KSRTC Super fast bus going to Mananthavaadi was found coming and she gave hand signal to stop the bus, When the bus was stopped she and five children boarded the bus. There was not much passengers in the bus. She occupied a seat opposite to the back door and at that time when the bus was about to move a person came with a child and hurriedly boarded the bus She identified that person as the accused herein. She noticed that the chappal of the child was dropped on the steps of the bus and the automatic door of the bus could not be closed due to the hindrance caused by the chappal.

Therefore she pointed out the chappal to the accused. He took it and moved forward. She further stated that the child was also trying to invite the attention of the accused about the dropped chappal. After few minutes both of them alighted near Seemas Textiles, Aluva. At that time PW.6 thought that they have alighted from the bus due to the high fare of the super fast bus. On the next day in the mobile phone she found the photo of this child as the status of her friend with a caption that the child is missing. She identified the child and informed the previous day incident to her husband. Subsequently her husband informed this to the police. Later on, the police visited their house and she handed over the bus tickets in favour of herself and children to the police. The bus ticket was marked as Ext.P6 and its photo copy taken from the court was marked as Ext.P6(a) for the reason that the bus ticket may get faded.

51. On perusal of Exts.P6 and P6(a) it is seen that the time of the issuance of the ticket was at 15:06:04 hours on 28.07.2023. The first ticket is for Rs.93/- for three persons at the rate of Rs.28/- from Aluva to Angamaly. It is to be noted that the intention of PW.6 was to reach the cinema theatre at Kariyad and it is near Angamaly. Half tickets for two children at Rs.23/- each was also taken by her and it was also produced along with other tickets. It shows the genuineness of the testimony of PW.6 because she was travelling with her three children and two children of her brother. Ext.P6 the tickets are for five persons of

which two are small children. She was holding her small child.

52. PW.6 was directed by the learned Magistrate to attend Test Identification Parade at Sub Jail, Aluva on 01.08.2023 and PW.6 deposed that she had attended the Test Identification Parade and signed there. Her signature in the report was identified in the box and it was marked as Ext.P7 (a). The Test Identification Report of the Judicial First Class Magistrate -II, Aluva was marked as Ext.P7 u/s.291A Cr.P.C. Ext.P8 is the statement given by PW.6 to the learned Magistrate u/s.164 Cr.P.C narrating these facts. In fact, the learned Special Public Prosecutor has not relied on Ext.P7 Test Identification Report for the reason that the photographs and visuals of the accused were published in the social media, electronic media and in the newspaper before the Test Identification Parade was conducted on 01.08.2023.

53. It is interesting to note that PW.6 was shown video clippings Q1 in respect of Quality chicken recorded in Ext.P28 pen drive. Then she identified herself in the video walking along the road side holding her younger child followed by the other children and she was wearing the same dress worn by her at the time of evidence. She identified it as the visuals of herself and the children boarding the bus followed by the accused and the child. M.O.4 T-shirt of the accused was identified by PW.6 in the box. She further stated that the child was wearing a dress with cap. She has also stated that the child was

holding a juice packet though it was not there in her previous statement.

54. PW.7 is a loading worker in Aluva market and he deposed that the market would be busy from 2.00 am onwards because unloading work starts at that time. The business in the market starts by 4.00 am and by about 3.00 pm the business in the market will be over. On 28.07.2023 he was on duty since 8.00 am onwards and his duty time was till 6.00 pm. After having lunch he was sitting in VKD vegetable shop in the market after about 3.P.M. At that time he found the accused herein walking along the road with a child. He approached the accused and ascertained as to who the child is. He answered by mixing Hindi and Malayalam and with gestures that it is his daughter. He was moving towards the area where the waste materials are being dumped from the market situated on the back side of the market. Therefore PW.7 asked as to why they are moving towards that side. Then the accused answered with a gesture that he was going there for consuming alcohol. There are persons utilizing this vacant area for collecting waste materials as well as for consuming alcohol. He found the accused and the child going towards that side and thereafter PW.7 was engaged in his work.

55. On the next day he joined for duty at 8.00 am as usual and he has done his work till about 10.00 - 11.00 am. Thereafter he recharged the network connection of his mobile phone and on viewing the Facebook he found the

CCTV visuals of the same child and the accused in the Facebook with a news that the child is missing. The accused was wearing a saffron colour dhoti and a blue T-shirt. Immediately he informed this to his fellow workers and also to the police. The police reached there immediately and verified the CCTV visuals in the nearby shops. Thereafter the police party came in a police jeep with a person covering his face with a mask and they moved towards the back side of the market where the waste is dumped. That area was blocked by the police. The police wanted four persons to witness the inquest and PW.7 moved to that side along with three other witnesses. From there he has found the dead body of the child who was found with the accused on the previous day. He has witnessed the inquest conducted by the police from there and signed in Ext.P9 inquest report. He has also deposed that the accused was later on found at Aluva Sub Jail for Test Identification Parade and he has signed in Ext.P7(b) which is part of the report of the Judicial First Class Magistrate. He has also given statement to the learned Magistrate u/s.164 Cr.P.C and that statement was marked as Ext.P10.

56. While PW.7 was in the box Ext.P28 pen drive was again played in the open court. The video clippings in Q4 with two files were played. Q4 video clippings relates to VKD vegetables in Aluva market. When the second file was played PW.7 identified the area which is the road and a banyan tree there and

the waste dumping area was stated as the place on the road side turning from the banyan tree. At this junction PW.7 found the accused with the child walking slowly and the time shown in the visuals was 15:14:44 hours on 28.07.2023. PW.7 clarified that he talked with the accused just prior to this visuals. PW.7 also identified the visuals from EKS vegetables in respect of the same area with the road and banyan tree and in that visuals also the accused and the child were found at 15:15:10 hours. The child was in blue black dress and the accused was in saffron colour dhoti and blue colour T-shirt.

57. Ext.P30 DVD was played in the open court in front of PW.7 and it was received from the Forensic Science Laboratory along with Ext.P29 report dated 18.09.2023. The visuals in that DVD was identified by PW.7 as the view of waste dumping area on the back side of Aluva market. That visuals time started from 3.00 pm on 28.07.2023. At 3.14 pm the accused was found passing through that area with the child. That visuals were marked as Ext.P30(a). The visuals were reported in Ext.P29 as genuine and the accused and the victim were identified with reference to their photos in Exts.P25 and P26.

58. Ext.P9 Inquest report prepared by PW.43 on 29.07.2023 and witnessed by PW.7 and other three persons indicate the description of the scene of the dead body of the victim girl hidden inside the waste materials and granite stones. It is mentioned in Ext.P9 that the inquest was started at 12.30 pm and

completed at 3.00 pm. Thereafter the body was moved to Kalamassery Medical College and the post-mortem examination was started at 3.30 pm as seen from Ext.P38 report of PW.26. In the oral testimony of PW.26 as well as in the post-mortem report it was stated that the dead body was found having ligature covering her neck and according to the prosecution it was the M.O.3 T-shirt of the victim girl converted as ligature. This fact was mentioned in Ext.P9 also.

59. It is relevant to note that in Ext.P9 PW.43 has mentioned the blue coloured pant in the dead body and it was removed by him at the time of inquest. PW.37 the father of the victim girl was present there and he identified the dead body. His statement was recorded by PW.43 in Ext.P9 report. Exts.D5 and D6 were marked during the cross examination of PW.37 as contradictions from his statement in Ext.P9. He denied Ext.D5 statement that he was informed by 'Shemeer' who was conducting chicken stall and according to PW.37 it was Guljar (PW.8) informed the abduction of his child. Ext.D6 relates to the fact that he contacted his wife over phone to inform the missing of his daughter. However, PW.1 and PW.37 clarified that it was a missed call from PW.37 and thereafter PW.1 called him back. PW.43 has deposed and mentioned in Ext.P9 Inquest report that blue pant worn by the victim girl at the time of her death and found on the dead body at the time of Inquest has been seized. The said pant was later on identified by PW.1 as M.O.2. Therefore the contention of the

learned counsel for the accused that the presence of M.O.2 in Court connecting the victim girl could not be established by the prosecution has no substance at all. The presence of Scientific Officer and the collection of samples by her (PW.27) from the dead body as well as from the area were also explained in Ext.P9 by PW.43.

60. PW.32 is the Police Photographer and he deposed that on 29.07.2023 he has visited the place where the dead body of the victim girl in this case was found on the western side of Aluva market for taking photographs as required by the higher officials. He has taken the photographs of the dead body found at the place of occurrence and these photographs were produced in 12 sheets marked as Ext.P48 series. Altogether 48 photos were taken by him at that time. Ext.P49 is a CD containing these photographs mentioned in Ext.P48 series. Along with these documents he has given a certificate u/s.65B of the Evidence Act. Ext.P48 series photographs corroborates the description of the dead body and the area narrated by PW.43 in the Inquest report as well as in the box. M.O.2 pant worn by the victim girl also can be seen in these photographs. The dead body was found beneath waste materials and granite stones and only a part of hand and leg were visible at the first instance. Similar evidence was given by PW.27 also.

61. As discussed earlier, PW.8 the salesman in the Quality chicken stall

deposed that he had found the accused moving along with the victim girl in this case on 28.07.2023 afternoon and he has identified both of them in the visuals of CCTV in their shop while played it in open court. He has also identified himself in the visuals as engaged in the chicken stall. He further stated that he had given his mobile number to the police. The difference in the time and date on these visuals were later on marked as Ext.P28 (a), P28 (aa) and P28 (ab) through PW.21 as video clippings in Q1 in Ext.P28 pen drive annexed with the Forensic Science Laboratory report marked as Ext.P27. The date and time difference as deposed by PW.14 mentioned earlier is corroborated by Ext.P27 through PW.21. This aspect was proved by prosecution through scientific evidence. Identity of the victim and the accused in these visuals also proved through scientific evidence.

62. PW.9 is the salesman in a vegetable shop at Aluva market. He deposed that on 28.07.2023 after 5'o clock he has collected the waste materials in his shop and taken it in a box for dumping the same in the waste land with bushes on the back side of the market. After dumping the waste in that area and while he was returning he found a man coming speedly wearing a saffron colour dhothi and blue T-shirt. PW.9 identified the accused herein as the person found at that place on that day. He further stated that the accused went away through his left side. He has also stated that there are waste materials dumped in that

area. He identified the place when the DVD visuals shown to him in the open court and it was later on marked as Ext.P31. This DVD was sent by the Forensic Science Laboratory along with Ext.P29 report while Ext.P20 pen drive containing visuals from NVR in the Municipal office, Aluva was sent for analysis. In the box he identified himself from the visuals as carrying box and returning after dumping the waste at 17:33:26 hours. He has also identified the accused herein in the said visuals at 17:33:48. The said visuals was marked as Ext.P31(a) through PW.21. It was argued by the learned counsel for the accused that there was no occasion for PW.9 to identify the accused at that place and he is a witness with false statement. But on analysing his oral evidence with Ext.P31 visuals it is clear that what is stated by him is correct because the accused with the dress similar to M.O.4 and M.O.5 were found near to PW.9 while he was turning around after dumping waste and it is quite natural that PW.9 was listening the accused because there were only two persons in that vacant area as seen from the visuals. Later on, it is seen that the accused moved quickly through the left side of PW.9. Therefore the genuineness of the oral testimony of PW.9 is proved by the visuals in Ext.P31.

63. PW.10 is a wholesale vegetable business man at Aluva market and he deposed that on 29.07.2023 after 12.00 noon while he was sitting in his shop he found policemen and people gathered behind his shop. Having seen them he

also went there due to curiosity and at that time PW.43 called him and a loading worker by name Hameed. They followed the police party and the accused through the waste dumping area in the market. He further stated that, "പ്രതിയാണ് മുമ്പിൽ നടന്നത് പ്രതിയുടെ തലയിൽ black തുണി കൊണ്ട് മൂടിയിരുന്നു. പ്രതി body ഉള്ള സ്ഥലം പോലീസിന് ചൂണ്ടി കാണിച്ചു കൊടുത്തു. അവിടെ ചപ്പം കല്ലും മേലെ വെച്ച് മൂടിയ ഒരു ശരീരത്തിന്റെ കയ്യും കാലും പുറത്തു കാണുന്നുണ്ടായിരുന്നു. അവിടെ വെച്ച് പ്രതിയുടെ തലയിലൂടെ ഇട്ട മാസ്ക് ഉയർത്തിയപ്പോൾ അയാളുടെ മുഖം കണ്ടു. അയാൾ കാവി മുണ്ടും നീല ഷർട്ടും ആണ് ധരിച്ചിരുന്നത് . അയാൾ ഇന്ന് കോടതിയിൽ ഉണ്ട്". Accordingly PW.10 identified the accused in the box and further stated that he has signed in a mahazar prepared by police from that place and it was identified by the witness as Ext.P11. During cross examination he deposed that though it was stated by him to the police regarding the dress of the accused, he has no reason why it was not mentioned in his statement. There was no cross examination to the effect that other part of the deposition mentioned earlier was not stated by him to the police. According to the prosecution the dead body was discovered consequent to the disclosure statement of the accused.

64. PW.11 also has witnessed to Ext.P9 Inquest prepared by PW.43. He has also witnessed in Ext.P12 seizure mahazar while PW.43 seized CCTV footages from EKS vegetables at Aluva market on 01.08.2023. As already mentioned, PW.1 and PW.7 have identified the accused as well as the victim girl

in the visuals seized from EKS vegetables marked as Ext.P28 (c), P28 (ca) and P28 (cb) in addition to the report of Forensic Science Laboratory as Ext.P27 in this regard.

65. PW.16 also is a loading worker at Aluva vegetable market and he deposed that on 01.08.2023 he found the police party examining the CCTV visuals of PTJ vegetable shop at Aluva market. He found the seizure of DVR from the shop by the police and he has witnessed in Ext.P15 seizure mahazar. These visuals were included in Ext.P28 pen drive and the accused as well as the victim were identified in those visuals by PW.1, PW.7 and PW.13. The hard disk taken from DVR was identified by PW.21 as M.O.8 and the relevant visuals mentioned above were marked as Ext.P28 (d), P28 (da) and P28 (db).

66. PW.18 is the CCTV technician conducting a shop at Aluva Companyppady with name 'F1 Systems'. He deposed that he had installed CCTV cameras at various wards of Aluva Municipality especially in waste dumping yard of Aluva market as part of the waste disposal project of the Municipality and as per the tender of the Municipality. On 02.08.2023 the police approached him and wanted the visuals to be taken in respect of the CCTV camera installed at the waste dumping area of the Aluva market. As there are several CCTV cameras installed as part of this project its Network Video Recorder (NVR) having huge capacity of recording was installed in the health

section of Aluva Municipality. He went to the Municipal office along with police and examined the visuals in D27 camera installed in the waste dumping area for the period from 3.00 pm to 5.30 pm approximately on 28.07.2023. On verification of these visuals it was found that a person passing through that area with a child and thereafter he was returning alone after 5.30 pm. That visuals were copied in a pen drive supplied by the police and handed over to the police. He has also given a certificate u/s.65B of the Evidence Act in support of the pen drive. The certificate was marked as Ext.P18 and the seizure mahazar prepared by police and witnessed by PW.18 for taking custody of pen drive was marked as Ext.P19. Ext.P20 was identified as the pen drive given by him to the police after copying the visuals.

67. Ext.P30 the Annexure II DVD along with Ext.P29 Forensic Science Laboratory report was played in open court while PW.18 was in the box. He identified these visuals as captured in D27 camera installed in the waste dumping area of Aluva market on 28.07.2023. He has identified the visuals of a man passing through with a child at 15:13:52 hours and it was marked as Ext.P30(a). Thereafter Annexure III DVD attached with Ext.P29 report and later on marked as Ext.P31 was also played. There, PW.18 identified the same visuals as in Ext.P20 pen drive that the person earlier found was returning alone at 17:33:32 hours. In order to have a comparison of the visuals between

Exts.P30, P31 and Ext.P20 these videos were played in open court and PW.18 deposed that the visuals are the same.

68. In this context it is relevant to note that the learned counsel for the accused vehemently argued that there are two other ways to the market and CCTV cameras were installed there also, but its visuals were not verified by the police. For this purpose the learned counsel relied on the oral testimony of PW.18. What was stated by PW.18 during cross examination was there are two ways to the market and one such way is from Pulinchodu to old market. He admitted that there is a camera installed there. But he has no case that the said way is leading to the waste dumping area or the place where the dead body of the child was found. Similarly the witness stated that there is another camera near to the river. The learned counsel for the accused submitted that through the river side there is a way to the place of occurrence and the visuals in the CCTV camera installed there as stated by PW.18 would throw light to the involvement of real culprits in the incident. But there also PW.18 has not stated that there is a pathway through the river side leading to the place of occurrence. Therefore the said contention of the learned counsel for the accused cannot be accepted as something suggesting the latches of the Investigating Agency.

69. It was further argued by the defence counsel that the CCTV visuals in D27 camera after 5.30 pm till the discovery of the dead body on the next day

also should have been collected by the Investigating Agency to rule out the involvement of any other persons in the crime alleged in this case. But the fact remains that the CCTV visuals as well as the oral testimony of the witness mentioned earlier suggesting that the accused was found carrying the victim girl murdered in this case towards the place where the dead body was found and after about two hours he was found returning alone. As already mentioned, Ext.P38 the post-mortem report of PW.26 shows the starting time of post-mortem examination at 3.30 pm and PW.26 deposed that the time of death can be calculated as between 18-24 hours prior to the post-mortem. That means, the death of the child was happened between 3.30 pm and 9.30 pm on 28.07.2023. But the dead body was discovered by PW.43 at about 12.00 noon on 29.07.2023. Therefore there is no relevance for asking for the CCTV visuals on 29.07.2023. As mentioned earlier, Exts.P30, P31 as well as Ext.P20 pen drive visuals indicate the company of the accused with the child while moving towards the area where the dead body was found through the front side of D27 camera in the waste dumping area at about 3.15 pm and the accused was found returning alone after 5.30 pm. There was no proper explanation offered by the accused for leaving the company of the child while returning through the waste dumping area as witnessed by PW.9 and found in the visuals mentioned above. Therefore not much weightage can be given to the above mentioned arguments

of the learned counsel for the accused.

70. PW.19 is conducting MJ Electricals in front of Beverages Corporation outlet at Aluva. He deposed that on 29.07.2023 morning while cleaning the shop and surroundings he found an O.P Ticket issued by District Hospital Aluva in front of the shop. The name of the patient was written as Asafak and he was aware of the accused in this case as it was published in the television and newspaper. Since the name of the accused herein and the name found in the O.P.Ticket are one and the same he kept the O.P.Ticket with him. After 2-3 days he discussed about this O.P.Ticket with his customer and he advised PW.19 to entrust the same to the police. Accordingly on 05.08.2023 at 11.00 am he went to the Aluva East Police Station and produced the O.P.Ticket. That O.P.Ticket was marked through him as Ext.P21. On perusal of Ext.P21 it is seen that the O.P.Ticket was issued by the District Hospital Managing Society on 28.07.2023 at 11.00.07 hours on receipt of Rs.5/-. PW.22 is the doctor working in the District Hospital, Aluva and she identified the accused herein as the person who came to the District Hospital on 28.07.2023 morning at 11.00 am with Ext.P21. She deposed that the accused was having a 7 days old wound on right foot and she had prescribed medicine for him. She has stated that what is written in Ext.P21 was in her handwriting.

71. PW.21 is the Assistant Director of Documents, State Forensic

Science Laboratory, Thiruvananthapuram. She deposed that the Cyber Division of State Forensic Science Laboratory, Thiruvananthapuram has been notified u/s.79A of the Information Technology Act 2000. She would say that on 11.08.2023 she received four sealed packets from this Court containing 4 DVRs, one pen drive and one NVR and 18 photographs. The photographs were that of a child and it was marked as Ext.P25 series through her. The other 14 photographs are that of the accused and they were marked as Ext.P26 series. M.Os.6 to 9 are the hard disks collected from DVR containing visuals dated 28.07.2023. After examining the visuals in the DVR and pen drive and also comparing the photos with the man and the child in the visuals PW.21 issued Ext.P27 report. The details of the DVR with hard disk and pen drive have been shown by PW.21 in Ext.P27 report. The pen drive was marked as Ext.P14 in this case and M.Os 6 to 9 are the hard disks verified by PW.21. They are numbered as Q1 to Q6. Q1, Q3 to Q5 are the DVR System with one hard disk and Q2 is Ext.P14 pen drive. Q6 is the NVR System with 4 hard disks. The NVR which is having huge capacity were not examined by the Expert and she stated that the sterile hard disks for carrying out the forensic examination of the voluminous NVR with 60 TB x 4 capacity were not supplied by the Investigating Agency. Any how, after examining other materials she issued Ext.P27 report.

72. In Page 3 of the report PW.21 has narrated the nature of examination

requested in the forwarding note issued from this Court. They are as follows.

1. Nature of examination as requested in forwarding note :

1. To examine the visuals in camera No 3 in Item No.1 and to copy the CCTV visuals during the incident time on 28.07.2023 from 15.03 Hrs to 15.07 Hrs.
2. Whether the persons exhibited in the standard photographs (Item 7 and 8) are available in the above visuals.
3. Provide the actual date and time for corresponding visuals exhibiting DVR time on 08.05.2023 from 16.13.36 Hrs to 16.17.03 Hrs.
4. To examine the visuals in camera No 3 in Item No.2 and to copy the CCTV visuals during the incident time on 28.07.2023 from 02.41.35 Pm to 03.03.45 Pm.
5. Whether the persons exhibited in the standard photographs (Item 7 and 8) are available in the above visuals.
6. To examine the visuals in camera No 4 in Item No.3 and to copy the CCTV visuals during the incident time on 28.07.2023 from 15.15.09 Hrs to 15.16.19 Hrs and 17.38.47 Hrs to 17.42.07 Hrs.
7. Whether the persons exhibited in the standard photographs (Item 7 and 8) are available in the above visuals on 28.07.2023 from 15.15.09 Hrs to 15.16.19 Hrs and 17.38.47 Hrs to 17.42.07 Hrs.

8. To examine the visuals in camera No 10 in Item No.4 and to copy the CCTV visuals during the incident time on 28.07.2023 from 15.14.41 Hrs to 15.15.33 Hrs and 17.38.24 Hrs to 17.41.42 Hrs.
9. Whether the persons exhibited in the standard photographs (Item 7 and 8) are available in the above visuals on 28.07.2023 from 15.14.41 Hrs to 15.15.33 Hrs and 17.38.24 Hrs to 17.41.42 Hrs.
10. To examine the visuals in camera No 3 in Item No.5 and to copy the CCTV visuals during the incident date and time on 28.07.2023 from 14.41.03 Hrs to 14.56.37 Hrs.
11. Whether the persons exhibited in the standard photographs (Item 7 and 8) are available in the above visuals in DVR on 28.07.2023 from 14.24.03 Hrs to 14.39.32 Hrs (Actual date and Time 28.07.2023 14.41.03 to 14.56.32, system time 17 minutes slow).
12. Provide the actual time for corresponding visuals exhibiting DVR Date and time on 28.07.2023 from 14.24.03 Hrs to 14.39.32 Hrs (system time 17 minutes slow).
13. To examine the visuals in camera No.D27 in Item No.6 and to copy the CCTV visuals during the incident time on 28.07.2023 from 15.00 Hrs to 17.33 Hrs.

14. Whether the persons exhibited in the standard photographs (Item 7 and 8) are available in the above visuals on 28.07.2023 from 15.13.06 Hrs to 15.14.17 Hrs and 17.33.26 Hrs to 17.33.56 Hrs.
15. Whether there is any editing or morphing done in the collected visuals in Item No 1 to 6.
16. Any other useful information for adducing additional evidence before court.

73. PW.21 has explained the nature of examination conducted and the analysis made in the box as well as in Ext.P27. The results of the examination are as follows.

Results of Examination:

- i. The CCTV visuals captured on 2023-07-28 14:43:47 hrs to 2023-07-28 16:06:40 hrs (DVR time 2023-05-08 15:53:47 hrs to 2023-05-08 17:16:40 hrs) on camera-03 were retrieved from the questioned hard disk marked Q1 and soft copy of the retrieved video clipping along with clip list report generated by forensic 'DVR Examiner' is enclosed in a folder named 'Video clipping from Q1' in Annexure-6 pen drive.
 - 1.
- ii. The female child and man (Fig-1 & Fig-2) exposed in the standard photographs marked S1(1) to S1(4) & S2(1) to S2(14)

and the female child and man exposed in the CCTV visuals (Fig-3 to Fig-9), retrieved from the questioned hard disk marked Q1 are the same.

- iii The video file retrieved from the questioned hard disk marked Q1 is found to genuine and no signs of forgery/morphing is detected.
- iv. The CCTV visuals captured on 2023-07-28 14:30:00 hrs to 2023-07-28 15:32:39 hrs on camera-03 were retrieved from the questioned pen drive marked Q2 and soft copy of the same is enclosed in a folder named 'Video clippings from Q2' in Annexure-6 pen drive.
- v. The female child and man (Fig-1 & Fig-2) exposed in the standard photographs marked S1(1) to S1(4) & S2(1) to S2(14) and the female child and man exposed in the CCTV visuals (Fig-10 & Fig-11), retrieved from the questioned pen drive marked Q2 are the same.
- vi. The video files retrieved from the questioned pen drive marked Q2 are found to genuine and no signs of forgery/morphing is detected.
- vii. The CCTV visuals captured on 2023-07-28 15:00:00 to 2023-07-28 16:00:00 hrs & 2023-07-28 17:00:00 to 2023-07-28 18:00:00 hrs on channel-04 were retrieved from the questioned hard disk marked Q3 and soft copy of the retrieved video

clippings along with clip list report is enclosed in a folder named 'Video clippings from Q3' In Annexure-6 pen drive.

- viii The female child and man (Fig-1 & Fig-2) exposed in the standard photographs marked S1(1) to S1(4) & S2(1) to S2(14) and the female child and man exposed in the CCTV visuals (Fig-12 to Fig-14), retrieved from the questioned hard disk marked Q3 are the same.
- ix. The video files retrieved from the questioned hard disk marked Q3 are found to genuine and no signs of forgery/morphing is detected.
- x. The CCTV visuals captured on 2023-07-28 15:00:08 hrs to 2023-07-28 16:00:08 hrs & 2023-07-28 17:00:08 hrs to 2023-07-28 18:00:08 hrs on channel-10 were retrieved from the questioned hard disk marked Q4 and soft copy of the retrieved video clippings along with clip list report is enclosed in a folder named 'Video clippings from Q4' in Annexure-6 pen drive.
- xi. The female child and man (Fig-1 & Fig-2) exposed in the standard photographs marked S1(1) to S1(4) & S2(1) to S2(14) and the female child and man exposed in the CCTV visuals (Fig-15 to Fig-18), retrieved from the questioned hard disk marked Q4 are the same.
- xii. The video files retrieved from the questioned hard disk marked Q4 are found to genuine and no signs of forgery/morphing is

detected.

- xiii. The CCTV visuals captured on 2023-07-28 13:52:45 hrs to 2023-07-28 16:35:53 hrs & (DVR time 2023-07-28 13:35:45 hrs to 2023-07-28 16:18:53 hrs) on camera-02 were retrieved from the questioned hard disk marked Q5 and soft copy of the above retrieved video clippings and video clippings of visuals captured on camera 01, 03 & 04 along with clip list report is enclosed in a folder named 'Video clippings from Q5' in Annexure-6 pen drive.
- xiv The man (Fig-2) exposed in the standard photograph marked S2(1) to S2(14) and the man exposed in the CCTV visuals (Fig-19 & Fig-20), retrieved from the questioned hard disk marked Q5 are the same.
- xv The video files retrieved from the questioned hard disk marked Q5 are found to genuine and no signs of forgery/morphing is detected.
- xvi The questioned NVR marked Q6 could not be examined as the sterile hard disks for carrying out the forensic examination is not supplied.

74. It is seen from the report that PW.21 has copied the visuals in the hard disk of the DVRs marked as M.Os 6 to 9 and also Ext.P20 pen drive in Ext.P28 pen drive as Annexure 6 to Ext.P27 and those visuals figures the

presence of the accused as well as the victim girl. It was identified on the comparison of these visuals with Ext.P25 and P26 photographs of the victim girl as well as the accused. The result of the examination mentioned above indicate that there was no forgery or morphing in the visuals. As already mentioned, these visuals were seized from Najiya Stores, Quality Chicken and Ideal Systems at Aluva Garage near to the house of the victim girl and EKS and PTJ vegetable in Aluva market. In all these visuals the accused and the victim girl were identified.

75. As discussed earlier, PW.14 deposed that the CCTV visuals from Quality chicken run by his father were found to be defective as regards the date and time. This was proved by the scientific examination made by PW.21. Similar variations in M.O.9 DVR were also referred by PW.21 in Ext.P27 report. In other visuals the date is correctly shown as 28.07.2023. Therefore it can be safely concluded that the visuals found by PW.1 from Quality chicken stall which are identified by PW.8 Guljar Hussian were recorded in the afternoon on 28.07.2023 from 14:43:27 hours onwards.

76. As found already, PW.21 had forwarded Ext.P28 pen drive as Annexure -6 of Ext.P27 report. The visuals found in video clippings Q1 to Q5 wherein the victim as well as the accused were found and identified were specifically marked as Ext.P28 (a), P28 (aa), P28 (ab) and P28 (ac) in respect of

video clippings Q1 taken from Quality chicken. Similarly the visuals in Ext.P14 pen drive were copied as video clippings Q2 in Ext.P28. The visuals showing the movement of the victim girl and the accused together in Q2 were marked as Ext.P28 (b) and P28 (ba). As regards Q3 video clippings in Ext.P28 corresponding to EKS vegetables the relevant part of the video to prove the company of the accused and the victim girl on their way towards Aluva market side were identified as Ext.P28 (c), P28 (ca), P28 (cb). Q4 clippings in Ext.P28 pen drive is relating to the CCTV visuals collected from PTJ vegetables in Aluva market corresponding to M.O.8 hard disk. Ext.P28 (d), P28 (da) and P28 (db) are the relevant visuals showing the accused and the victim girl together at about 3.00 pm to 3.15 pm and thereafter the accused was alone found between 5.38 pm and 5.41 pm. Q5 video clippings corresponding to M.O.9 hard disk relates to Najiya Stores, Aluva Garage and the visuals in these video clippings were specifically marked as Ext.P28(e) and P28 (ea) identified by PW.3 and PW.37. PW.37 has identified his daughter in these visuals whereas PW.1 his wife had identified his daughter in Q1 to Q4 visuals. PW.3 the salesman of Najiya Stores also had identified the accused and the victim girl in these videos.

77. PW.21 further stated that she had received another sealed packet on 24.08.2023 with a questioned pen drive. That pen drive was marked in this case as Ext.P20 containing visuals copied by PW.18 from the NVR (Q6 in

Ext.P27) from the Health Department of Aluva Municipal Office. There are CCTV cameras installed in the Municipal area especially near market and Ext.P20 confined to the camera No.D27 installed in the dumping yard of the Aluva market which displayed the last moment that the accused and the victim girl were found passing through the dumping yard nearby the place where the dead body of the victim was found on the next day. After examining Ext.P20 PW.21 sent Ext.P29 report in which Annexure-II and III are DVDs containing visuals copied from Ext.P20. These DVDs were marked as Ext.P30 and P31. 78. The nature of examination requested in the forwarding note are mentioned in Ext.P29 as follows.

Nature of examination as requested in forwarding note :

1. To examine the visuals in camera No.D.27 in item No.10 and to copy the CCTV visuals during the incident time on 28.07.2023 from 15.00 Hrs to 18.00 Hrs.
2. Whether the persons exhibited in the standard photographs (Item 7 and 8) are available in the above visuals on 28.07.2023 from 15.13.06 Hrs to 15.14.17 Hrs and 17.33.26 Hrs to 17.33.56 Hrs.
3. Whether there is any editing or morphing done in the collected visuals in Item No.10.

79. The details of the analysis conducted have been mentioned in

Ext.P29 report also and the photographs of the victim as well as the accused were also copied in it as taken from Exts.P25 and P26. The result of the examination has been stated by PW.21 in Ext.P29 stated as follows.

- i. The CCTV visuals captured on 2023-07-28 15:00:00 hrs to 2023-07-28 18:00:00 hrs on D27 (Market Back) were retrieved from the questioned pen drive marked Q1 and soft copy of the same is enclosed in a folder named 'Video clippings from Q1' in Annexure-2 & Annexure-3 DVDs.
- ii. **The female child and man (Fig-1 & Fig-2) exposed in the standard photographs marked S1(1) to S1(4) & S2(1) to S2(14) and the female child and man exposed in the CCTV visuals at 15:13:39 hrs to 15:14:05 hrs & the man exposed in the CCTV visuals at 17:33:26 hrs to 17:33:56 hrs, retrieved from the questioned pen drive marked Q1 are the same.**
- iii. The video files retrieved from the questioned pen drive marked Q1 are found to genuine and no signs of forgery/morphing is detected.

80. The result of this examination indicate the genuineness of the visuals without any morphing or other tampering. Moreover, the victim child and the accused identified with reference to Ext.P25 and P26 were found moving through the waste dumping yard at 15:13:39 hours and that part of the visuals copied in Ext.P30 DVD. Ext.P30(a) the most relevant part that the accused and the victim passing through the dumping yard was separately marked. Similarly

Ext.P31 DVD contains the visuals in the same dumping yard at 17:33:26 hours and 17:33:56 hours showing the presence of PW.9 Murali and also the return of the accused alone without the company of the victim girl after two hours in the same place captured in D27 CCTV camera of the Aluva Municipality. Its relevant part was marked as Ext.P31(a).

81. During cross examination of PW.21 Ext.D4 the Scheme for notifying examiner of electronic evidence issued by the department of Information Technology Government of India was marked by the counsel for the accused. Relying on Ext.D4 PW.21 deposed that as per this scheme State Forensic Science Laboratory, Thiruvananthapuram was notified u/s.79A of the Information Technology Act. Later on, the counsel for the accused produced Ext.D9 the copy of the Gazette notification dated 05.11.2021 as per which the State Forensic Science Laboratory, Thiruvananthapuram was notified u/s.79A of the Information Technology Act. This notification was not confronted with PW.21 while she was in the box though she deposed that their lab is notified u/s.79A of Information Technology Act. However during the course of hearing the learned counsel for the accused raised an important point that State Forensic Science Laboratory, Thiruvananthapuram has no jurisdiction to examine CCTV footages as per Ext.D9 notification and a separate notification for this purpose has to be issued as seen from Ext.D4. In Ext.D4 Scheme, in Part II it is stated that, The

scope of approval will be one or more of disciplines/areas of activity in the applicant Forensic Science Laboratories :

1. Computer (Media) Forensics
2. Network (Cyber) Forensics
3. Mobile Devices Forensics
4. Digital Video/Image & CCTV Forensics
5. Digital Audio Forensics
6. Device Specific Forensics
7. Digital Equipment/Machines (having embedded firmware)
8. Any other

Accreditation in additional disciplines may be offered in future as per requirement.

82. The learned counsel further submitted that as per Ext.D9 notification dated 05.11.2021 the Cyber Forensic Division, State Forensic Science Laboratory, Vellayambalam, Thiruvananthapuram, Kerala was notified as Examiner of Electronic Evidence in the following disciplines,

- (a) Computer (Media) Forensics excluding Floppy Disk Drive:
- (b) Mobile Devices Forensics.

By comparing the Scope of the scheme in Ext.D4 mentioned above and the relevant part of discipline mentioned above in Ext.D9 notification the learned counsel for the accused argued that discipline No.4 in Ext.D4 is Digital Video/Image and CCTV Forensics whereas Ext.D9 notification is confined to

discipline No.1 and discipline No.3 in Ext.D4.

83. The above submission of the learned counsel for the accused appeared to be having some substance at first blush. But the learned Special Public Prosecutor submitted that by Ext.D9 notification the State Forensic Science Laboratory, Thiruvananthapuram is authorized for examination of pen drive, DVD, hard disk etc as the same will come within the scope of 'computer media forensic'.

84. Section 2(i) of the Information Technology Act 2000 described a computer and the section is extracted below:

“ "Computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network”.

85. A computer media is commonly described as electronic device used to store data such as hard disks, USB drives, DVDs, CD Rom and Floppy disks. But Floppy disks are exempted from the purview of the Computer (Media) Forensics while authorizing the State Forensic Science Laboratory, Thiruvananthapuram as per Ext.D9. Therefore the learned Special Public

Prosecutor submitted that the State Forensic Science Laboratory, Thiruvananthapuram has the authority to examine the pen drives and hard disks included in the DVRs of CCTV as it form part of the computer media. The learned Special Public Prosecutor also invited the attention of this court about the rule of ejusdem generis in this regard. It was also submitted that the categories mentioned in Ext.D4 are overlapping with each other and they are not mutually exclusive.

86. This submission of the learned Special Public Prosecutor appears to be correct because a mobile phone nowadays is being used for all practical purpose of computer because it can be used for receiving or sending emails, browsing in any websites and handling social media platform apart from its usage of calling or sending and receiving messages. That apart, a mobile phone is used for capturing photographs, videos and recording audios. CCTV cameras are now being connected with mobile phones and the visuals in CCTV can be viewed and stored in mobile phones. Likewise, the functioning of CCTV also is similar to a computer. Apart from mobile devices forensics, digital video and digital audio forensics are included in separate category as per Ext.D4. So the mobile devices or a mobile phone examination mentioned in item No.3 of D4 category covers item No.4 digital video and item No.5 digital audio also. Similarly Network (Cyber) Forensic included in the second category in Ext.D4 also is

connected with a mobile phone. Therefore I am in full agreement with the submission of the learned Special Public Prosecutor that the groups mentioned in Ext.D4 can only be treated as guidelines and these categories cannot be mutually exclusive.

87. In **Abu Tahir v. State of Kerala, 2022 (6) KLT 345**, the Hon'ble High Court of Kerala has considered the question of the authority competent to analyse voice samples as a CD containing audio of a telephonic conversation wanted to be tested with the voice sample of the party to lis. In this case the Hon'ble High Court has considered the notification mentioned as Ext.D9 herein and observed that State Forensic Science Laboratory, Thiruvananthapuram is competent to examine the CD containing audio. Further the petitioner therein was directed to give voice sample in the State Forensic Science Laboratory, Thiruvananthapuram for comparison instead of the earlier order of the Sessions Court to give voice sample at All India Radio. This dictum supported the case of the prosecution because digital audio mentioned as item No.5 in Ext.D4 was not included in Ext.D9 notification, still, the State Forensic Science Laboratory was authorized to examine the digital audio in the CD based on the notification u/s.79A of Information Technology Act which is Ext.D9 herein. Therefore I am of the view that the State Forensic Science Laboratory, Thiruvananthapuram authorized u/s.79A of Information Technology Act as per Ext.D9 notification is

competent to give report after examination as done in this case and it is relevant under Section 45A of Evidence Act.

88. Another point raised by the learned Special Public Prosecutor is that though Ext.D4 was shown to PW.21 and marked through her, the learned counsel for the accused did not ask anything about Ext.D9 to PW.21 and it was produced only at the time of defence evidence. The learned Special Public Prosecutor submitted that the question raised by the learned counsel for the accused now could have been easily answered by PW.21 as she is familiar with this position. No cross examination was made though she deposed that they have authorisation u/s.79A of Information Technology Act. Confrontation of medical experts with the text books without putting it to them was not accepted by the Apex Court in **Piara Singh v. State of Punjab, AIR 1977 SC 2274** and the Division Bench of the Hon'ble High Court of Kerala in **Thomas v. State of Kerala, 1986 KLT SN 53 (Case No.89)**.

89. In **Mukesh and another v. State NCT of Delhi and others, AIR 2017 SC 2161**, the Apex Court considered the evidentiary value of the CCTV footages in proof of the guilt of the accused. The visuals of CCTV footages will come within ambit of silent witness theory. It is a substantial piece of evidence provided its authenticity is properly proved. In this case, as already discussed, PW.21 the Expert of the State Forensic Science Laboratory,

Thiruvananthapuram has examined the DVRs, hard disks in it and the pen drives sent for examination and she opined that it is free from tampering and the victim as well as the accused were identified in the visuals by her reports marked as Ext.P27 and P29. Therefore the contention of the accused that the CCTV footages are tampered and examined by an incompetent authority cannot be accepted as correct.

90. PW.25 is the Assistant Surgeon at District Hospital, Aluva. He deposed that on 29.07.2023 at 6.30 pm the accused herein was produced before him for medical examination including potency test. The examination was started at 6.35 pm and the accused was found having normal sexual development. He has noted two injuries on the body of the accused. The first injury is the abrasion 1x1cm over the right foot over second toe and the second injury is the similar abrasion of 2x2cm over the left knee. In this context it is relevant to note the evidence given by PW.22 the doctor in the same hospital and examined the accused on 28.07.2023 at 11.00 am and prescribed medicine in Ext.P21 O.P.Ticket for similar injuries.

91. Ext.P37 is the potency certificate issued by PW.25. It is also to be noted that the accused was identified by PW.25 in the box. As regards potency, it was opined by PW.25 that there is nothing to suggest that the accused is incapable of performing sexual acts. At this juncture it is relevant to consider the

contention of the learned counsel for the accused that he has a visible identification mark on his face and it was not noted in Ext.P37 and therefore the learned counsel contended that it was not the accused who was produced before PW.25. But PW.25 has identified the accused in the box and he has noted two other identification marks of the accused in Ext.P37. Selection of two identification marks of the person is discretion of the certifying officer and one cannot insist that the recording of identification marks should be started from any particular part of the body. Moreover, the accused has no case that the identification marks recorded in Ext.P37 do not exist in his body.

92. Another point deposed by PW.25 is that he had collected nail clippings, scalp hair, pubic hair combings and blood from the accused for DNA profiling. He further stated that the collected samples were packed, labelled and sealed and thereafter handed over to the CPO Subramanyan. Along with it he had given his specimen impression marked as Ext.P35. Later on, these samples were sent for DNA analysis through this Court.

93. PW.33 is the Police Photographer and he deposed that on 08.08.2023 he has taken photographs of the accused from Aluva East Police Station and its copies were handed over to the Investigating Officer. He identified the photographs as Ext.P26 series. Altogether 14 photos of the accused were entrusted by PW.33. It is to be noted that the accused was in

police custody as ordered by this Court on that day. PW.33 further stated that he had received four photos of the victim girl in Whatsapp sent by PW.37 the father of the victim girl as directed by the Investigating Officer. PW.37 also deposed in the same manner. The printouts of these photos also were taken by PW.33 and handed over to the Investigating Officer. Ext.P25 series are the said photographs. In addition to Ext.P25 and P26 PW.33 had given a certificate u/s.65B of Evidence Act and it was marked as Ext.P54. PW.1 the mother of the victim girl had identified Ext.P25 photos of her daughter. There is no case for the accused that the person found in Ext.P26 photos are not himself. These photos were sent to State Forensic Science Laboratory for identification of the victim girl and the accused in the visuals taken from CCTV footages and PW.21 has reported in Ext.P27 and Ext.P29 that the persons found in Ext.P25 and P26 are the persons found in the visuals recorded in Ext.P28 pen drive and also in Ext.P30 DVD. The accused was identified in Ext.P31 DVD also as per Ext.P29.

94. PW.32 the Police Photographer also had given Ext.P48 series photos and Ext.P49 CD containing photos of the inquest and thereafter Ext.P51 series photos and Ext.P52 CD relating to the discovery of the articles as per Ext.P16 seizure mahazar. He has also given Ext.P53 certificate u/s.65B of Evidence Act. Similar certificates were issued u/s.65 B of Evidence Act by PW33 referred above and while Exts.P14 and P20 pen drives were given to the

Investigating Officer by the witnesses after recording the CCTV visuals as discussed earlier. The learned counsel for the accused submitted that the certificates marked in this case are not in compliance with the provisions contained in Section 65 B(4) of the Evidence Act and as mandated in the Apex Court dictum in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, 2020 (4) KHC 101**. But on a reading of the above dictum as well as the nature of certificates to be submitted explained in Section 65 B (4) of the Indian Evidence Act, I find no infirmity in the certificates produced. No specific form of certificate is prescribed in the above provision.

95. PW.26 is the Assistant Professor and Assistant Police Surgeon in the department of Forensic Medicine, Government Medical College, Ernakulam. He deposed that on 29.07.2023 he conducted the post-mortem examination of the dead body of the victim in this case aged 5 years along with Dr.Snehal Ashok, Senior Resident. The post-mortem examination was started at 3.30 pm and concluded at 5.30 pm. Thereafter he has given his report on 02.08.2023 marked as Ext.P38. In Ext.P38 as well as in his oral evidence PW.26 has given the general findings on verification of the dead body, ante mortem injuries, post-mortem injuries and other findings. Thereafter he has given his opinion as to the cause of death and also the suggestive signs of recent forceful vaginal and anal penetration. These aspects narrated by PW.26 in his deposition as well as in

Ext.P38 post-mortem certificate are reproduced below.

A. General Findings :

Body of a moderately built and nourished girl child having length 114 cm and weight 19 Kg was brought in a black coloured body bag. Body was placed in a disposable water proof sheet and then wrapped in a clean white cotton cloth. Head was turned towards right side. Soil, sand, mud and plant leaf pieces were sticking on body at places. Eyes were closed, conjunctivae congested, corneas were hazy and pupils in mid-position. Petechial haemorrhages seen in palpebral conjunctiva. Mouth was closed. Lips were bluish and frenulum of lips was intact. All teeth were intact (total 20 in number). Soil particles were seen inside mouth. Blood stained fluid was oozing from nostrils. Blood stains were seen at vaginal and anal orifice. Soil and sand were sticking around genital area and buttocks. Vaginal and anal orifices were dilated. Labia minora was gaping. Hymen was torn irregularly with multiple fresh tears (refer injury paragraph). Whitish stain was seen inside vagina (on back wall). Urethral opening appeared normal. All other external body orifices were normal. Finger nails were bluish. Left hand fingers had pinkish red nail polish. Scalp hair was 4.5cm long. Live big brown ants were seen on body. Eggs of flies were sticking on scalp hair on left side of head.

Ligature material – A navy blue coloured sleeveless T-shirt (made of

soft cloth having yellow prints at front) was torn and tightly tied around the middle of neck with a half knot on front of neck. T-shirt was torn vertically along its front aspect and it was soiled with soil and mud. The label on back of this T-shirt showed "*Sports tees 5-6 years*". The loop around the neck measured 23 cm. Two free portions measured 24 cm and 11.5 cm respectively.

Rigor mortis was feeble in head, neck, upper limbs and in knees, and it was partially retained at both ankles. Post-mortem staining was seen at the back; not fixed. There was no sign of decomposition. Body was not kept in cold chamber.

B. Injuries (Ante mortem) :-

1. **Abrasion (Ligature mark) 22 cm long continuous and horizontal all around neck; its upper border was at the level of thyroid cartilage. It was placed 5cm below chin in midline (3cm broad); 5cm below right angle of jaw (3cm broad); 8cm right ear (2.5cm broad); 4cm below left angle of jaw (3cm broad); 7.5cm below left ear (3 cm broad) and 9.5cm below occiput (2.5cm broad).**

Flap dissection of neck was done under bloodless field. Subcutaneous tissue underneath the abrasion was pale. Blood infiltration seen in thyroid hyoid muscles on both sides

underneath ligature mark at the level of thyroid cartilage. Hyoid and thyroid cartilages were intact. Pharyngeal muscles were congested and its mucosa showed petechial haemorrhages. All other neck structures were intact and normal.

2. Curvilinear abrasion 3.5x0.1cm on left side of front of chest, 2cm below collar bone and inner end in midline.
3. Multiple small linear abrasions over an area 1.5x1.5cm (of individual sizes 0.5x0.1cm, 1x0.1cm and 1.5x0.1cm) on right side of front of chest on the front fold of armpit, 7cm outer to midline and 2.5cm below collar bone.
4. **Laceration 0.5x0.3x0.3cm (muscle deep) in perineum at the posterior commissure.**
5. **Multiple small lacerations of hymen at multiple sites extending from 4 O'clock to 7 O'clock position (*hymen was torn irregularly at multiple sites*).**
6. **Laceration 0.5x0.3cm muscle deep in perineum at the anterior commissure reaching up to vaginal mucosa.**
7. **Contusion along the edges of labia minora.**
8. **Laceration of vaginal mucosa 1x0.3x0.3cm at 9 O'clock position.**
9. **Laceration of vaginal mucosa 0.5x0.3x0.2cm at 11 O'clock position. Vaginal mucosa was reddish in colour.**
10. **Abrasions of anal mucosa from 6 O'clock to 9 O'clock position.**

11. **Laceration of anal mucosa 0.5x0.3x0.2cm at 7 O'clock position.**
12. **Laceration of anal mucosa 0.4x0.2x0.2cm at 12 O'clock position.**
13. **Laceration of anal mucosa 0.6x0.4x0.3cm at 6 O'clock position.
Anal sphincter was dilated.**
14. Laceration 0.5x0.3x0.2cm on left side of head over the parietal prominence.
15. Contusion of scalp 4x3x0.5cm on right side of head, 2cm behind and 2cm above upper attachment of right ear.
16. Contusion of scalp 3x0.5x0.5cm on right side of head over the parietal prominence.
17. Abrasion 0.3x0.2cm on lower outer quadrant of left buttock.
18. Abrasion 0.7x0.5cm on front of left knee.
19. Abrasion 1x0.5cm on front of left knee just above previous injury.
20. Abrasion 0.5x0.5cm on lower part of front of left knee.
21. Abrasion 1x0.5cm on outer aspect of left knee.
22. **Graze abrasion 3.5x2.5cm on inner aspect of left thigh, just above knee (grazes directed obliquely downwards and forwards).**
23. Abrasion 2x2cm on back of left leg 8cm above ankle.
24. Contusion of chest wall 6x6cm on left side 5.5cm outer to midline with blood infiltration in intercostal muscles between IV to VIII ribs.
25. Abraded contusion 2x0.6x0.5cm on back of right elbow.

C. Injuries (Post-mortem) :

1. Post-mortem abrasion with depression of skin over an area 4x1cm, horizontal on left side of face, its outer end at the level of tragus of ear.
2. Extensive post-mortem ant bite erosions on face around eyes, nose, mouth, margins of lips; neck region (sparing ligature mark area); trunk and on all four limbs at places. Dry blood stains from post-mortem ant bite marks were seen on face, around eyes, mouth and nostrils.

D. Other Findings :

Skull and meninges were intact. Brain was intensely congested, soft and oedematous. Diaphragm and vertebral column were intact. Air passages were congested and contained few ml of blood stained fluid. Lungs were congested and showed petechial haemorrhages on its surface. No free fluid present in chest and abdominal cavities. Pericardial sac was intact. Heart was flabby and structurally normal. Extensive petechial haemorrhages were seen on heart surface. Valves and chambers were normal. Coronary arteries were patent. Myocardium was congested. Aorta was normal. Stomach was full with soft rice, pieces of cooked onion and other unidentifiable food particles having no unusual smell, mucosa appeared normal. Pancreas was soft and reddish. Liver, spleen, intestines, adrenal and kidneys were

congested. Uterus and its appendages were normal. Urinary bladder was empty. All other internal organs were congested, otherwise appeared normal.

A sample of blood, viscera were collected, samples of vaginal swab and smear (two sets) and an anal swab and smear were preserved and send for chemical analysis in sealed packets. Sample of scalp hair (pulled sample), blood sample and finger nail clippings from both hands were preserved, sealed and handed over to charge CPO 12557 as per requisition of investigating officer.

OPINION :

- 1. Post-mortem findings were consistent with death due to ligature strangulation.**
- 2. There are signs suggestive of recent forceful vaginal and anal penetration (injury numbers 4 to 13).**
- 3. Additional report will follow after receipt of chemical examination test results.**

96. As discussed earlier, PW.26 has reported in Ext.P38 that the dead body was found having 20 teeth and based on the dentition he opined the minimum age of the deceased could be 2 ½ years and upper age could be 7 years. It was also opined by PW.26 that the cause of death was due to ligature strangulation. He has explained the details of the symptoms of asphyxial death found on her neck as injury No.1 in Ext.P38. Therefore the testimony of PW.26 coupled with Ext.P38 certificate proved beyond reasonable doubt that it was the

homicidal death. In fact there was no challenge on this point from the side of the accused.

97. Another point noted by PW.26 is that the death might have been happened within a period of 18 hours prior to the post-mortem examination started at 3.30 pm and the maximum limit could be upto 24 hours. As already mentioned, the death of the child could have been happened between 3.30 pm and 9.30 pm on 28.07.2023. PW.26 also opined that the death occurred within six hours after the last meal.

98. The learned Special Public Prosecutor pointed out that injury Nos.4 to 9 in Ext.P38 mentioned above are the description of severe damage caused to the vagina of the victim. Moreover, injury Nos.10 to 13 are anal injuries. Apart from laceration of anal mucosa at different positions, anal sphincter was dilated. These injuries suggests the brutality of the attack on the vagina and anus of the 5 year old girl coming within the definition of rape u/s.375 (a) and (b) of Indian Penal Code and penetrative sexual assault u/s.3 (a) and (b) of the Protection of Children from Sexual Offences Act, 2012. Above mentioned anal injuries prove the carnal intercourse against the order of the nature u/s.377 of Indian Penal Code. Injury No.22 graze abrasion on inner aspect of left thigh also suggests sexual attack similar to rape or penetrative sexual assault u/s.375 (c) of Indian Penal Code and Sec.3 (c) of Protection of Children from Sexual Offences Act,

2012. Apart from recent forceful vaginal and anal penetration opined by PW.26 it reveals multiple instances of rape and penetrative sexual assault coming u/s.376 (2) (n) of Indian Penal Code and Sec.5 (l) of Protection of Children from Sexual Offences Act, 2012. Grievous bodily harm mentioned in Ext.P38 especially on the private parts in the course of sexual attack is sufficient to constitute the offence u/s.376 (2) (m) of Indian Penal Code and Sec.5(i) of Protection of Children from Sexual Offences Act, 2012. Rape on a girl unable to give consent due to tender age and intoxication is an offence u/s.376 (2)(j) of Indian Penal Code and when the rape victim is below the age of 12 years it is an offence u/s.376AB of Indian Penal Code and Sec.5 (m) of Protection of Children from Sexual Offences Act, 2012. All offences under Section 5 of Protection of Children from Sexual Offences Act, 2012 are punishable under Section 6 of the said Act.

99. PW.26 has mentioned in Ext.P38 that he had collected the samples from the dead body for forensic and chemical examination and this was explained by him in the box also. The sample of blood, viscera, samples of vaginal swab and smear (2 sets) and anal swab and smear were preserved by PW.26 and sent for chemical analysis in sealed packets. Similarly, the sample of scalp hair, blood sample and finger nail clippings from both hands were preserved, sealed and handed over to the police for the purpose of DNA

analysis. He denied the suggestion of the learned counsel for the accused that the collection, packing, sealing and labelling were not done properly.

100. PW.23 is the Assistant Chemical Examiner attached to Regional Chemical Examiner's Laboratory, Kakkanad. She deposed that on 31.07.2023 she received five sealed packets from Government Medical College, Ernakulam as forwarded by PW.26 and Dr.Snehal Ashok after post-mortem examination.

The samples received in five sealed packets are :

1. Stomach and part of intestine contents
2. Part of Liver and one half of each Kidney
3. Blood
- 4 & 5. Preservatives

After examining these samples PW.23 has prepared a report dated 21.08.2023 and the report was marked as Ext.P32. The result of examination is as follows:

Ethyl alcohol was detected in the samples under item Nos.1, 2 and 3. The sample of blood contained 56mg (Fifty six milligrams) of Ethyl alcohol per hundred millilitres. Ethyl alcohol was not detected in the item Nos.4 and 5, the sample of preservative. No other poison was detected in the samples under item numbers 1, 2 and 3.

101. Based on the above findings of PW.23, PW.26 issued another certificate incorporating the above aspects and that certificate was marked as

Ext.P39. The same findings marked above was incorporated by PW.26 in Ext.P39 also. In this context it is relevant to consider the consequence of the consumption of 56mg/100ml alcohol by a five year old girl. As seen from CCTV footages starting from 2.40 pm onwards discussed earlier, there was no signs of any intoxication for the child as she was found walking along with the accused. The shopkeeper in the Najiya Stores examined as PW.3 who had seen the accused and the victim girl in his shop also did not felt any unusual behaviour on the side of the child. Section 185 of Motor Vehicles Act makes the driving of a vehicle by a person with 30 mg per 100 ml alcohol in his blood an offence of drunken driving punishable for the first offence with imprisonment for a term which may extend to six months or with fine of Rs.10,000/- or with both. So presumption of law is that a person having driving licence and authorised to drive cannot drive a vehicle properly with 30 mg per 100 ml alcohol in his blood. Here is a case where a child aged 5 year found administered with 56 mg per 100 ml alcohol before her death. So the physical condition of the child after administration of this much alcohol can be imagined.

102. PW.26 further stated that he had received a request from PW.43 to take back the samples from Chemical Examiner's Laboratory for sending the same for DNA analysis at State Forensic Science Laboratory, Thiruvananthapuram. The request was for retrieving vaginal and anal swabs and

smears from Chemical Examiner's Laboratory. Accordingly, PW.26 wrote a request to Regional Chemical Laboratory, Kakkanad for the above purpose and on the same day the samples were brought back. All these happened on 02.08.2023. On verification of the samples PW.26 found the samples were intact with seal outside. On verification of inside, the samples which were initially sealed by PW.26 were also found intact. Thereafter PW.26 relabelled it and handed over to the police. These samples were also produced by PW.43 before the Court for sending it for DNA analysis.

103. PW.43 the Investigating Officer deposed that he has taken charge of the investigation after the FIR was registered at about 8.00 pm on 28.07.2023. As mentioned earlier, he had inquired about the missing child before the registration of the F.I.R and contacted PW.1 and directed her to go to the Police Station to give F.I.Statement. PW.41 the Sub Inspector attached to Aluva East Police Station deposed that he came to know about the missing of the child in the evening on 28.07.2023 while he was on patrolling duty. Immediately he started searching of the child missed from Aluva Garage side in KSRTC bus stand, private bus stand, railway station etc. At about 9.50 pm he found a person with similar physical features of the assailant at Thottakattukara Junction. He prevented that person and questioned and his name was disclosed as Asafak. But he was giving mutually contradictory answers to further

questions. So, it was informed to PW.43 who was also on patrolling duty at that time and PW.43 taken custody of that man who is none other than the accused herein. It is to be noted that PW.43 and PW.38 had circulated the message of missing of the child to all Control Rooms. The CCTV visuals from Quality Chicken was taken by PW.43 on the same day for the purpose of publishing the identity of the victim and the assailant. On that basis PW.41 felt suspicion on seeing the accused.

104. PW.43 further stated that after detailed questioning of the accused and on his further investigation he was satisfied that the accused is responsible for the offences alleged in Ext.P66 F.I.R and accordingly he was arrested at 11.30 am after preparing arrest memo, inspection memo and custody memo. These documents were marked as Ext.P76 series. PW.43 thereafter interrogated the accused in Hindi language. PW.43 also is fluent in Hindi and therefore he did not require any translator or interpreter to interrogate the accused. In the statement the accused said in Hindi, "മുഹേർ ലേക്കർ ജാനാ മേം ആപ്കോ ലാൾ ദിഖായേഗാ". On the basis of this statement PW.43 covered the face of the accused except his eyes with a mask and as led by the accused PW.43 and police party went to the waste dumping yard near Aluva market and they reached its South-Western corner at 12.30 pm on 29.07.2023. From there, as pointed out by the accused PW.43 found a part of hand and leg of a human

being covered with waste materials, old cloths and stones. On discovery of this body the face cover of the accused was removed to get him identified by the witnesses and thereafter PW.43 prepared Ext.P11 seizure mahazar. The above mentioned statement of the accused was also shown in the mahazar as Ext.P11 (a). PW.43 has also submitted the extract of the said statement with its Malayalam meaning and that extract was marked as Ext.P11 (b). As discussed earlier, PW.10 the owner of the nearby vegetable shop has witnessed the seizure of dead body by PW.43 as per Ext.P11 along with other witnesses. His evidence is also in support of the oral testimony of PW.43.

105. PW.43 adduced oral evidence to the effect that after discovery of the dead body of the victim girl as per Ext.P11 he has conducted inquest of the dead body in the presence of Scientific Officer (PW.27) and other witnesses. The dead body of the victim was identified by PW.37 her father. PW.43 deposed that at the time of inquest he has found a baniyan used as ligature surrounded the neck of the dead body and found bleeding from vagina and anus apart from various injuries on the body. The face of the body was damaged as hit by granite stone. The details of the injury noted in the body and also the appearance found at the time of inquest has been explained by PW.43 in Ext.P9 Inquest report. Similar evidence was given by PW.7 the witness to the Inquest. That apart, PW.32 the Police Photographer has taken photos of the dead body

at the time of Inquest and these photos were marked as Ext.P48 series. The photos were shown in Ext.P49 CD also. Exts.P48 and P49 corroborates the oral testimony of PW.43 regarding the physical features of the body found at the time of the inquest and explained in Ext.P9.

106. After sending the dead body for post-mortem examination at Government Medical College, Ernakulam PW.43 has prepared scene mahazar of the place from where the dead body was found and it was marked as Ext.P77. Similarly he has taken custody of the dress of the accused marked as M.O.4, M.O.5 and M.O.10 after giving substitute dress as per seizure mahazar marked as Ext.P78. PW.27 deposed that she was present at the time while PW.43 conducted inquest and she is the Scientific Officer attached to District Crime Branch, Kochi City Police. She deposed that the scene of occurrence is on the South-Western corner of the waste disposal land behind Aluva market. At the scene PW.27 found the body of a girl lying beneath 3 granite rock pieces fairly large and soil and base materials including plastic contents and cloth pieces. This was the picture narrated by PW.43 and PW.10. This was proved by Ext.P48 and P49 photographs and also Ext.P9 Inquest Report.

107. From the scene of occurrence PW.27 collected 6 items of material objects, they are,

1. Reddish brown coloured stains collected in cotton gauze from the

scene of occurrence.

2. Sample control cotton gauze.
3. Dark brown stained soil collected from the scene of occurrence.
4. Soil collected from the body of the accused.
5. Control soil collected from the scene of occurrence.
6. A short black coloured hair collected from the genital area of the deceased.

108. PW.27 further stated that the the collected material objects were packed, labelled and sealed methodically and handed over to the Investigating Officer at the scene of occurrence. Her specimen seal "SBK" was also handed over to the Investigating Officer and it was marked as Ext.P36. She has prepared a report of the materials collected and it was marked as Ext.P36(a). Thereafter on 05.08.2023 she has submitted a detailed scene inspection report and it was marked as Ext.P40. During cross examination PW.27 deposed that she has given a brief statement to the Investigating Officer about the above mentioned acts as she had given detailed statement marked as Ext.P40. She denied the allegation of the learned counsel for the accused that the collection, packing, sealing and labelling of the samples etc were not proper.

109. The learned counsel for the accused submitted that Exts.P34, P34 (a) and P40 cannot be admitted in evidence as hit by Section 162 Cr.P.C. The learned counsel relied on the decision of the Apex Court in **Kaliram v. State of Himachal Pradesh, AIR 1973 SC 2773, C.Chenga Reddy v. State of Andhra**

Pradesh, AIR 1996 SC 3390 and the Hon'ble High Court of Kerala in **Rajeevan v. Superintendent of Police, 2011 (1) KHC 738, M.R.Balakrishnan v. State of Kerala, 2020 (4) KLJ 84.** Exts.P34 and P34(a) contain the specimen seal of PW.26 who collected samples from the dead body and forwarded along with samples. Ext.P35 is the report to be forwarded with material objects sent for analysis along with the list of samples collected from the accused and containing the specimen impression of seal of PW.25. Similarly, PW.27 also handed over Ext.P36 specimen with a note on collection of samples marked as Ext.P36(a). These are all documents absolutely necessary for comparison for the samples by the Expert. As seen from the oral testimony of PW.24 the DNA Expert, Exts.P34 to P36 were forwarded to the Forensic Science Laboratory. Therefore such documents cannot be treated as statement of witnesses instead of a statement u/s.161 Cr.P.C. These documents can only be treated as forwarding note containing the list of samples collected and specimen seal. However Ext.P40 report dated 05.08.2023 by PW.27 in respect of scene of occurrence cannot have any evidentiary value as hit by Section 162 Cr.P.C. in view of the dictum mentioned above. At the same time it will not affect the prosecution case because PW.27 has given substantive evidence in Court by deposing that she had visited the place of occurrence along with PW.43 the Investigating Officer on 29.07.2023 and witnessed the nature and lie of the dead body at the time when

it was discovered by the Investigating Officer. Moreover she has also given oral evidence as to the details of the samples collected, packed and sealed before entrusting the same to the Investigating Officer.

110. PW.43 further stated that the samples collected by PW.26 at the time of post-mortem examination were seized by him on 29.07.2023 at 7.00 pm as per Ext.P80 seizure mahazar along with Exts.P34 and P34(a) mentioned earlier. Moreover he has seized the samples collected by PW.25 from the accused on 29.07.2023 at 7.30 pm after preparing Ext.P81 mahazar along with Ext.P35 sample seal of PW.25.

111. After the arrest and seizure of dead body of the victim the accused was produced before the Court on 30.07.2023. The accused was produced before the Judicial First Class Magistrate, Aluva on 30.07.2023 (Sunday) and he was remanded to judicial custody. Ext.P82 is the report submitted by PW.43 to incorporate the name and address of the accused in the F.I.R. Ext.P83 is the report to alter the sections in the F.I.R. A detailed mahazar was prepared by PW.43 about the place of occurrence from where the victim was abducted and it was marked as Ext.P84. PW.43 has given evidence as to the method of seizure of DVRs corresponding to M.Os.6 to 9 as it was packed and sealed. After playing Ext.P28 pen drive in open court PW.43 identified the relevant visuals in CCTV footages collected from five shops marked as Exts.P28(a), P28 (aa), P28

(ab), P28(b), P28 (ba), P28(c), P28 (ca), P28 (cb), 28(d), 28 (da), 28 (db) and P28(e). He has given evidence as to the seizure of DVRs as well as Ext.P14 pen drive.

112. As deposed by PW.26, PW.43 stated that he has taken back the vaginal swab, smear, anal swab and smear of the victim from the Regional Chemical Examiner's Laboratory through PW.26 and he has taken the same into custody on 02.08.2023 at 4.30 pm after preparing Ext.P85 seizure mahazar. Ext.P34 is the sample seal of PW.26 seized along with vaginal swab and smear and anal swab and smear of the deceased. As stated earlier, Ext.P34(a) is containing seal of impression in relation to the seizure of scalp hair, finger nail clippings of the deceased and also the blood.

113. On 01.08.2023 police custody of the accused was given to PW.43 for 10 days. At that time PW.43 questioned the accused again in Hindi and he gave statement that, "മുചേര ലേക്കർ ഉധർ ജാനാ മേം ആപ്കോ ജഗാ ദിഖായേഗാ ഓർ മേം ആപ്കോ ചപ്പൽ ദിഖായേഗാ ഓർ മേം ആപ്കോ കപ്പടാ ലേക്കേ ദൂംഗാ ". On the basis of this statement, on 03.08.2023 at 3.30 pm as led by the accused PW.43 and police party along with witnesses went to south-western side of the Aluva market near to the place where the dead body was found. That was the place where the dumping yard was surrounded by a compound wall and the accused pointed out a gap in the wall wherein a black chappal and a piece of banyan

cloth was found. That was seized by PW.43 as per Ext.P16 seizure mahazar. The articles seized were identified by PW.1 as M.O.1 and M.O.3(a). It was also deposed by PW.1 that M.O.3(a) is a part of M.O.3. As stated earlier M.O.3 was found as a ligature surrounded the neck of the dead body at the time of Ext.P11 and also at the time of Ext.P38 post-mortem report. It was later on hand over by PW.26 to the police. The relevant part of the statement of the accused leading to the discovery has been mentioned in Ext.P16 seizure mahazar as Ext.P16(a) and the extract of the said statement with Malayalam translation was separately produced by PW.43 and marked as Ext.P16(b). PW.43 also deposed that M.O.3(a) is a part of M.O.3. PW.16 is a witness to Ext.P16 seizure mahazar. As stated earlier, PW.32 the police photographer was present at the time of seizure as per Ext.P16 and he has captured the photos of the recovery proceedings and these photos were marked as Ext.P51 series. Ext.P52 is the CD containing these photographs. Ext.P52 CD was played in the open court while PW.43 was examined and he has identified the visuals as taken at the time of Ext.P16. Moreover, these photos indicate the presence of the accused and the witnesses with PW.43 at the place where the recovery of M.O.1 and M.O.3(a) were affected. It further shows the place where these articles were kept in the gap of the compound wall.

114. On 05.08.2023 at 11.00 am PW.43 has seized Ext.P21 O.P.Ticket

from PW.19 as per Ext.P89 seizure mahazar. Similarly on 08.08.2023 at 10.00 am Exts.P25 series and P26 series photos with Ext.P54 certificate u/s.65 B of Evidence Act were seized by PW.43 from PW.33 as per Ext.P88 seizure mahazar. Ext.P89 is the forwarding note submitted by PW.43 for sending the DVRs, Ext.P14 pen drive and NVR for Cyber Forensic Examination. On 09.08.2023 PW.43 has prepared a detailed mahazar narrating the place from where the accused alighted from the bus till the dead body was recovered and that mahazar was marked as Ext.P90. On 10.08.2023 the accused was produced before this Court after police custody and he was sent back to jail. On 10.08.2023 PW.43 seized Ext.P48 photos with Ext.P49 CD and Ext.P50 certificate u/s.65B of Evidence Act from PW.32 as per Ext.P91 seizure mahazar. Ext.P94 is the forwarding note for sending Ext.P20 pen drive containing visuals copied from NVR and PW.43 has also explained the reason why copies of the visuals were not directly collected from NVR at Forensic Science Laboratory as deposed by PW.21 that it was voluminous. PW.43 identified Exts.P30(a) and P31(a) visuals of the dumping yard contained in Exts.P30 and P31 DVDs received along with Ext.P29 report of Forensic Science Laboratory similar to the views in Ext.P20 pen drive. Ext.P95 is the additional report to add sections in the F.I.R. After completing the investigation PW.43 laid the charge against the accused.

115. PW.41 the Sub Inspector also had assisted PW.43 in the investigation after the accused was apprehended in the night on 28.07.2023. He has examined the visuals in the NVR in Aluva Municipal office along with PW.18 and found the visuals of the victim and the accused passing through the dumping yard as these visuals were captured by D27 camera fitted there. He has seized Ext.P20 pen drive copied by PW.18 as per Ext.P59 seizure mahazar and Ext.P18 is the certificate u/s.65B of Evidence Act collected from PW.18 at that time. Thereafter he has seized NVR on 04.08.2023 as per Ext.P19 seizure mahazar.

116. On 09.08.2023 PW.41 went to KSRTC depot at Kozhikode and seized KSRTC Super Fast bus bearing No.KL-15-A-2082 in which PW.6 and her children and also the accused and the victim travelled on 28.07.2023. The seizure mahazar was marked as Ext.P.70 and the bus was released to the Assistant Transport Officer, Kozhikode as per Ext.P71 Kachit. On the same day evening he went to Mananthavadi depot of KSRTC and as produced by ATO the way bill dated 28.07.2023 of the said bus, relevant part of electronic ticket machine and the duty certificate of the driver and the conductor of the bus on 28.07.2023 were seized. The seizure mahazar prepared by PW.41 was marked as Ext.P72 and the above mentioned documents were marked as Exts.P73, P73(a) and P73(b). On perusal of Ext.P73 it is evident that Ext.P6 bus tickets

were issued from the stage Aluva to the next stage Angamaly for five persons. It corroborates the oral testimony of PW.6 discussed earlier.

117. PW.24 is the Assistant Director of Molecular Biology in the DNA division of State Forensic Science Laboratory, Thiruvananthapuram. She deposed that on 05.08.2023 she received two sealed packets in this case and the seals were found intact and tallied with specimen seal impression forwarded. The parcel consisted of two sealed packets with a total of 20 items. The description of 20 items forwarded to the State Forensic Science Laboratory are explained by PW.24 in the box as follows.

Sl. No.	Item No.	Description
1.	1	Sample blood of xxxx, 5 yrs in an EDTA vial. (P.M No.654/23 dated 29.07.2023).
2.	2	Sample scalp hair of xxxx, 5 yrs in a paper packet (P.M No.654/23 dated 29.07.2023).
3.	3	It consisted of two items which were numbered as items 3(a) and 3(b) in this laboratory.
4.	3(a)	Left hand nail clippings (with pinkish red coloured nail polish) of xxxx, 5 yrs in a paper packet (P.M No.654/23 dated 29.07.2023).
5.	3(b)	Right hand nail clippings (without nail polish) of xxxx, 5 yrs in a

paper packet (P.M No.654/23 dated 29.07.2023).

6. 4 It consisted of five items which were numbered as 4(a) to 4(e) in this laboratory.
7. 4(a) Sample pubic hair of Asafak Alam, 28 yrs in a paper packet.
8. 4(b) Sample scalp hair of Asafak Alam, 28 yrs in a paper packet.
9. 4(c) Sample body hair of Asafak Alam, 28 yrs in a paper packet.
10. 4(d) Sample nail clippings of Asafak Alam, 28 yrs in a paper packet.
Brown coloured stains were found on it.
11. 4(e) Sample blood of Asafak Alam, 28 yrs in an EDTA vial. A plain EDTA vial was found with it.
12. 5 A piece of cotton gauze with dark brown coloured stains (Reddish brown coloured stains collected in cotton gauze from the SOC by Smt.Sruthi Bharathan.K, SO, DCB, Kochi City on 29.07.2023 AN).
13. 6 Some soil. Dark brown coloured stains were found on it (Dark brown stained soil collected from the SOC by Smt.Sruthi Bharathan.K, SO, DCB, Kochi City on 29.07.2023 AN).
14. 7 One sealed paper packet forwarded to Physics division for examination as requested in the forwarding note.
15. 8 One sealed packet forwarded to Physics division for the examination as requested in the forwarding note.

16. 9 One small, black coloured hair in a paper packet, collected from the genital area of the deceased by Smt.Sruthi Bharathan.K, SO, DCB, Kochi City on 29.07.2023 AN.
17. 10. A cut opened, soiled, dark blue coloured, T-shirt with cap (hoody T-shirt) with yellow coloured printed designs. It bore a label reading TEAM SPIRIT TS SPORTS INSPIRED, LIFESTYLE ESTABLISHED, 5-6 YRS, SPORTTEES. It was found tied at one end (ligature cloth from the victim body). Dark brown coloured stains were found on it.
18. 11. A torned cut opened, soiled, dirty nicker. It bore a label reading F&W. A small dark blue coloured, cut piece of a cloth were found with it. Dark brown coloured stains were found on it. Few hairs were found adhered on it.
19. Items 12, 13 and 14 were found kept together.
20. 12 A torn, blue greyish black and white coloured half sleeve T-shirt. Dark brown coloured stains were found on it. Hair was found adhered on it.
21. 13 A dark saffron coloured, single dhoti with yellow and golden yellow coloured border. It was found cut at one end. Dark brown coloured stains were found on it. Few hairs were found adhered on it.
22. 14 It consisted of two items which were numbered as items 14(a) & 14(b) in this laboratory.

23. 14(a) A dark brown coloured underwear (trouser type) with dark blue, light blue and red coloured elastic at waist. It bore a label reading DOLLAR. Brown coloured stains found on it. Hair was found adhered on it.
24. 14(b) A five-rupee coin (2016) was found kept in the pocket of underwear. Brown coloured stains were found on it.
25. 15 A piece of white cotton gauze (A control cotton gauze submitted by Smt.Sruthi Bharathan.K, SO, DCB, Kochi city dated on 29.07.2023 AN)
26. 16 It consisted of two items which were numbered as items 16(a) and 16(b) in this laboratory.
27. 16(a) Four cotton swabs were found kept in a paper packet. Dark brown coloured stains were found on it (Vaginal swab of xxxx) in P.M.No.654/23 dated 29.07.2023.
28. 16(b) Four microscope slides with a dried smear. Dark brown coloured stains were found on it (Vaginal smear of xxxx) in P.M.No.654/23 dated 29.07.2023.
29. 17 It consisted of two items which were numbered as 17(a) and 17(b) in this laboratory.
30. 17(a) Two cotton swabs were found kept in a paper packet. Brown coloured stains were found on it (Anal swab of xxxx) in

P.M.No.654/23 dated 29.07.2023.

31. 17(b) Two microscope slides with a dried smear. Brown coloured stains were found on it (Anal smear of xxxx) in P.M.No.654/23 dated 29.07.2023.
32. 18 It consisted of copies of two certificates.
- 1) A certificate with ref No.P.M No.654/2023 dated 29.07.2023 signed by Dr.Anoop. K.Thankappan, M.D, Asst Professor & Asst Police Surgeon, Dept of Forensic Medicine, Govt. Medical College, Ernakulam & Dr.Snehal Asok T.P, Senior Resident, Govt. Medical College, Ernakulam regarding the material objects (swab & smear) collected from xxxx for DNA profiling.
 - 2) A certificate with ref No.P.M No.654/2023 dated 29.07.2023 by Dr.Anoop. K.Thankappan, M.D, Asst Professor & Asst Police Surgeon, Dept of Forensic Medicine, Govt. Medical College, Ernakulam & Dr.Snehal Asok T.P, Senior Resident, Govt. Medical College, Ernakulam regarding the material objects (scalp hair, nail clippings & blood) collected from xxxx, 5 yrs for DNA profiling.
- 33 19 A black coloured, chappal with a label reading GASCO W.T.P. Light brown coloured stains were found on it.
- 33 20 A soiled, dark blue coloured, cut cloth piece with white & yellow coloured printed designs and a reddish brown coloured button. It bore a label reading ATHI...Brown coloured stains were found on it.
118. As stated earlier, these samples include material objects

collected by PW.26 at the time of post-mortem of the victim girl, samples collected by PW.27 the Scientific Assistant from the place where the dead body was found, the dress of the victim girl used as ligature collected from the dead body at the time of post-mortem, dress of the victim girl collected at the time of inquest, dress of the accused marked as M.Os.4, 5 and 10, samples of blood and other items collected by PW.25 from the accused and M.O.1 and M.O.3(a) collected as per Ext.P16 mahazar. After examining of the above articles PW.24 has prepared a report and it was marked as Ext.P33. In the report itself PW.24 has stated that the samples were in sealed packets and intact. Moreover, it tallied with specimen seal impression forwarded. In the box as well as in Ext.P33 report PW.24 has given the result of examination as follows.

1. Blood is detected on items 5, 6, 10,11, 12, 13, 14(a), 14 (b), 16(a), 16(b), 17(a), 17(b), 19 & 20.
2. Blood is not detected on item No.15.
3. Saliva is detected on items 6, 10, 11, 12, 13 and 14(a).
4. Saliva is not detected on items 5, 14(b), 16(a), 16(b), 17(a), 17(b), 19 and 20.

5. Item No.4(d) contains dark blue coloured cotton fibre similar to those in item No.11.
6. Fibres similar to item No.10 are not detected in item No.4(d).
7. Hair is detected on items 11, 12, 13 & 14(a).
8. Hair is not detected on items 10 and 20.
9. Items 10,11, 14(a) and 20 contain human spermatozoa and semen.
10. Items 16(a), 16(b), 17(a) and 17(b) contain human spermatozoa.
11. Seminal stains are not detected on items 5, 6, 12, 13, 14(b) and 19.
12. The blood stains on items 5, 10,11, 16(a), 16(b), 17(a), 17(b) and 20 belong to xxxx to whom the sample blood in item No.1 belongs.
13. The scalp hair in item No.2 belongs to xxxx to whom the sample blood in item No.1 belongs.
14. The DNA profile obtained from the left and right hand nail clippings in items 3 (a) and 3(b) shows a mixed profile of xxxx and Asafak Alam to whom the sample blood in item No.1 and 4(e) belongs respectively.
15. The nail clippings in item No.4(d) belongs to Asafak Alam to whom the sample blood in item No.4(e) belongs.
16. The blood stains on items 12, 13 and 14(a) belong to Asafak Alam to

whom the sample blood in item No.4(e) belongs.

17. The hair in item No.12 belongs to Asafak Alam to whom the sample blood in item No.4(e) belongs.
18. The salivary stains in items 13 and 14(a) belong to Asafak Alam to whom the sample blood in item No.4(e) belongs.
19. The male DNA in items 10, 14(a), 17(a) and 20 belongs to Asafak Alam to whom the sample blood in item No.4(e) belongs.
20. The female DNA in items 10,11, 14(a), 16(a), 16(b), 17(a), 17(b) and 20 belong to xxxx to whom the sample blood in item No.1 belongs.
21. The Y profiling obtained from items 3(a), 3(b), 10, 14(a), 17(a) and 20 are matching with the Y profile obtained from the sample blood of Asafak Alam in item No.4(e).
22. The male DNA in items 11, 16(a), 16(b) & 17(b) are insufficient for DNA profiling.
23. The hairs in items 11, 13 and 14(a) are unsuitable for DNA profiling.
24. The salivary stains in items 6, 10, 11 & 12 are insufficient for DNA profiling.
25. The blood stains in items 14(b) & 19 and hair in item No.9 are insufficient for DNA profiling.
26. The DNA profile obtained from the blood stains on item No.6 belongs to human but unsuitable for comparison purpose.

119. During cross examination PW.24 explained that the result of Electropherogram report received as part of their analysis using Gene Mapper IDX software has been reproduced in Ext.P33 in tabular form. The learned counsel for the accused submitted that the non-production of the Electropherogram report along with Ext.P33 is fatal. But the non-production of the separate report does not make any change in the analysis as well as the result of the examination conducted as mentioned in Ext.P33. PW.24 has denied the suggestion of the learned counsel for the accused that item Nos.1 to 20 were cross contaminated and the collection packing, sealing, labelling etc were not proper.

120. So the report as well as the evidence of PW.24 makes it clear that the materials used for analysis as per Ext.P33 reached the lab in tamper proof manner with intact seal. On analysing Ext.P33 report of the result therein coupled with the oral testimony of PW.24 it can be seen that the nail clippings of the deceased contained in the DNA of the accused and also the deceased (Result No.14, 21). It further shows M.O.3 ligature (Item No.10) and M.O.3 (a) (Item No.20) contained the DNA of the deceased, semen and DNA of the accused. Saliva found was unsuitable for profiling. (Result Nos.9, 20, 21, 24). There is also a finding that M.O.2 nicker of the victim (Item No.11) contained DNA of the deceased and semen and hair found were unsuitable for profiling

(Result Nos.7, 9, 12, 20, 23, 24). Another important finding is that vaginal swab and smear (Item Nos.16(a) and 16(b)) and anal swab and smear (Item No.17 (a) and 17(b)) contained human spermatozoa though it found in items 16(a), 16(b) and 17(b) are insufficient for DNA profiling (Result Nos.10, 12, 20, 22). There is also a finding that anal swab (Item No.17 (a)) of the victim contained blood of the deceased, spermatozoa and DNA of the accused (Result Nos.10, 12, 20, 21). From these scientific evidence it is clear that nail clippings, M.O.3 T-shirt of the victim and anal swab of the deceased contained DNA of the accused which occurred in a sexual violence. Such DNA evidence is conclusive and there was no tampering and contamination to the material objects examined. This is a clear indication in proof of the prosecution case that the victim girl was raped by accused causing damage to her vagina and anus before she was killed by strangulation at the hands of the accused.

121. As regards the dress and samples collected from the accused sent for DNA profiling, PW.24 has given Ext.P33 result that nail clippings of the accused (Item No.4(d)) contained fiber similar to M.O.2 nicker (Item No.11) of the victim (Result No.5 and 15). The result further shows that M.O.10 underwear (Item No.14(a)) of the accused contained human spermatozoa, blood of the accused and the deceased girl (Result Nos.9, 16, 20, 21). These results are scientific evidence proving the involvement of the accused in the rape and

murder of the child. As already mentioned, M.O.3 ligature (Item No.10) found on the neck of the dead body contained the semen and DNA of the accused.

122. The learned counsel for the accused was arguing much alleging improper collection, sampling, labelling etc of the samples in this case especially for DNA analysis. The learned counsel relied on the decision of the Apex Court in **Rahul v. The State of Delhi Ministry of Home Affairs, AIR 2022 SC 5661** and contended that DNA evidence is in the nature of opinion evidence as envisaged under Section 45 of Evidence Act and like any other opinion evidence, its probative value varies from case to case. There is no dispute to the dictum laid down by the Apex Court in this regard. But there is no proof that the DNA evidence was not properly documented, collected, packaged and preserved except the bald allegation of the accused. The officers who have collected samples and the experts who have received the samples unanimously deposed that the samples were collected as per usual method and it reached the lab in tamper proof. It has been so mentioned in the respective Forensic Science Laboratory reports also. So the DNA test report is to be accepted (**Mukesh v. State, NCT of Delhi, Para-228** (supra))

123. The learned Special Public Prosecutor invited the attention to the decision of the Hon'ble High Court of Kerala in **Chandrasekharan v. State of Kerala, 1993(1) KLT 571** which held that, "*When the investigating officer packs*

and forwards material objects he is doing official acts. We are inclined to presume that they were regularly performed by the officer. There is no statutory provision which prescribes any particular mode for such packing etc. The legal aid for drawing a presumption, as illustrated under S.114 of the Evidence Act, can be used even in respect of official acts adopted during investigation of crimes. Nor are we inclined to presume that investigating officers, being interested in the prosecution, would tamper with materials which remained in their custody and concoct such materials to bring the case to conviction. It would not be a proper judicial attitude to start with distrust or suspicion against investigative exercises made by public officers. Nor it be a healthy approach to presume that whenever there is any opportunity, the investigating officers would manipulate or tamper with material objects dishonestly. Any such attitude, if adopted by judicial functionaries, would run down the guts and gumption of the police administration and erode the morale of the investigating agencies".

Therefore no reliance can be placed on the submission of the learned counsel for the accused that the samples were contaminated or the procedure for sampling was violated. It follows that the reports of experts mentioned as Exts.P27, P29 and P33 can be accepted as a valid opinion and relevant for consideration of the issues involved in this case.

124. PW.28 is the Village Officer, Aluva West Village and he has visited

the dumping yard in the Aluva market where the dead body of the victim girl was found as requested by the Investigating Officer. After visiting the place he has prepared Ext.P41 site plan. In Ext.P41 he has noted the place of occurrence in the south-western corner where the dead body was found. No.2 in Ext.P41 is the Seemas Textiles shop where the accused alighted from the bus with the victim girl as deposed by PW.6. The road towards the market starts from the highway road and EKS vegetables and PTJ vegetables are situated on the side of this road. These shops were shown in Ext.P41 as No.4 and 5. As stated earlier, the visuals from EKS vegetables were marked as Exts.P28 (c), P28 (ca), P28 (cb) based on M.O.7 hard disk collected out of the DVR seized as per Ext.P12 mahazar by PW.43. That CCTV camera in front of EKS vegetables has been shown in Ext.P41. Similarly the CCTV cameras in front of PTJ and company mentioned as No.5 in Ext.P41 also has been shown in the site plan. The visuals in the CCTV camera of PTJ vegetables were marked as Exts.P28(d), P28 (da) and P28 (db). As discussed earlier, the visuals of these two shops shown the custody of the victim child with the accused in front of the shops and near the banyan tree and that tree was also has been shown as No.10 in Ext.P41. The accused and the child were found moving towards the road mentioned as No.9 in Ext.P41 which ultimately reaches the waste dumping yard on the south and also the place where the dead body was found.

125. Ext.P41 is also important for noting the fact that there are water taps near the banyan tree and the accused was found washing his hands and legs captured in Ext.P28 (db) visuals between 17:38:24 Hrs to 17:41:42 Hrs. Similar view was captured in the CCTV camera of EKS vegetable also marked as Ext.P28 (cb) between 17:38:47 Hrs and 17:42:07 hours. Further, Ext.P41 displayed the presence of CCTV camera on further south facing the waste dumping yard. As discussed earlier, it was installed by Aluva Municipality as camera No.D27 and the visuals from that camera was collected by PW.18 and seized by PW.41 the Sub Inspector with Section 65 B Certificate. Subsequently, the visuals were copied and annexed in two DVDs marked as Exts.P30 and P31 along with Ext.P29 Forensic Science Laboratory report prepared by PW.21. As stated earlier, the visuals disclosed the movements of the accused with the victim child from north towards south across the camera view between 15:13:03 Hrs to 15:14:07 Hrs. That visuals were separately marked as Ext.P30(a). Subsequently, between 17:13:24 Hrs to 17:41:42 hours the accused was found returning from the southern side without the child and he was seen by PW.9. That view was separately marked as Ext.P31(a). The importance of Ext.P41 further lies on the marking of the place where the dead body was found because that place can be reached by passing from north towards south across the CCTV camera view shown as No.15 in Ext.P41. Therefore, the topography

description of the above facts in Ext.P41 prepared by PW.28 lends credence to the prosecution allegation against the accused discussed elaborately in the previous paragraphs.

126. PW.29 is the Village Officer, Choornikara and on 07.08.2023 he has visited the place of occurrence in his village and prepared Ext.P43 site plan on the basis of the mahazar prepared by the police. On perusal of Ext.P43 it can be seen that it depicts the lie of the area where the victim girl was residing and the mud road from where the victim girl was allegedly abducted by the accused and passed crossing railway gate and the public road to catch the KSRTC bus. Thereafter PW.29 prepared a detailed site plan marked as Ext.P44 and it further explains each and every point relevant for consideration in this case. No.7 in Ext.P44 is shown as the road in front of the house building of the victim from where the child was abducted. No.14 is the house of the victim and it can be seen from the site plan that there cannot be a direct view from the house of the victim to the public road from where the child was abducted. In Exts.P44 the Village Officer has shown the room of the accused as serial number 17 in the building on the north of the building where the victim was residing. The building of the accused is a three storied building and the Village Officer has also shown the house of PW.12 Chandra adjacent to the room of the accused in the same floor. It has to be remembered that PW.12 has deposed that the accused came

to her in the afternoon on 28.07.2023 requesting for electric connection to be extended to his room from her room but it was refused by her. The railway gate adjacent to this building also has been shown in Ext.P44 wherein PW.4 was working as gatekeeper. As explained already by PW.13 the owner of the building is Zakkir Hussain and PW.13 was managing it. So the Village Officer has rightly recorded the place wherein the victim and the accused were residing and also the adjacent building as the property of Zakkir Hussain. Thus Ext.P44 also explains clearly about the topography of the area from where the accused taken the custody of the victim girl in the afternoon on 28.07.2023. This plan further proved the fact that the accused herein residing there for about 2 days prior to the alleged incident as deposed by PW.8 and PW.12 might have noticed the victim girl because the accused has to pass through the road in front of the house of the victim to reach his residence from the railway gate. The probability of the prosecution case that the victim passed through the railway gate witnessed by PW.4 and reached the highway road, crossed it and boarded in KSRTC bus also is clear while comparing Ext.P44 site plan and the other oral and digital evidence adduced in this case discussed earlier.

127. PW.30 is the Secretary of the Choornikara Grama Panchayat. He issued Exts.P45 and P46 ownership certificates in respect of the buildings wherein the victim girl and the accused was residing. M.M.Shamsudheen the

grand-father of PW.13 is the owner of the building. PW.13 has stated that his father is Zakkir Hussain and as mentioned above, the Village Officer has shown it as their property in the site plan. PW.28 the Village Officer, Aluva West Village has issued Ext.P42 possession certificate showing that the area mentioned in Ext.P41 site plan is used as Aluva market.

128. PW.40 the Sub Inspector attached to Aluva Police Station deposed that she went to the house of PW.6 on 01.08.2023 and seized Ext.P6 tickets after preparing Ext.P67 seizure mahazar. Similarly, on 10.08.2023 she went to Thayikattukara School Complex L.P.School and verified the admission register produced by PW.20 the Head Mistress incharge. Thereafter she has seized the Admission Register as per Ext.P68 seizure mahazar and it was released to PW.20 on Ext.P22 Kachit. She collected Ext.P24 extract of the admission register in respect of the victim girl from PW.20.

129. PW.42 is the Sub Inspector of Kuruppampady Police Station and he deposed that as directed by the District Police Chief he went to Ghazipur Police Station, Delhi to inquire about crime No.81/2018 registered by them against the accused. On inquiry he could realise that the police has completed the investigation and laid the charge against the accused before Karkadooma Court, Delhi as S.C.No.3820/2019. He further stated that the accused was absconding in that case after released on bail and he is a proclaimed offender there. He

obtained the certified copy of the charge sheet in respect of this case and produced before the Investigating Officer. That charge sheet copy was marked as Ext.P74 in this case.

130. On verification of Ext.P74 it is seen that Ashafak, S/o.Inamul Hak, aged 23 years with address Juggi No.74, Gali No.07, Ghazipur Diary Farm, Delhi is the accused and the offences alleged are under sections 354, 354A of Indian Penal Code and Section 10 of the Protection of Children from Sexual Offences Act, 2012. A 10 year old girl is the victim therein and it was alleged that on 06.03.2018 evening the accused sexually abused her and kissed her. It was submitted by the learned counsel for the accused that Ext.P74 does not relate to him because the accused in Ext.P74 is a Hindu whereas the accused herein is a Muslim. But it is to be noted that the Superintendent of Sub Jail, Aluva wherein the accused is detained now since 30.07.2023 has sought permission from this Court to produce the accused before Delhi Court as they have received a production warrant to produce the accused herein in that Court in Ext.P74 case. Therefore a mistake in the charge sheet that the accused is a Hindu cannot be a reason to hold that Ext.P74 does not relate to the accused herein.

131. PW.34 is the Finger Print Expert working in Single Digit Finger Print Bureau attached to Ernakulam Rural Police District. He deposed that on 30.07.2023 the finger print slip of the accused herein was forwarded to them by

the Station House Officer of Aluva East police station to ascertain whether he has any previous crime details. Accordingly he has searched in National Finger Print Identification System (NAFIS) and found the accused herein is involved in Crime No.81/2018 of Ghazipur Police Station which is similar to Ext.P74 mentioned earlier. He filed Ext.P55 report to the Investigating Officer in this regard.

132. The learned Special Public Prosecutor submitted that the relevance of Ext.P74 is to show the criminal intention maintained by the accused and he is a paedophile. A paedophile is a person who is sexually attracted to children. On the other hand, the learned counsel for the accused submitted that Ext.P74 has no relevance in this case and there is no case for the prosecution that the accused herein was convicted in that case. The previous conviction of the accused in similar case is not a point that requires consideration at this stage. Moreover, Section 54 Evidence Act has no application here since bad character itself is an issue here. Therefore the learned Special Public Prosecutor submitted that it has relevance u/s.14 of the Evidence act for the limited purpose of showing the attitude of the accused towards the children.

133. PW.39 is the Sub Inspector attached to Munambam Police Station and as part of the investigation in this case he had visited the native place of the accused in Goraganch Village, Aralia District, Bihar and met the parents and

relatives of the accused and also the Sarpanch there. The learned counsel for the accused submitted that the statement copies were not furnished to him. But PW.39 has no case that he has recorded the statement of these persons in Bihar and what was the information disclosed by them.

134. At the time of questioning u/s.313 (1) (b) Cr.P.C. the accused was denying all the incriminating evidence put to him in 488 questions. Later on, he filed a statement u/s.313 (5) of Cr.P.C in Malayalam interpreted by Advocate Bini Elizabeth translator stating that one Pathan Sheik and his men are the real accused in this case and he was falsely implicated in this case. It was also alleged that he was wandering in streets in a derailed mental condition and at that time the policemen taken him to the police station. Thereafter CWs.3 to 45 were brought to the police station and shown him. His photographs and videos were taken and published in the media.

135. The name of Pathan Sheik was referred by the accused in the above statement because PW.43 the Investigating Officer has admitted during cross examination that one Pathan Sheik was referred by the accused at the time of interrogating him and so Pathan Sheik was called to the police station. On detailed interrogation with Pathan Sheik PW.43 realised that he was not near the place of occurrence at the relevant time as he was engaged in some other place called NAD near Kalamassery. Therefore PW.43 released him without recording

his custody. It shows the attempt of the accused to include Pathan Sheik in this case. But there is no evidence in the prosecution records connecting Pathan Sheik either with the offences alleged or his presence in the place of occurrence throughout. Therefore such contention of the accused cannot be accepted as correct.

136. At the time of hearing the learned counsel for the accused submitted that the accused was taken into custody on 21.07.2023 which was not a case for the accused at the time of cross examining the police officers and also at the time of questioning. This date was referred by the learned counsel for the accused on the ground that PW.35 the Nodal Officer of Bharati Airtel has produced the CDR of the mobile number of the accused for the period from 03.04.2023 till 28.07.2023 and it was marked as Ext.P57. There was no call details for the mobile phone of the accused from 21.07.2023 and that may be the reason why such a contention was taken by the counsel for the accused at the stage of hearing. On the other hand PW.35 has deposed that the mobile number 8891547232 of the accused was an Aadhaar based bio metric activation in the name of customer Asafak Alam, S/o. Naimul Hak and the Customer Application Form with the photographs of the accused was marked as Ext.P56. The date of birth of the accused shown in Ext.P56 is 01.01.1995. In Ext.P74 the same name was mentioned and the age was shown as 23 years in the year 2018. Moreover,

the accused has no case that his mobile phone was seized by the police. However, the police has only verified whether the tower location details of the accused was at the place of occurrence on 28.07.2023. But they could not get any useful information from the CDR as there was no call details from 21.07.2023. So it can only be presumed that the accused has not used his mobile phone after 21.07.2023.

137. DWs.1 and 2 were examined on the side of the accused and they are two doctors attached to District Hospital, Aluva. DW.1 examined the accused on 29.07.2023 at 6.00 am before his arrest was recorded and that wound certificate was marked as Ext.D7. DW.1 has only mentioned that she did not find any fresh injury on the body of the accused. Healed wound of the accused were noted by PWs.22 and 25 the doctors attached to the District Hospital, Aluva. PW.22 examined the accused in the morning on 28.07.2023 as per Ext.P21 O.P.Ticket. Ext.D8 is the certificate issued by DW.2 another doctor attached to District Hospital, Aluva on 30.07.2023. He has also not noted any fresh injury on the body of the accused. The learned counsel for the accused asked about the identification marks of the accused noted by them and both of them have noted a black mole on the left cheek of the accused as one of the identification marks. It was submitted by the learned counsel for the accused that PW.25 who has conducted the potency examination and also taken samples from the accused

has not recorded the same identification marks as recorded by DWs.1 and 2. On that ground the learned counsel argued that it was not the accused examined by PW.25. As discussed earlier, selecting the marks found on the body for the purpose of recording it is the discretion of the doctor and one cannot insist that in all certificates same identification marks should be noted. Moreover, the accused has no case that the identification marks noted by PW.25 is not there on the body of the accused. Therefore such contention of the accused has no force at all. There was no complaint from the accused at any point from his remand on 30.07.2023 that he was manhandled by the police officers or otherwise tortured.

138. The learned counsel for the accused submitted that the discovery of the dead body on 29.07.2023 as per Ext.P11 seizure mahazar and the discovery of M.O.1 chappal and M.O.3(a) the part of T-shirt consequent to the statement of the accused as per the prosecution case cannot be accepted as a valid evidence in view of the dictum laid down by the Apex Court in **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh, AIR 2022 SC 5273**, **Subramanya v. State of Karnataka, AIR 2022 SC 5110** and **Boby v. State of Kerala, 2023 (1) KLT 543** and **Rajesh and another v. State of Madhya Pradesh (Criminal Appeal Nos.793-794/2022)**. But on analysing the facts of the cases mentioned in the above decisions and the case in hand I find much difference.

139. In **Sabu @ Eetty Sabu v. State of Kerala, 2023 (2) KHC 229**, the

Hon'ble High Court of Kerala had an occasion to consider the application of the dictum laid down in the above mentioned decision of the Apex Court in **Subramanya v. State of Karnataka**. In Para15 of the judgment the Hon'ble High Court of Kerala has held that *"Even though Adv.Saipooja relied upon the decision in **Subramanya v. State of Karnataka** to contend that the statement that led to the recovery is not admissible since the manner in which the statement was recorded is not in compliance with law, I am afraid I cannot accept the said contention. In the said decision, the basic infirmity noted by the Supreme Court was that none of the prosecution witnesses had deposed the exact statement said to have been made by the appellant which led to the discovery of a fact relevant under section 27 of the Evidence Act. In such a circumstance the Court came to the conclusion that evidence was deficient in respect of the statement that led to the recovery of the weapon of offence. However, in the present case, Ext.P2 (a) is the document where the statement of the accused that led to the recovery of the weapon of offence was taken down and the same was specifically deposed to by the investigating officer when he was examined as PW.8. Further, no questions were put to the witness regarding the procedure of taking down the statement that led to the recovery of the knife. In the above circumstances, the contention of the learned counsel for the*

appellant regarding the inadmissibility of the statement that led to the recovery of the knife is untenable”.

140. The above observation of the Hon'ble High Court is squarely applicable to this case because PW.43 the Investigating Officer has given oral evidence to the effect that he has questioned the accused at first after recording his arrest on 29.07.2023 at 11.30 am and on the basis of his disclosure statement he proceeded to the place where the dead body of the victim was found as led by the accused along with the witnesses. The relevant part of the statement mentioned in Ext.P11 seizure mahazar was marked as Ext.P11 (a). Its extract was separately produced with Malayalam translation and it was marked as Ext.P11(b). It is to be noted that the accused gave statement to PW.43 in Hindi and the interrogation was also in Hindi as PW.43 also knows Hindi. The Hindi version of the statement of the accused was reproduced in Exts.P11(a) and P11(b). Moreover PW.43 has received the custody of the accused through Court since 01.08.2023 and thereafter the accused was again questioned. At that time the accused was given a statement to PW.43 in Hindi and on that basis on 03.08.2023 at 3.30 pm PW.43 went to the place in Aluva market where the accused pointed out M.O.1 chappal and M.O.3(a) cloth piece hidden at the gap of the compound wall. The Hindi version of the disclosure statement of the accused has been reproduced in Ext.P16(a) and the extract produced as

Ext.P16 (b) as in the case of previous seizure mahazar. Moreover it has been photographed by PW.32 and the photos of the seizure are Ext.P51 disclosing the presence of the accused, PW.43 and the witnesses at the place where the hidden articles were found.

141. As regard, the decision in **Boby v. State of Kerala** (Supra) relied on by the learned counsel for the accused the said decision relates to a case where there was no confessional statement of Boby the third accused in that case recorded with regard to the recovery of the dead body of the deceased as mentioned in paragraph 34 of the Judgment. Therefore the dictum in this decision also cannot be applied to the case in hand. Another decision relied on by the accused is **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh** (Supra). On a perusal of the judgment the Hon'ble Supreme Court has made it clear in paragraph 54 of the judgment that, *"We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, tha the document so prepared by the police officer must be treated a tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the Accused on its*

own worth". Therefore the above judgment also will not help the accused in this case.

142. The decision of the Apex Court in **Rajesh and another v. State of Madhya Pradesh** (Supra) dealt with the nature of custody of the accused while giving the confession statement. But in the case in hand the disclosure statement was given by the accused after the accused was arrested as the accused in this case and subsequently when he was in police custody. Therefore there is factual difference between the case in hand and the **Rajesh and another v. State of Madhya Pradesh** (Supra). These decisions referred by the learned counsel for the accused are not sufficient to find against the discovery of the dead body and other articles as per Exts.P11 and P16 seizure mahazars.

143. In **Mukesh and another v. State NCT of Delhi and others** (Supra) the Apex Court considered the necessity of independent witnesses at the time of recovery u/s.27 of the Evidence Act. The Apex Court held that, "*As a matter of fact, need of examining independent witnesses, while making recoveries pursuant to the disclosure statement of the accused is a rule of caution evolved by the Judiciary, which aims at protecting the right of the accused by ensuring transparency and credibility in the investigation of a criminal case*". It further held that, "*Even though, the arrest and recovery under Section 27 of the*

Evidence Act is often sought to be misused, the courts cannot be expected to completely ignore how crucial are the recoveries made under Section 27 in an investigation. The legislature while incorporating Section 27, as an exception to S.24, S.25 and S.26 of the Evidence Act, was convinced of the quintessential purpose Section 27 would serve in an investigation process. The recovery made under Section 27 of the Evidence Act not only acts as the foundation stone for proceeding with an investigation, but also completes the chain of circumstances. Once the recovery is proved by the prosecution, burden of proof on the defence to rebut the same is very strict, which cannot be discharged merely by pointing at procedural irregularities in making the recoveries, especially when the recovery is corroborated by direct as well as circumstantial evidence, especially when the investigating officer assures that failure in examining independent witness while making the recoveries was not a deliberate or mala fide, rather it was on account of exceptional circumstances attending the investigation process". It was also held that, "When recovery is made pursuant to the statement of accused, seizure memo prepared by the Investigating Officer need not mandatorily be attested by independent witnesses".

144. The learned Special Public Prosecutor relied on the decision of the Apex Court in support of his contention that the prosecution has clearly

established the recovery of the dead body of the victim consequent to the disclosure statement of the accused given to PW.43 and thereafter preparation of Ext.P11 seizure mahazar containing the relevant part of the statement of the accused given to PW.43 in Hindi. He has also submitted that the recovery of M.O.1 and M.O.3(a) on 03.08.2023 as per the disclosure statement of the accused marked as Exts.P16 (a) and P16(b) and the seizure of above articles as per Ext.P16 by PW.43 is also proved beyond reasonable doubt. The learned Special Public Prosecutor placed reliance on the decision of the Apex Court in **State of Himachal Pradesh v. Jeet Singh, (1999) 4 SCC 370** which held that, *“Mere fact that any witness to the recovery did not overhear the disclosure statements of the accused is hardly sufficient to hold that no such disclosures were made by the accused”*. The other decisions referred by the learned Special Public Prosecutor are **John Pandian and others v. State, (2010) 14 SCC 129**, **Kripal Singh v. State of Rajasthan, (2019) 2 SCC (Cri) 680**, **State, Government of NCT of Delhi v. Sunil and another (2001) SCC (Cri) 248**, **State of Maharashtra v. Suresh, 2000 SCC (Cri) 263** and **State of Maharashtra v. Damu, (2000) 6 SCC 269** in support of his contention.

145. The learned counsel for the accused submitted that the prosecution could not establish the authorship of concealment of the articles allegedly recovered as per Exts.P11 and P16. As already found, the dead body recovered

as per Ext.P11 was in a concealed state as covered by waste materials and granite stones. The oral testimony of PWs.7, 10, 27, 32 and 43 proved this fact. Ext.P48 series photographs also support this. Similarly at the time of seizure of M.O.1 and M.O.3(a) as per Exts.P16, Ext.P51 photographs were taken by PW.32 and the photos as well as the oral testimony of PW.43 and mahazar witnesses established the fact that these articles were also found hidden in a gap of the compound wall of the waste dumping yard. In **State of Himachal Pradesh v. Jeet Singh** (Supra), the Hon'ble Supreme Court observed that *"There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others"*. Therefore the submission of the learned counsel for the accused in this regard also will not stand.

146. Ext.P25 series photographs of the victim girl were identified by her parents examined as PW.1 and PW.37. Ext.P26 series photographs of the accused taken at the time of police custody is undisputed. These photos were sent to State Forensic Science Laboratory for identification in the CCTV

footages. PW.21 has reported in Ext.P27 report that the persons in Exts.P25 and P26 photos are found in the CCTV visuals contained in Ext.P28 pen drive and also in Exts.P30 and P31 DVDs. In this regard the decision of the Hon'ble High Court of Kerala in **Santhosh Madhavan @ Swami Amritha Chaithanya v. State, 2014 KHC 31** is important. It was held that,

“But there are two categories of such documents. They are, (i) those which fall within the pictorial testimony theory and (ii) those which fall under the silent witness theory category. Pictorial testimony theory or communication theory is based on the notion that any witness with knowledge that a photograph is a fair and accurate representation may testify to the fundamental facts. There is no requirement that the person who took the photograph should testify in order to authenticate the photograph. It is enough that the individual testifying recognises the subject that is depicted in the photograph. Authenticity of the photograph is to be established like in the case of any other document. It must be noticed that documentary testimony theory only covers the admissibility of evidence and it does not refer to the evidence of the photographer as a fact finder. Under the silent witness theory, the following factors will have to be established:

“Under “silent witness” theory, testimony, establishing authenticity, integrity, and competency of video recording.

Photograph expert's determination that video recording was not altered in any way, built -up or faked.

Continuous chain of custody established.

Video camera or camcorder was checked and property operating.

Video recording is same as what witness saw on playback immediately after recording.

No material alteration, surreptitious editing, or fabrications have taken place”.

The identification of the photographs by the parents of the victim and Exts.P27 and 29 report of PW.21 proved that the photos and visuals are tamper proof without any editing or morphing.

147. As already discussed, the accused did not give any proper explanation to the incriminating evidence put to him at the time of questioning u/s.313 (1)(b) Cr.P.C. The explanation given by him in his statement u/s.313 (5) of Cr.P.C also is found to be false. In **Nagesh v. State of Karnataka, (2012) 6 SCC 477**, the Apex Court held that, *“if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law”*.

148. In **Ganesh Lal v. State of Rajasthan, 2002 SCC (Cri) 247** the Apex Court held that, *“when the case rests on circumstantial evidence the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by itself would yet enable an*

inference being raised against him because the fact being in the exclusive knowledge of the accused it was for him to have offered an explanation which he failed". The Court further held that, "The fact remains that the accused failed to offer any explanation of such circumstances and therefore they can be used as inculpatory circumstances against him and the necessary inferences flowing there from used as links in the chain of incriminating circumstantial evidence fastening guilt on him".

149. In **State of Tamil Nadu v. Rajendran, 2000 SCC (Cri) 40**, the Hon'ble Supreme Court held that, "*In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete*". Falsity of the defence plea and the false answers given to the Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the persons concerned with the crime committed (**State of Maharashtra v. Suresh, 2000 SCC (Cri) 263, Joseph v. State of Kerala, 2000 SCC (Cri) 926**).

150. There is evidence in this case that the victim girl was found with the accused in the afternoon from about 2.50 pm near the house of the victim as

well as the accused at Garage area in Choornikara Village and they were found crossing the railway lane and the main road after purchasing juice worth Rs.10/- from Najiya Stores nearby. Their company was seen by PWs. 2 and 3 and recorded in the CCTV of Najiya Stores. It was also recorded by the CCTV of the nearby shop Ideal Systems. It was further recorded by the CCTV visuals from Quality Chicken wherein PW.8 was working. PW.8 also has seen the accused abducting the victim. Thereafter the accused and the victim were found boarding in a KSRTC bus in which PW.6 also was travelling and she found the accused and the victim dropped near Seemas Textiles, Aluva. Ext.P6 bus tickets of PW.6 shows the time 3.06 pm then. Ext.P41 site plan of the Village Officer shows the proximity of Seemas Textiles to the place of the dumping yard in Aluva market and the place where the dead body of the victim was found on the next day. The accused and the victim girl were found by PW.7 at the market road and both of them were found going towards the waste dumping area. This view was available in the CCTV cameras of EKS vegetables and PTJ vegetables and its location was mentioned in Ext.P41. The victim and the accused were last seen by PW.7 and by about 3.13 pm the victim and the accused were passing through the dumping yard and this view was captured in CCTV camera of Aluva Municipality proved by Ext.P30(a) visuals. After about two hours the accused was found returning alone at about 5.33 pm and it is proved by the oral

testimony of PW.9 and the CCTV footages in D27 camera of Aluva Municipality proved by Ext.P31(a). Thereafter the accused was found washing his hand at the water tap in front of PTJ vegetables and EKS vegetables and their CCTV cameras captured the visuals also at about 5.38 pm as discussed earlier. Therefore the prolonged and continuous company of the accused and the victim is evident from the oral, documentary, scientific and digital evidence produced by the prosecution. The oral evidence of PW.26 who conducted the post-mortem and Ext.P38 certificate issued by him indicate the time of death between 3.30 pm and 9.30 pm on 28.07.2023. That means, the accused was found with the victim girl just prior to her death and he was found alone after 5.33 pm on that day. So the last seen theory applies in this case and the accused has not offered no explanation in this regard.

151. As already discussed in detail, there is no direct evidence to show that the accused has committed murder of the victim girl. However the prosecution is trying to establish such allegation on the basis of circumstantial evidence. In **Hanumant v. State of Madhya Pradesh, AIR 1952 SC 343**, the Apex Court held that, *“It is well to remember that in cases where the evidence in 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". These principles have been laid out in the form of five golden principles by the Apex Court in **Sharad Birdhi Chand Sarda vs State of Maharashtra (1984) 4 SCC 116** as follows.

1. *The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
2. *The facts so established should be consistent only with the hypothesis of 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 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 above guidelines are followed in subsequent decisions of the Apex Court.

152. In **State of West Bengal v. Mir Mohammad Omar and others, (2000) 8 SCC 382**, the Apex Court observed that, "*The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries and the society would be the casualty. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical*

conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody”.

153. In Chaman and others v. State of Uttarakhand, (2016) 12 SCC 76, the Apex Court held that, *“Significantly, the proved abduction of the deceased from his house by the appellants is per se a criminal offence and carries with it a much higher degree of sinister culpability compared to any phenomenon of “last seen together”, simpliciter. Further the deceased being in the custody of the appellants after his abduction on 12.6.1996, it was within their special knowledge as to how he had been dealt with by them thereafter before his dead*

body was found in a decomposed state in a nearby jungle. No explanation is forthcoming in any form in this regard from the appellants”.

154. In **State of Rajasthan v. Kashi ram, (2006) 12 SCC 254**, the Hon'ble Supreme Court held that, *“It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not*

support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain”.

155. In **Sudru v. State of Chhattisgarh, (2019) 8 SCC 333**, the Apex Court considered the last seen evidence and held that, *“In this view of the matter, after the prosecution has established the aforesaid fact, the burden would shift upon the appellant under Section 106 of the Evidence Act. Once the prosecution proves, that it is the deceased and the appellant, who were alone in that room and on the next day morning the dead body of the deceased was found, the onus shifts on the appellant to explain, as to what has happened in that night and as to how the death of the deceased has occurred”.* Further, the Apex Court relied on its earlier decision in **Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681** which held that, *“In a case based on circumstantial evidence where no eye- witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete”.*

156. In **Lalku Mian and others v. Chief Secretary (2013) 1 SCC (Cri) 201** the Apex Court held that, *“It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference”*.

157. The learned counsel for the accused argued at length regarding the

omissions and exaggerations about the statement of the prosecution witnesses. In reply to this the learned Special Public Prosecutor relied on the decision of the Apex Court in **Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434** in which it is held that, *“It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor*

discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole”.

158. The learned Special Public Prosecutor has also relied on the decision of the Apex Court in **State represented by Inspector of Police v. Saravanan and another, (2008) 17 SCC 587** and in **Shashidar Purandhar Hegde v. State of Karnataka, AIR 2004 SC 5075** and also the decision of the Hon'ble High Court of Kerala in **Francis Joy v. State of Kerala, 1989 (1) KLJ 585** dealing with minor discrepancies on criminal matters without affecting the core of the case of the prosecution.

159. The learned Special Public Prosecutor submitted that the prosecution has established the guilt of the accused beyond reasonable doubt based on the oral, documentary, digital and circumstantial evidence that the accused has abducted the victim girl aged 5 years offering sweets and with an intention to commit rape and murder she was taken to the dumping yard of Aluva Municipality and reached the place of occurrence on the south-western corner of the dumping yard after about 3.15 pm. After reaching there, it was alleged that the accused administered liquor to the victim girl which was carried by the accused as seen from his reply to the query of PW.7 when he was asked the

purpose for which he along the child going to the dumping yard area. Moreover, his presence in front of beverages corporation outlet in the morning is proved by the availability of O.P.Ticket (Ext.P21) in favour of the accused in that area collected by PW.19 and proved through PW.22. PW.12 Chandra also deposed the drunken condition of the accused in the afternoon on 28.07.2023. 56 mg per 100 ml ethyl alcohol was detected in the blood of the victim girl as seen from the chemical analysis report as well as the additional post-mortem report. Moreover, ethyl alcohol was detected in stomach, liver and kidney also. The intention of the accused to take the victim girl to this vacant area for committing gruesome act of rape and murder can be gathered from the answers given by him to PW.7 that he claimed to be the father of the child so as to keep her custody. As discussed earlier, PWs. 2, 3, 4 and 8 have found the victim girl passing through their place crossing the railway gate near to the house of the victim along with the accused, PW.6 seen them in KSRTC bus and finally PW.7 found the accused near the dumping yard with the child. Thereafter he moved to the place where the victim was found dead and returned alone.

160. The post-mortem certificate shows the cause of death as strangulation and ligature using M.O.3 dress of the victim was found surrounding the neck while the body was detected and in the same position it was sent for post-mortem examination. Therefore asphyxial death of the child is proved and it

is also proved as a case of homicidal death. The injuries found on the anus as well as vagina shows the sexual violence against the child and there was bleeding from these organs. Multiple damages were found in the vaginal and anal parts disclosing the cruel and violent nature of attack on these parts. Injuries were noted on her thighs also suggesting another form of sexual assault. The accused did not adduce any evidence to get himself included in any of the exceptions of Sec.300 of Indian Penal Code. As the accused was not able to explain any other circumstances for the death of the child after he has taken custody of her and moved to the place where the dead body was found, it can only be concluded that the accused is the person who committed rape on the victim girl and thereafter caused her death by strangulating her. The lie of the dead body as mentioned in Exts.P11 and P9 and also the photographs marked as Ext.P48 series indicate the fact that the body was hidden beneath waste materials and granite stones. One chappal and a part of the T-shirt of the victim was subsequently recovered from a hidden place in a gap of the compound wall of the dumping yard and it was alleged that the other chappal was thrown to the river. The liquor bottle also might have been thrown away. As the child has not having any problem as seen from the visuals and from the statements of witnesses who found her walking along with the accused the intoxication of liquor found in the body of the child also can be treated as administered by the

accused. The volume of liquor found suggests unconscious condition of the girl after administered it and ruling out any chance of resistance. The dead body of the child was found defaced by causing injury with granite stone and utmost disrespect was seen given to the dead body which cannot be tolerated by the society at large, her religion and the relatives of the victim personally.

161. In an over all appreciation of the above mentioned evidence it is clear that the entire chain of circumstances is completed starting from the abduction of 5 year old girl at about 2.50 pm from the mud road near the house of the victim and accused and till the victim was taken to the dumping yard at about 3.15 pm proved by Ext.P30 (a) visuals. The nature of injury caused to the private parts of the victim, presence of liquor inside her body, strangulated death etc. discussed in detail in the foregoing paragraphs are sufficient to conclude consistent with the guilt of the accused and there is no iota of fact suggesting innocence of the accused. The contention of the learned counsel for the accused that the accused was subjected to physical torture and the disclosure statements were not made voluntarily cannot be accepted as the accused had no such complaint when he was produced in Court during crime stage and at the time of questioning u/s.313 (1) (b) Cr.P.C. There was not even a suggestion to PW.43 by the learned counsel for the accused that the accused while in custody was subjected to physical torture. Moreover, the time gap between the company of

the accused and the time of death of the victim girl are too short which is also a connecting link against the accused.

162. Considering all these facts and circumstances I hold that the prosecution has established the guilt of the accused beyond reasonable doubt for the offences alleged u/s. 366A, 364, 367, 328, 376AB, 376 (2) (j), 376 (2) (m), 376 (2) (n), 377, 302, 297, 201 of Indian Penal Code. The prosecution has also established the guilt of the accused u/s. 5 (i), (l) (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012. That apart, the legal presumption u/s.29 of the Protection of Children from Sexual Offences Act, 2012 that the accused has committed the offence u/s.5 of the POCSO Act can be drawn against the accused as the prosecution has established the foundational facts constituting the offences as held in **Justin @ Renjith v. Union of India and others, 2020 (6) KHC 546** and **xxx v. state of Kerala, 2022 (2) KLT 450**. The accused could not adduce any rebuttal evidence in this regard. Similarly, the prosecution has also established the guilt of the accused u/s.77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 for administering intoxicating liquor to the victim girl aged 5 years. Thus these points are answered in favour of the prosecution.

163. **Point No.17** : In view of the findings on point Nos.1 to 16, the accused is found guilty of the offences punishable u/s. 366A, 364, 367, 328,

376AB, 376 (2) (j), 376 (2) (m), 376 (2) (n), 377, 302, 297, 201 of Indian Penal Code, Sec. 5 (i), (l) (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 and Sec.77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and he is convicted thereunder. As it is not a fit case to apply the benevolent provisions of the Probation of Offenders Act, accused and prosecution will be heard on the question of sentence.

Dictated to the Confidential Assistant, corrected by me and pronounced in open court on this the 04th day of November, 2023.

Sd/-
K.Soman,
Additional District & Sessions Judge.

164. Sec.42 of the Protection of Children from Sexual Offences Act, 2012 states that, where an act or omission constitutes an offence punishable under this Act and also under Sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or Section 509 of Indian Penal Code or Section 67 B of Information Technology Act, 2000, then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

165. The accused has been convicted for the offences u/s.366A, 364, 367, 328, 376AB, 376 (2) (j), 376 (2) (m), 376 (2) (n), 377, 302, 297, 201 of Indian Penal Code, Sec. 5 (i), (l) (m) r/w.6 of the Protection of Children from

Sexual Offences Act, 2012 and Sec.77 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The offence u/s.376 AB of Indian Penal Code and the offence u/s.5 (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 relates to the rape or aggravated penetrative sexual assault against a child aged below 12 years. The punishment for the two offences are same. However, the offence u/s.376 (2) (n) for repeated rape prescribes lesser punishment than the punishment prescribed for Sec.376 AB of Indian Penal Code. At the same time, the same punishment is prescribed for repeated penetrative sexual assault u/s.5 (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 in Sec.5 (l) r/w.6 of the Protection of Children from Sexual Offences Act, 2012. Therefore I prefer Sec.5 (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 for sentencing instead of Sec.376 AB of Indian Penal Code. Similarly, Sec.5 (i) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 is preferred considering greater degree of punishment than similar offence u/s.376 (2) (m) of Indian Penal Code. Likewise, Sec.5(l) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 is preferred as punishment is greater in degree for the similar offence u/s.376 (2) (n) of Indian Penal Code. That means, out of 16 charges found against the accused in this case sentence is limited to 13 charges excluding the charges in respect of the offences u/s.376AB, 376 (2) (m) and 376 (2) (n) of Indian Penal

Code by applying the guidelines in Sec.42 of the Protection of Children from Sexual Offences Act, 2012.

166. On 09.11.2023 the accused was heard on the question of sentence u/s.235(2) of Cr.P.C. He maintained the plea that he has not committed any offence and the assailants who are his companions caught by the police have been let free. The argument that one Pathan Sheik is the culprit raised by the counsel for the accused and also the accused in his statement u/s 313(5) of Cr.P.C. has been found against already. The accused did not show any sign of repentance though he has been found guilty on 16 charges including repeated rape and murder of the victim girl aged 5 years.

167. The Protection of Children from Sexual Offences Act came into force with effect on 14.11.2012 and it has undergone amendments by Act 22 of 2018, Act 34 of 2019 and Act 25 of 2019. Out of these three amendments the amendment made vide Act 25 of 2019 with effect from 16.08.2019 is important because it has enhanced the punishment prescribed for the offence u/s.6 of the Protection of Children from Sexual Offences Act, 2012. Earlier, the punishment mentioned in the said provision was rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine. However, the Parliament realised that the said punishment is insufficient or inadequate. Thereby amendment by way of Act 25

of 2019 was introduced. In this context, it is relevant to examine the statement of objects and reasons of Act No.25 of 2019. The relevant part of the statement is extracted below.

“3. However, in the recent past incidences of child sexual abuse cases demonstrating the inhumane mind-set of the abusers, who have been barbaric in their approach towards young victims, is rising in the country. Children are becoming easy prey because of their tender age, physical vulnerabilities and inexperience of life and society. The unequal balance of power leading to the gruesome act may also detriment the mind of the child to believe that might is right and reported studies establish that children who have been victims of sexual violence in their childhood become more abusive later in their life. The report of the National Crime Records Bureau for the year 2016 indicate increase in the number of cases registered under the said Act from 44.7 per cent. In 2013 over 2012 and 178.6 per cent. In 2014 over 2013 and no decline in the number of cases thereafter.

4. The Supreme Court, in the matter of **Machhi Singh v. State of Punjab, 1983 (3) SCC 470**, held that when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience

is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The same analogy has been reiterated by the Supreme Court in the matter of **Devender Pal Singh v. State (NCT of Delhi)**, AIR 2002 SC 1661 wherein it was held that when the collective conscience of the community is so shocked, the Court must award death sentence.

5. In the above backdrop, as there is a strong need to take stringent measures to deter the rising trend of child sex abuse in the country, the proposed amendments to the said Act make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child”.

168. So, the legislative intention is clear from the above referred part of the statement of objects and reasons of Act 25 of 2019. In this case, apart from the offence u/s.302 of Indian Penal Code there are three offences u/s.5 of the Protection of Children from Sexual Offences Act, 2012 for which punishment is prescribed u/s.6 wherein death penalty also is introduced as punishment mentioned above in which the accused and the prosecution were heard on the question of sentence. Going by Sec.31 of the Protection of Children from Sexual Offences Act, 2012 the provisions of Criminal Procedure Code prescribed

u/s.235(2) of Cr.P.C and Sec.354(3) of Cr.P.C relating to the hearing on sentence as well as special reasons for death penalty are to be conducted in respect of the offence u/s.6 of the Protection of Children from Sexual Offences Act, 2012 also as in the case of Sec.302 of Indian Penal Code.

169. *"The true character of a society is revealed in how it treats its children"* - **Nelson Mandela**

170. *"Rape is one of the most depraved acts. The iniquitous flagitious act becomes abonimal when the victim is a child. The diabolic act reaches the lowest level of humanity when the rape is followed by brutal murder"* (**State of Uttar Pradesh v. Satish, AIR 2005 SC 1000**). *"Once a person is convicted for an offence of rape, he should be treated with a heavy hand. An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging 'potential criminals'. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court"* (**Dinesh v. State of Rajasthan, (2006) 3 SCC 771, State of Madhya Pradesh v. Babulal (2008) 1 SCC 234**).

171. In **State of Rajasthan v. Gautam, 2023 (5) KLT 833**, the Apex

Court in its judgment dated 11.10.2023 considered the sentence for the offence u/s.376 of Indian Penal Code. The Apex Court observed that, *“While dealing with the issue of sentence, in such a case, the mitigating circumstances which weigh in favour of the accused must be balanced with the impact of the offence on the victim, her family and society in general. The rights of the accused must be balanced with the effect of the crime on the victim and her family. This is a case which impacts the society. If undue leniency is shown to the respondent in the facts of the case, it will undermine the common man’s confidence in the justice delivery system. The punishment must be commensurate with the gravity of the offence. When it comes to sentencing, the Court is not only concerned with the accused but the crime as well”*.

172. In this case on 04.11.2023 the accused herein was convicted for the offences u/s. 366A, 364, 367, 328, 376AB, 376 (2) (j), 376 (2) (m), 376 (2) (n), 377, 302, 297, 201 of Indian Penal Code, Sec. 5 (i), (l) (m) r/w.6 of the Protection of Children from Sexual Offences Act, 2012 and Sec.77 of the Juvenile Justice (Care and Protection of Children) Act, 2015. On that day I had called for the report from the Jail Superintendent, Sub Jail, Aluva where the accused is detained, report from the District Probation Officer, Ernakulam regarding the social background of the accused and report from the State as to the possibility of reformation and rehabilitation of the accused. The victim impact study report

was also permitted to be filed. The hearing of the accused on the question of sentence was deferred to 09.11.2023. As mentioned earlier, on 09.11.2023 the accused was heard on the question of sentence. The reports mentioned were made available to the Special Public Prosecutor and the counsel for the accused for perusal.

173. In the report the District Probation Officer informed that she had visited the accused in jail and conducted interview with him to ascertain his personal details as well as family background. It is an important fact that the proceedings in this case from the beginning was conducted on the assumption that the accused knows Hindi only and he is not able to understand Malayalam. Most of the witnesses examined on the side of the prosecution adduced oral evidence in Malayalam and it was interpreted to the accused in Hindi. This was the situation at the time of questioning u/s.313 (1) (b) Cr.P.C. also. However, the report of the Probation Officer shows that she had conversation with the accused in Malayalam and the accused responded to her questions in Malayalam language with an accent typical of people who come from outside Kerala. The Probation Officer further reported that there was no hint of fear, anxiety or irritation or he was not emotional while answering questions. He remained calm and took his time before answering questions.

174. The report after interview with the accused given by the District

Probation Officer further shows that the accused is a person from Khoraganch Vilalge in Araraia District of Bihar which is his address in the charge sheet. His parents are alive and his siblings are there in the village. His two sisters and brothers are married and his father is a labourer. The accused is unmarried but he stated that he is engaged with a girl from his neighbourhood.

175. The report of the District Probation Officer as disclosed by the accused indicate that he did not have any job or money while he was living in his village and therefore he went for Delhi and worked as Pizza delivery boy for three years. Thereafter he came to Kerala. Initially, he was working and staying at Vadanappilly in Thrissur District. Later on, he came to Aluva and stayed at Uliyannoor. Few days prior to the alleged incident he came to the rented house near Aluva Garage as mentioned in the prosecution case. He studied till 4th standard but he was not doing any work thereafter in his village and left for employment to Delhi. After reaching Kerala he was working in meat shops and in construction sites on daily wages. As regards, his conduct on inquiry with the local people and the previous employers, the habit of consuming alcohol and quarelling with others were mentioned. He could not continue in one place for long period due to his defect in conduct and in work. When the District Probation Officer contacted the mother of the accused through the mobile number given by the accused she informed that the accused did not send any amount or he was

not in the habit of calling them for the last three years. He picked up a fight with his father after getting drunk and used 'Nasha' while in the village. The accused has also admitted that he was in judicial custody for 28 days in Delhi.

176. On 13.11.2023, the District Probation Officer, Ernakulam forwarded another social background report of the accused sent by District Police Chief, Araria, Bihar and received by email. Such a report was requested by the District Probation Officer, Ernakulam after getting order from this Court. The report from Bihar also shows that he left the place for employment and he has no elementary education. His younger brother was educated. After doing coolie work he was spending the income for liquor and smoking. He was engaged in gambling also. It was also reported that no monetary help was provided by the accused to his family.

177. The Superintendent of Sub Jail, Aluva informed that the accused was sent to that jail in judicial custody in connection with this case on 30.07.2023 and thereafter he was in police custody for 10 days from 01.08.2023 till 10.08.2023. Initially, the accused was not interacting with others and found silent and also disturbed in mind. He was avoiding questions of the jail officials. He was not sleeping well during initial days for which he was given medication. Considering his security he was kept away from other prisoners in jail. Nowadays, the accused started interacting with others and found engaged in

games. They have also reported that the accused communicated with the District Probation Officer in Malayalam language though it was not known to them till that date because he was pretending as if he do not know Malayalam. No friends or relatives visited him so far. Further, it was reported that Additional Sessions Court (POCSO) Delhi has issued production warrant in crime No.81/2018 of Ghazipur Police Station. That case was earlier referred as Ext.P74 charge sheet.

178. The conduct of the accused in jail was found to be relevant in the judicial precedents relied on by both sides. Those cases indicate the fact that the accused was in prolonged incarceration in jail while his conduct was considered. However, in this case, the accused was detained in judicial custody since 30.07.2023 only and the report of the Superintendent of Sub Jail was submitted on 07.11.2023. Therefore it is too early to assess the conduct of the accused in jail as in the cases relied on by the parties in various decisions of the Apex Court. However, the report of the Jail Superintendent indicate that the accused is now residing peacefully in the jail and he has no signs of any mental abrasion at this stage.

179. The report of the Station House Officer who was examined as PW.43 in this case is regarding the possibility of any chance of reformation or rehabilitation. The report is to the effect that they had sent officers to his village

in Bihar and also in Delhi to inquire about the previous conduct of the accused and those officers have been examined in this case. Their report is to the effect that the accused was not having any contact with his parents or family members for the last several years and the family members are not interested about the accused even after they are informed about the case pending against him. The POCSO case in Delhi regarding Ext.P74 charge sheet was also relied on in the report in which a 10 year old girl was sexually molested by the accused on 06.03.2018 and the accused was absconding thereafter. As mentioned earlier, a production warrant has been issued by the Delhi Court after knowing about his detention in this case. The report of the Station House Officer is to the effect that there is no chance or possibility of getting the accused reformed and it is evident from the facts and circumstances of this case.

180. On the side of the victim their counsel filed the victim impact statement to the effect that the tragedy in this case suffered by the victim girl aged 5 years has shocked the conscience of the people and the parents are afraid of sending their children outside the house considering the experience of their second daughter in this case. The deceased was one of their four children and she was favorite among the teachers and classmates. Her siblings were not informed about the death of the victim so far. The parents' lives are for ever in a state of guilt. The father of the victim child also is a migrant worker and therefore

they have no family support here. They submitted that in the light of the personal and societal impact this crime has resulted, the accused does not deserve any leniency. They also prayed for adequate compensation to the family of the victim.

181. As per the Constitution Bench Division of the Apex Court in **Bachan Singh v. State of Punjab, (1980) 2 SCC 684** and another decision of the Apex Court in **Machhi Singh v. State of Punjab (supra)**, the guidelines were issued to be kept in mind when considering whether a case belongs to the 'rarest of rare' category for awarding death sentence. In **Bachan Singh**, the Apex Court while interpreting Sec. 354 (3) and Sec.235(2) of Cr.P.C elaborated two aspects that "*the extreme penalty can be inflicted only in gravest cases of extreme culpability and in making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender, also*". It was further held that, "*A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed*" (Emphasis supplied).

182. In **Machhi Singh v. State of Punjab (supra)**, the Apex Court observed that, "*the following questions may be asked and answered as a test to*

determine the 'rarest of the rare' case in which death sentence can be inflicted

(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 ?

183. The learned Special Public Prosecutor submitted that the mitigating circumstances 7 in number enumerated by the Apex Court in **Bachan Singh's** case, if considered in the background of the facts of this case would prove the aggravating circumstance in this case and also non-availability of any of the mitigating circumstance. The learned Prosecutor further submitted that this is a clear case falling under the rarest of rare category. The circumstances referred by the Apex Court are the following.

(1) That the offence was committed under the influence of extreme mental or emotional disturbance. In this case the offences alleged were not committed by the accused under any extreme mental or emotional disturbance. According to the prosecution it was out of the paedophilic mindset of the accused he has committed the said offences. It is a fact that the accused abducted the victim girl aged 5 years offering sweets and giving mango juice from the nearby shop and then taken to the vacant area with his sinister motive.

184. (2) Age of the accused. If the accused is young or old, he shall not be sentenced to death. The learned counsel for the accused canvassed for the benefit of this guidelines that the accused is aged only 28 years and therefore requested for the benefit of his young age. In support of his contention the learned defence counsel has relied on the decision of the Apex Court in **Rahul v. State of Maharashtra, (2005) 10 SCC 322**, in which the accused was aged 24 years and the victim raped and murdered was aged 4 ½ years old. Another decision cited by the learned counsel was **Santhosh Kumar Singh v. State, 2010 ICO 1296** in which the accused was aged 24 years old. **Rameshbhai Chandubhai Rathod v. State of Gujarat, 2011 ICO 79** wherein the accused was aged 28 years and **Amit v. State of Uttar Pradesh, 2012 ICO 175** in which the accused was aged 28 years and the victim was aged 3 years old girl. Other decisions previous to this also were relied on by the learned counsel.

185. Per contra, the learned Special Public Prosecutor relied on the decisions of the Apex Court in **Bhagavan Swaroop v. State of Uttar Pradesh, (Para 5) (1971) 3 SCC 759, Deepak Rai v. State of Bihar (para 90-100) (2013) 10 SCC 421, Shabnam v. State of Uttar Pradesh (para 36) (2015) 6 SCC 632 and also Mukesh and another v. State (NCT of Delhi) and others (supra)** wherein the age was not considered as a mitigating factor considering the

gruesome nature of the offences committed by the accused. In this case, as already discussed, the accused has misused the faith reposed on him by the victim girl who belong to the same State of the accused and she was happily following the accused as seen from the CCTV footages after getting a packet of mango juice. She might have thought that the uncle was taking her to a more pleasant and joyful atmosphere and she was not aware of the deceitful means and the evil object of the accused. The cruel acts of the multiple rape after administering alcohol to a five year old child, strangulating her to death and burying the dead body in garbage etc. are to be considered while he canvass for benefit of young age and I am of the view that the accused does not deserve the benefit of his age. In fact, the evidence show that his date of birth as per his Aadhaar based customer application to the mobile phone provider is 01.01.1995. That means, on the date of occurrence of the alleged incident on 28.07.2023 the accused was aged 28 years and 7 months.

186. 3). The probability that the accused would not commit cruel acts of violence as would constitute a continuing threat to society. As discussed earlier, he has committed the diabolical act of utmost sexual violence against a five year old girl attacking her private parts and also her thighs constituting the offence of rape u/s.375 (a), (b), (c) of Indian Penal Code and Sec.3 (a), (b), (c) of the Protection of Children from Sexual Offences Act, 2012. Ext.P74 shows that he

was booked in a POCSO case alleging sexual assault against a 10 year old girl on 06.03.2018 by Ghazipur police Delhi. On the date of the said incident the victim in this case was not born because the date of birth of the victim herein is 14.05.2018. It is seen from the report of the Probation Officer that the accused had quarrelled with his father in his village and in Delhi he was involved in an offence of sexual harassment and sexual assault to a 10 year old girl. He did not improve thereafter and after 28 days of judicial custody in that case he absconded and for the last 3 years he is in Kerala it is stated. As already referred, he knows Malayalam but he concealed it from the police, Court and also the jail authorities. The report of the Probation Officer indicate that he did not work or stay permanently at any place because he was a drunkard and was quarrelling with others. He has the habit of using Hans, Pan parag etc though he stated to the Probation Officer otherwise. The report of the Station House Officer also indicate that he was involved in quarrel with others in front of beverages corporation outlet at Aluva and surroundings places but no cases were registered. He was not even aware about his mobile phone at present because its last call was on 21.07.2023 and thereafter he did not possess it. The above habit of the accused on 28.07.2023 is proved from the availability of the O.P.Ticket in the premises of the Beverages Corporation outlet, Aluva and collected by PW.19. PW.12 Chandra his neighbour at Mukkath building belong

to PW.13 also indicate the fact that he was drunk on 28.07.2023 afternoon. He moved to the dumping yard behind Aluva market and he informed PW.7 who confronted with him that he was going for drinking purpose. PW.9 deposed that this area was used by persons for consuming alcohol. So, the habit of the accused did not improve even after 2018 and finally he committed more graver offence than what was allegedly committed in Delhi in 2018 as per Ext.P74 in this case. Therefore the probability or possibility that he would not commit any cruel act of violence cannot be seen from his previous conduct. If he is permitted to be free at any point of time it is sure that he would commit much graver offence and may be a threat to the society especially the minor girl children.

187. 4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above. As mentioned earlier, the Station House Officer has filed a report in consultation with the Psychologist that the accused is a paedophile and there is no possibility of recovery from this mental state. The inquiry conducted by the police from the native village of the accused in Bihar and the case details from Delhi and also the inquiry conducted by the District Probation Officer in Thrissur District and Ernakulam District where the accused lived earlier do not give any positive signs of reformation or rehabilitation of the accused. He was consuming liquor, using Pan Parag, Hans etc and also

quarrelling with others, causing nuisance to the neighbours. He was expelled from the house where he lived and the places where he worked due to this habit. He was absconding from Delhi after 28 days of judicial custody and did not contest his criminal case in Delhi. It was submitted by the learned counsel for the accused that there was no conviction in Ext.P74 and it is only his involvement in the criminal case the maximum that can be considered. However, it is a fact that the accused himself is responsible for the delay in disposal of the case because he was absconding after released on bail. Being responsible for the delay in disposal of the case, he cannot be heard to contend that he was not convicted and therefore Ext.P74 cannot have any relevance at all. The fact remains that he is involved in a child sexual abuse case alleging offences under the Indian Penal Code and the Protection of Children from Sexual Offences Act, 2012 in Delhi Court which is pending even now due to the absence of the accused.

188. As discussed in detail, the deceitful method for getting custody of the victim girl aged 5 years from near his house and taking her to a long distance by giving sweet drinks and thereby avoiding hindrance of PW.7 by claiming that the child is his daughter etc. indicate his premeditated and purposeful act violating the trust of the innocent child and committed in day light. She was administered alcohol at a high quantity making her unconscious or semi conscious to prevent

probable resistance and thereafter her vagina, anus and thighs were brutally damaged and there was bleeding from her private parts. The post-mortem certificate also shows the brutality of the attack and the injury on the private parts of the girl. After committing a barbaric act of multiple rape and unnatural offence against the innocent five year old girl, without any provocation he murdered her by strangulating using her dress as a ligature. He did not stop there. The dead body was covered with garbage or waste materials and also granite stone pieces after defacing the dead body. He was keeping cool after the incident because he returned as if nothing happened as seen by PW.9 and he was washing his hands and legs to make it appear that he did not do anything. In fact, the accused was apprehended by PW.41 the Sub Inspector only because of the suspicion he could gather on seeing the CCTV footages of Quality Chicken circulated through Whatsapp by PW.43. Otherwise, the accused might have absconded from this place. In addition to that the accused was denying everything before police and in Court though his involvement in the offence of abduction of the child was evident in CCTV footages and from the oral evidence of witnesses. He did not explain as to what happened to the child after he went to the south-western corner of the market dumping yard with the child as seen in the CCTV footages. That apart, he was pretending that he do not know Malayalam and it could be revealed from the reports of the Jail

Superintendent and the District Probation Officer. Such a person cannot be expected to be reformed or rehabilitated by passage of time. Instead, he was becoming worse in his action than what was his involvement in a criminal case in 2018.

189. The learned Special Public Prosecutor relied on the decision of the Apex Court in **Vasanta Sampat Dupare v. State of Maharashtra, (2017) 6 SCC 631** which discussed a similar situation as in this case. The Apex Court held that, *“He had lured the deceased to go with him to have chocolates. It is an act of taking advantage of absolute innocence. He had taken the deceased from place to place by his bicycle and eventually raped her in a brutal manner, as if he had the insatiable and ravenous appetite. The injuries caused on the minor girl are likely to send a chill in the spine of the society and shiver in the marrows of human conscience. He had battered her to death by assaulting her with two heavy stones. The injured minor girl could not have shown any kind of resistance. It is not a case where the accused had a momentary lapse. It is also not a case where the minor child had died because of profuse bleeding due to rape but because of the deliberate cruel assault by the appellant. After the savage act was over, the coolness of the appellant is evident, for he washed the clothes on the tap and took proper care to hide things. As is manifest, he even*

did not think for a moment the trauma and torture that was caused to the deceased.The appalling cruelty shown by him to the minor girl child is extremely shocking and it gets accentuated, when his age is taken into consideration. It was not committed under any mental stress or emotional disturbance and it is difficult to comprehend that he would not commit such acts and would be reformed or rehabilitated. As the circumstances would graphically depict, he would remain a menace to the society, for a defenceless child has become his prey. In our considered opinion, there are no mitigating circumstances". In that case the decision to award death penalty for murder of a 4 year old girl after rape was confirmed.

190. The other three mitigating circumstances that, 5) In the facts and circumstances of the case the accused believed that he was morally justified in committing the offence, 6) The accused acted under the duress or domination of another person, (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct are not applicable to the facts of this case. Instead, this preplanned, calculated and cold blooded murder can be regarded as an aggravated kind of act on the side of the accused.

191. In **Machhi Singh v. State of Punjab** (supra), the Apex Court has considered five category of situation while dealing with the balance sheet of

aggravating and mitigating circumstances. They are, 1) Manner of commission of crime, 2) Motive, 3) Antisocial or socially abhorrent nature of the crime, 4) Magnitude of the crime, 4) Personality of victim of murder. As discussed in detail earlier, all these five categories are suited to the facts of this case and in proof of aggravating circumstances projected in this case.

192. In **Ram Naresh v. State of Chhattisgarh, (2012) 4 SCC 257**, the Apex Court mentioned 11 aggravating circumstances and 7 mitigating circumstances while considering whether death penalty is to be imposed. Out of 11 aggravating circumstances 7 circumstances are applicable to this case. They are,

- 1) The offences relating to the commission of heinous crimes like murder, rape etc.
- 2) The offences was committed while the offender was engaged in the commission of another serious offence.
- 3) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
- 4) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms like a child, helpless woman, a daughter etc..... and is inflicted with the crime by such a trusted person.
- 5) When murder is committed for a motive which evidences total depravity and meanness.
- 6) When there is a cold-blooded murder without provocation.
- 7) The crime is committed so brutally that pricks or shocks not only the

judicial conscience but even the conscience of the society.

193. The mitigating circumstances propounded in the same judgment are,

- 1) The manner and circumstances under which the offence was committed like extreme mental or emotional disturbance.
- 2) The age of the accused.
- 3) The chance of the accused of not indulging in commission of the crime again and the possibility of the accused being reformed and rehabilitated.
- 4) The condition of the accused shows that he was mentally defective.
- 5) The accused believed him morally justified in committing the offence.
- 6) The crime was not committed in premeditated manner.
- 7) Solitary evidence of eye witness.

All these circumstances are either not applicable to the case in hand or discussed earlier.

194. In **Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546**, the Apex Court has laid down grounds for aggravating and mitigating circumstances and the theory of Crime test, Criminal test and RR test. The aggravating circumstances carved out are,

- 1) The cruel diabolic, brutal, depraved and gruesome nature of the crime.
- 2) The crime result in public abhorrence shocks the judicial conscience or the conscience of the society or the community.
- 3) The reform or rehabilitation of the convict is not likely or that he would

be a menace to the society.

- 4) The victims were defenceless.
- 5) The crime was either unprovoked or that it was
- 6) Premeditated

All these conditions are proved to be in favour of the prosecution in this case in view of the discussion made in the foregoing paragraphs.

195. The 7 mitigating circumstances pointed out for commutation of death sentence in the above decision are,

- 1) The young age of the accused.
- 2) The possibility of reforming and rehabilitating the accused.
- 3) Accused had no prior criminal records.
- 4) The accused was not likely to be a menace or threat or danger to the society or the community.
- 5) The accused was acquitted in one of the lower courts.
- 6) The crime was not premeditated.
- 7) The case is one of circumstantial evidence.

196. All the first six points have been discussed elaborately and there is no record showing that the accused was convicted in any case. But his criminal antecedents has been discussed earlier. The possibility of rehabilitation, young age, likelihood of being menace to the society etc. were also considered. As regards, the circumstantial evidence, the Apex Court decision in **Manoj Pratap Singh v. State of Rajasthan, 2022 Live Law (SC) 557, Ravi v. State of**

Maharashtra (2019) 3 SCC (cri) 723 and in **State of Uttar Pradesh v. Satish** (Supra) are sufficient to show otherwise. Moreover, the case in hand is not a case of circumstantial evidence simpliciter. I have already held that the prosecution could establish the guilt of the accused on oral, documentary, digital, scientific and circumstantial evidence. Even though there are no eye witness to the commission of rape and murder by the accused the DNA report connects the accused with the alleged offences. Therefore, none of the mitigating circumstances mentioned above also are not available in this case.

197. In **Susheel Murmu v. State Jharkhand, (2004) SCC Cri. 529**, the Apex Court held that, *“In rarest of rare cases the collective conscience of the society is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded”*. The Apex Court considered the circumstances that may entertain such sentiments of the community including,

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

(2) When the murder is committed for a motive which evinces total depravity and meanness misusing the position of trust and when the victim of the

murder is an innocent child.

This dictum also applies to the facts of this case.

198. From the discussion made above and the dictum laid down by the Apex Court and also the legislative approach by introducing death penalty for the offence u/s.6 of the Protection of Children from Sexual Offences Act, 2012 with effect from 16.08.2019, I am of the view that the victim centric approach, society centric approach and the legislative centric approach call for maximum punishment in case of this nature.

199. The learned counsel for the accused claimed mitigating circumstances like family background of the accused, level of education of the accused, his social economic background, income and kind of employment, health condition, mental make up, conduct in jail, status as a migrant labourer etc for avoiding death penalty. First of all the child murdered in this case is the daughter of a migrant labourer. The family of the victim girl and the accused belong to Bihar State. The alleged incident cannot be treated as one without premeditation for the reasons stated earlier. The health condition as well as the mental condition of the accused is normal as seen from the report of the Jail Superintendent. As already mentioned, the accused is not in touch with his family for the last several years as seen from the report of the Probation Officer and so his family background cannot be a factor for getting any benefit in his

favour. His education is till 4th standard, that is, he stopped his education at the age of 9 or 10 years cannot be a factor to give any benefit to him. Moreover, the report from Bihar is that the accused has no school education. The accused is a person working on daily wages in construction sites and other places, getting income at the rate of Rs.750-1000 and spending it for his own purpose mainly for consuming alcohol. Spending money for alcohol and smoking was his habit in Bihar also. So the social economic background cannot be a reason as canvassed by the learned counsel for the accused. Moreover, the family of the victim also are in the same state of affairs.

200. At this juncture, I am referring two decisions of the Apex Court. The first one is **Rudrappa Ramappa Jainpur and others v. State of Karnataka, AIR 2004 SC 4148**, which held that, "*each case must rest on its own facts and the mere similarity of the facts in one case cannot be used to determine a conclusion of fact in another*". The second decision is **Parasa Raja Manikyala Rao v. State of Andhra Pradesh, AIR 2004 SC 132** (para 9) which held that, "*Each case, more particularly a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To*

decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive". The above decisions are referred because both sides have cited the decisions of the Apex Court in their favour, one in favour of death penalty and the other to avoid death penalty. I have explained in detail most of the decisions and the decisions relied on by the parties. However, considering the facts and circumstances of the present case a decision has to be taken whether the aggravating circumstances outweigh the mitigating circumstances claimed by the defence and whether this case is included in the category of 'rarest of rare' cases.

201. Manner in which a five year old girl was abducted, intoxicated with liquor, raped repeatedly, done carnal intercourse against the order of the nature, murdered the child and the method adopted by the accused for defacing and concealing the dead body revealed the traits of outrageous criminality in the behaviour of the accused and his premeditated action. The brutal mindset of the highest order is obvious and clear from the facts and circumstances of this case. The accused is proved to be involved in a child sexual abuse case in Delhi in the year 2018 before the victim in this case was born indicating his paedophilic nature. That case could not be disposed of as the accused herein was absconding to Kerala. The cruel tendency of the accused and his total disregard to human life is writ large from the manner of attack and the nature of injuries

caused to the dead body revealed from Ext.P38 post-mortem report. This incident has created tremble feeling in the society and upset the collective conscience of the community. This incident is being discussed in Kerala as they are emotionally disturbed treating this incident as an example of threat to the children who are deprived of their chance to play and spend their precious childhood even in the surroundings of their house. As argued by the learned Special Public Prosecutor if the accused is permitted to be a part of the society it would be a threat to the girl children including those who are yet to born. Considering the above facts and circumstances, I am of the view that this Court will be failing in its duty if the maximum punishment prescribed under the law is not imposed on the accused.

202. On an over all view of all the circumstances in this case and on weighing the aggravating circumstances and in the absence of any mitigating circumstances I have no hesitation to hold that this case is one among the 'rarest of rare' cases in which the lesser alternative is unquestionably foreclosed and special reasons do exist in this case within the meaning of Sec.354(3) Cr.P.C to award death penalty to the accused for the offence u/s.302 of Indian Penal Code. Similarly, for the reasons stated earlier the act of the accused by committing multiple rape on the victim girl aged five years also has to be considered as serious and grave offences requiring adequate sentence

proportionate to its gravity. All other offences found against the accused are also to be dealt with by giving adequate sentence prescribed under law.

203. In **Muthuramalingam & Others vs State Represented by Inspector of Police, AIR 2016 SC 3340**, the Apex Court held that “*We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other*”. The Apex Court further held that “*The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31*”.

204. In the result, the following sentences are passed.

- 1) The accused is sentenced to undergo rigorous imprisonment for 5 (five) years and pay a fine of Rs.10,000/- (Rupees Ten thousand only) for the offence u/s.201 of Indian Penal Code. In default of

payment of fine, the accused shall undergo rigorous imprisonment for 3 (three) months.

- 2) The accused is sentenced to undergo rigorous imprisonment for 1 (one) year for the offence u/s.297 of Indian Penal Code.
- 3) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and pay a fine of Rs.25,000/- (Rupees Twenty five thousand only) for the offence u/s.364 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 6 (six) months.
- 4) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and pay a fine of Rs.25,000/- (Rupees Twenty five thousand only) for the offence u/s.366A of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 6 (six) months.
- 5) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and pay a fine of Rs.25,000/- (Rupees Twenty five thousand only) for the offence u/s.367 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous

imprisonment for 6 (six) months.

- 6) The accused is sentenced to undergo rigorous imprisonment for 10 (ten) years and pay a fine of Rs.25,000/- (Rupees Twenty five thousand only) for the offence u/s.328 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 6 (six) months.
- 7) The accused is sentenced to undergo rigorous imprisonment for 3 (three) years and pay a fine of Rs.10,000/- (Rupees Ten thousand only) for the offence u/s.77 of the Juvenile Justice (Care and Protection of Children) Act, 2015. In default of payment of fine, the accused shall undergo rigorous imprisonment for 3 (three) months.
- 8) For the offence u/s.376 (2) (j) of Indian Penal Code, the accused is sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.

- 9) The accused is further sentenced to undergo imprisonment for life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only) for the offence u/s.377 of Indian Penal Code. In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.
- 10) For the offence u/s.5 (i) r/w.6 of the Protection of Children from Sexual Offences Act, 2012, the accused is sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.
- 11) For the offence u/s.5 (l) r/w.6 of the Protection of Children from Sexual Offences Act, 2012, the accused is sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.
- 12) For the offence u/s.5 (m) r/w.6 of the Protection of Children from

Sexual Offences Act, 2012, the accused is sentenced to undergo imprisonment for life which shall mean imprisonment for the remainder of his natural life and pay a fine of Rs.1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year.

- 13) For the offence u/s.302 of Indian Penal Code the accused is sentenced to death and I direct that he be hanged by the neck till he is dead. Further, he is sentenced to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only). In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year for the said offence.

205. This proceedings shall be submitted before the Hon'ble High Court of Kerala for confirmation of the death sentence u/s.366 Cr.P.C and the death sentence shall not be executed unless it is confirmed by the Hon'ble High Court.

206. The term sentences imposed as above shall run concurrently. The accused shall first undergo the term sentences before the commencement of his life sentences which run concurrently. The period of detention already undergone by the accused is 109 days and it is allowed to be set off against the

substantive term of imprisonment u/s. 428 of Cr.P.C.

207. After the fine amount is realised it shall be paid to PW.1 and PW.37 the parents of the deceased as compensation u/s. 357 (1) Cr.P.C.

208. The M.Os shall be retained intact until further orders from the Hon'ble High Court of Kerala.

209. In accordance with the mandate as contained in Sec.363(4) Cr.P.C the accused is informed of his right of appeal before the Hon'ble High Court of Kerala and if he wishes to file an appeal it should be filed within 30 days in accordance with Article 115 (a) of the Limitation Act 1963.

210. The accused is committed to the Central Prison, Viyyur under a warrant in Form No.40 of Cr.P.C (2nd Schedule) in accordance with Sec.366 (2) Cr.P.C.

211. The District Legal Services Authority, Ernakulam is recommended u/s.357A(3) of the Code of Criminal Procedure to provide adequate compensation to the legal representatives of the deceased as the compensation awarded u/s.357(1) Cr.P.C is not readily available and inadequate considering the loss suffered by them.

212. Send a copy of the judgment to District Legal Services Authority, Ernakulam for appropriate action.

213. Send a copy of the judgment to the District Magistrate u/s.365

Cr.P.C.

Dictated to the Confidential Assistant, corrected by me and pronounced in open court on this the 14th day of November, 2023.

Sd/-
K.Soman,
Additional District & Sessions Judge.

APPENDIX

Prosecution Witnesses :-

PW1	04.10.2023	Nidhu Kumari
PW2	04.10.2023	Shaji
PW3	05.10.2023	Sadhik V.S.
PW4	05.10.2023	Saji V.S.
PW5	05.10.2023	Kalesh Kumar N.S.
PW6	06.10.2023	Susmi Manesh
PW7	06.10.2023	V.A.Thajudheen
PW8	06.10.2023	Guljar Hussian
PW9	09.10.2023	Murali K.
PW10	09.10.2023	Muhammed Rashid
PW11	09.10.2023	Babu C.A.
PW12	09.10.2023	Chandra
PW13	09.10.2023	Muhammed Saleel

PW14	10.10.2023	Aman Paulson
PW15	10.10.2023	Shaiju C.S.
PW16	10.10.2023	Shyju E.A.
PW17	10.10.2023	Sharafudheen
PW18	10.10.2023	Rafeek K.M.
PW19	11.10.2023	Binu Jose
PW20	11.10.2023	Jasmin K.H., Head Mistress incharge
PW21	11.10.2023	Deepa A.S., Assistant Director, SFSL
PW22	12.10.2023	Dr.Arya Narayanan
PW23	12.10.2023	Vindukala K.T., Assistant Chemical Examiner
PW24	12.10.2023	Anu Chandra, Assistant Director, SFSL
PW25	12.10.2023	Dr.Regimon T.S.
PW26	12.10.2023	Dr.Anoop K.Thankappan
PW27	12.10.2023	Sruthi Bharathan K., Scientific Officer
PW28	16.10.2023	Rajesh V., Village Officer
PW29	16.10.2023	Anilkumar K.A., Village Officer
PW30	16.10.2023	Mahesh Kumar P.K., Pachayat Secretary
PW31	16.10.2023	N.Aji Kumar
PW32	16.10.2023	Yogy P.V., Police Photographer
PW33	16.10.2023	Praveen Kumar, Police Photographer

PW34	16.10.2023	Abhilash P.L.
PW35	16.10.2023	K.Vasudevan
PW36	16.10.2023	Rinson Johnson
PW37	17.10.2023	Manjay Kumar
PW38	17.10.2023	Reji M.T, Sub Inspector Grade
PW39	17.10.2023	Anish M., Sub Inspector of Police
PW40	17.10.2023	Lijimol P.T., Sub Inspector of Police
PW41	17.10.2023	Sreelal S.S., Sub Inspector of Police
PW42	18.10.2023	Bibin T.B., Sub Inspector of Police
PW43	18.10.2023	Manjudass M.M., Inspector Station House Officer

Defence Witnesses :-

DW1	26.10.2023	Dr.Anna Neethu V. Freddy
DW2	26.10.2023	Dr.Sajeev C.K.

Court Witnesses :- Nil

Prosecution Exhibits:-

P1	28.07.2023	F.I.Statement of PW.1
P2	31.07.2023	Seizure Mahazar of pendrive
P3	08.08.2023	Statement of PW.2 u/s.164 Cr.P.C.
P4	08.08.2023	Statement of PW.3 u/s.164 Cr.P.C.
P5	31.07.2023	Seizure Mahazar of DVR

P6	28.07.2023	KSRTC Bus Ticket
P6(a)	28.07.2023	Photocopy of KSRTC Bus Ticket
P7	01.08.2023	Memorandum of Test Identification Parade
P7 (a)	01.08.2023	Signature and name and address of PW.6 in page number V of Memorandum of Test Identification Parade
P7 (b)	01.08.2023	Signature and name and address of PW.7 in the overleaf of page number V of Memorandum of Test Identification Parade
P8	07.08.2023	Statement of PW.6 u/s.164 Cr.P.C.
P9	29.07.2023	Inquest Report
P10	07.08.2023	Statement of PW.7 u/s.164 Cr.P.C.
P11	29.07.2023	Seizure Mahazar of dead body of the victim
P11(a)	29.07.2023	Relevant portion of Ext.P11
P11(b)	29.07.2023	Extract of Confession Statement of the accused
P12	01.08.2023	Seizure Mahazar of DVR from EKS Vegetables
P13	31.07.2023	Certificate u/s.65B (4)(c) of Indian Evidence Act
P14		Pendrive (1 No.)
P15	01.08.2023	Seizure Mahazar of DVR from PTJ & Co.
P16	03.08.2023	Seizure mahazar of chappal and baniyan cloth of the victim
P16(a)	03.08.2023	Relevant part of Ext.P16

P16(b)	03.08.2023	Extract of Confession Statement of the accused
P17	02.08.2023	Seizure Mahazar of DVR from Najiya Stores
P18	02.08.2023	Certificate u/s.65B (4)(c) of Indian Evidence Act
P19	04.08.2023	Seizure Mahazar of NVR from Aluva Municipality
P20		Pendrive
P21	28.07.2023	O.P.Record of the accused from District Hospital, Aluva
P22	10.08.2023	Kachit of School Admission Register
P23		Copy of Page No.55 of School Admission Register
P23(a)		Relevant part in Ext.P23
P24	03.08.2023	Extract of Admission of the victim in T.S.C.L.P.S., Thaikkattukara
P25 series, P25 (a), P25(b), P25(c)		Photographs of the deceased (4 Nos.)
P26 series, P26 (a) to P26 (m)		Photographs of the accused (14 Nos.)
P27	01.09.2023	Cyber Forensic Analysis Report from State Forensic Science Laboratory, Thiruvananthapuram
P28		Pendrive (Annexure - 6)

P28(a)		Visual in Q1 14.43.47 to 16.06.40
P28 (aa)		Visual between 16.09.33 to 16.09.40
P28 (ab)		Visual between 16.13.37 to 16.16.42
P28 (ac)		PDF Report
P28 (b)		Visuals in Q2 (P14) 14.30.00 to 15.32.00
P28 (ba)		Visual between 02.41.35 pm to 02.56.10 pm
P28 (c)		Video clipping in Q3 15.10.16 to 17.10.18
P28 (ca)		Visual between 15.15.10 to 15.16.19
P28 (cb)		Visual between 17.38.47 to 17.42.07
P28 (d)		Video clipping in Q4 15.00.08 to 16.00.08 & 17.00.08 to 18.00.08
P28 (da)		Visual between 15.14.41 to 15.15.40
P28 (db)		Visual between 17.38.24 to 17.41.42
P28 (e)		Video clipping in Q5 13.52.45 to 16.35.53
P28 (ea)		PDF Report
P29	18.09.2023	Cyber Forensic Analysis Report from State Forensic Science Laboratory, Thiruvananthapuram
P30		Annexure II DVD
P30(a)		Visual in Ext.P30 DVD from 15.13.03 to 15.14.07
P31		Annexure III DVD

P31(a)		Images from 17.33.26 to 17.33.56 in Ext.P31 DVD
P32	21.08.2023	Report from Chemical Examiner's Laboratory Department, Kakkanad
P33	19.08.2023	Examination Report from State Forensic Science Laboratory Police Department, Thiruvananthapuram
P34	29.07.2023	Specimen seal for collection of swab and smear
P34(a)	29.07.2023	Specimen seal for collection of scalp hair, nail clippings and blood sample
P35	29.07.2023	Report to be forwarded with material objects sent for chemical analysis
P36	29.07.2023	Specimen seal of Sruthi Bharathan K., Scientific Officer
P36(a)	29.07.2023	Examination of Scene of Crime (Item 6 Nos.)
P37	29.07.2023	Potency Certificate of the accused
P38	29.07.2023	Post-mortem report
P39	29.07.2023	Additional Report from Department of Forensic Medicine & Office of the Police Surgeon, Government Medical College, Ernakulam
P40	05.08.2023	Report on the Forensic Examination of the Scene of Occurrence
P41	Nil	Site plan No.82/23

P42	18.08.2023	Possession Certificate
P43	07.08.2023	Site Plan No.434/2023
P44	10.08.2023	Site Plan No.440/2023
P45	05.08.2023	Ownership Certificate of building No.18/411
P46	05.08.2023	Ownership Certificate of building No.18/412
P47	11.08.2023	Duty Certificate of PW.4 from Southern Railway
P48 series, P48, P48(a) to P48(z), P48 (aa) to P48 (au)		Photographs (48 Nos.)
P49		CD along with Ext.P48 series
P50		Certificate under section 65 B (4) of the Indian Evidence Act 1872
P51 series		Photographs (4 Nos.)
P52		CD along with Ext.P51 series
P53	05.10.2023	Certificate under section 65B (4) of the Indian Evidence Act
P54	08.08.2023	Certificate under section 65B (4) of the Indian Evidence Act
P55	31.07.2023	Finger print report
P56	Nil	Customer Application Form of accused
P57	From 03.04.2023	Call details of mobile number 8891547232

	to 28.07.2023	
P58	Nil	Customer Application Form of phone number 8714577081
P58(a)		ID proof of Ext.P58 (Aadhaar card copy)
P59	From 28.07.2023 to 28.07.2023	Call details of mobile number 8714577081
P60	Nil	Customer Application Form of phone number 7970677080
P60 (a)		ID proof of Ext.P60 (Aadhaar card copy)
P61	From 28.07.2023 to 28.07.2023	Call details of mobile number 7970677080
P62	10.08.2023	Certificate under section 65 B (4) of Indian Evidence Act
P63	11.09.2018	Customer Application Form of phone number 6001315890
P63(a)	11.09.2018	ID proof (Copy of Elector Photo Identity Card)
P64	From 28.07.2023 to 28.07.2023	Call details of mobile number 6001315890
P65	21.08.2023	Certificate U/s.65 B (4) of the Evidence Act 1872

P66	28.07.2023	F.I.R in Crime No.720/2023
P67	01.08.2023	Seizure mahazar of KSRTC bus tickets
P68	10.08.2023	Seizure mahazar of School Admission Register
P69	02.08.2023	Seizure mahazar of Ext.P20 (pendrive)
P70	09.08.2023	Seizure mahazar of KSRTC bus bearing No.KL-15-A-2082
P71	09.08.2023	Kachit of KSRTC bus bearing No.KL-15-A-2082
P72	10.08.2023	Seizure mahazar of way bill, Electronic Ticket Machine and duty certificate
P73 series	27.07.2023	Way bill
P73(a)	28.07.2023	Electronic Ticket Machine (relevant portions)
P73(b)	09.08.2023	Duty certificate of driver and conductor of bus bearing No.KL-15-A-2082
P74	06.03.2018	Certified copy of Final Report in Crime No.81/2018 of Ghazipur Police Station
P75	29.07.2023	Scene Mahazar
P76 series	29.07.2023	Arrest Memo
P76(a)	29.07.2023	Inspection memo
P76(b)	29.07.2023	Custody memo
P77	29.07.2023	Scene mahazar
P78	29.07.2023	Seizure mahazar of the dress of the accused

P79	29.07.2023	Seizure mahazar of samples collected by the Scientific Officer
P80	29.07.2023	Seizure mahazar of samples collected from the dead body by Asst.Professor and Asst. Police Surgeon
P81	29.607.2023	Seizure mahazar of samples collected from the accused by Asst. Surgeon, District Hospital, Aluva
P82	29.07.2023	Address report
P83	29.07.2023	Section adding report
P84	30.07.2023	Additional scene mahazar
P85	02.08.2023	Seizure mahazar of vaginal swab and smear, anal swab and smear of the deceased
P86	04.08.2023	Forwarding note
P87	05.08.2023	Seizure mahazar of O.P ticket of the accused
P88	08.08.2023	Seizure mahazar of photos of the victim and the accused
P89	08.08.2023	Forwarding Note
P90	09.08.2023	Additional Scene Mahazar
P91	10.08.2023	Inventory Mahazar (Photos of Inquest)
P92	18.08.2023	Forwarding Note
P93	18.08.2023	Inventory Mahazar of Ext.P74
P94	22.08.2023	Forwarding note

P95 22.08.2023 Section adding report

Defence Exts:-

D1 29.07.2023 Relevant portion of 161 statement of PW.2

D2 28.07.2023 Relevant portion of 161 statement of PW.8

D3 10.08.2023 Relevant portion of 161 statement of PW.20

D4 Nil Scheme for notifying examiner of electronic evidence (copy)

D5 29.07.2023 Relevant portion of statement of PW.37 in Inquest report

D6 29.07.2023 Relevant portion of statement of PW.37 in Inquest report

D7 29.07.2023 Medical Certificate of the accused

D8 30.07.2023 Medical Certificate of the accused

D9 05.11.2021 Copy of Gazette

Court Exts:- Nil

Material Objects:-

M.O.1 Sandal of victim (1 No.)

M.O.2 Pant of victim (Black colour)

M.O.3 Part of T-shirt containing cap of the victim

M.O.3 (a) Part of M.O.3

M.O.4 T-shirt of the accused

M.O.5 Dhothy of the accused (Kavy colour)

M.O.6	Hard disk of visuals from DVR
M.O.7	Hard disk of visuals from DVR
M.O.8	Hard disk of visuals from DVR
M.O.9	Hard disk of visuals from DVR
M.O.10	Underwear (brown colour) of the accused.

Sd/-

Additional District & Sessions Judge

/true copy/

(By order)

Sheristadar

Sessions Case No.1385 of 2023
Judgment Dated: 14.11.2023