IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

CRL.A.No.1357 OF 2019

AGAINST THE JUDGMENT DATED 25.10.2019 IN SC NO.399/2017 OF I ADDITIONAL SESSIONS COURT (SPECIAL COURT UNDER POCSO ACT), PALAKKAD

CRIME NO.43/2017 OF Walayar Police Station , Palakkad

APPELLANT/COMPLAINANT:

STATE OF KERALA
REP. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY SPECIAL PUBLIC PROSECUTOR SRI.NICHOLAS JOSEPH
BY SENIOR PUBLIC PROSECTOR SRI S.U.NAZAR

RESPONDENT/ACCUSED:

MADHU @ KUTTI MADHU,S/O MANIKANDAN,
AGED 26 YEARS, PALLIKKAD HOUSE, ATTAPALLAM , PAMPAMPALLAM P.O,
PUTHUSSERY EAST VILLAGE,
PALAKKAD, PIN- 678 621

BY ADV. SHRI.JOHNSON VARIKKAPPALLIL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2020, ALONG WITH CRL.A.NO.1359/2019 AND CONNECTED CASES, THE COURT ON 06.01.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

CRA(V).No.33 OF 2019

AGAINST THE JUDGMENT DATED 25.10.2019 IN SC NO.399/2017 OF I ADDITIONAL SESSIONS COURT (SPECIAL COURT UNDER POCSO ACT), PALAKKAD

CRIME NO.43/2017 OF Walayar Police Station , Palakkad

APPELLANT/PW4:

XXX

BY ADVS.SRI.JOHN S.RALPH, SRI.V.JOHN THOMAS,
SRI.VISHNU CHANDRAN,
KUM. KEERTHANA SUDEV, SRI.APPU BABU,
SMT.SHIFNA MUHAMMED SHUKKUR

RESPONDENTS/DE-JURE COMPLAINANT & ACCUSED:

1 **STATE OF KERALA,**
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE,
NARCOTIC CELL, PALAKKAD (NOTICE TO WHOM IS SERVED ON THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM).

2 **MADHU @ KUTTI MADHU,AGED 26 YEARS**
S/O.MANIKANDAN, RESIDING AT PALLIKKADU,
ATTAPALLAM P.O., PAMPAMPALLAM, PUDUSSERY EAST, PALAKKAD- 678 621.

R2 BY ADV. SRI.JOHNSON VARIKKAPPALLIL
R1 BY SRI.NICHOLAS JOSEPH, SPECIAL PUBLIC PROSECUTOR (CRIMINAL) & SENIOR PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY HEARD ON 13-11-2020, ALONG WITH CRL.A.NO.1357/2019 AND CONNECTED CASES, THE COURT ON 06.01.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

CRL.A.No.1359 OF 2019

AGAINST THE JUDGMENT DATED 25.10.2019 IN SC NO.400/2017 OF I ADDITIONAL SESSIONS COURT (SPECIAL COURT UNDER POCSO ACT), PALAKKAD

CRIME NO.240/2017 OF Walayar Police Station , Palakkad

APPELLANT/COMPLAINANT:

STATE OF KERALA
REP. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY SPECIAL PUBLIC PROSECUTOR SRI.NICHOLAS JOSEPH
BY SENIOR PUBLIC PROSECTOR SRI S.U.NAZAR

RESPONDENT/ACCUSED:

MADHU @ VALIYA MADHU,S/O.VELLAPPAN,
AGED 28 YEARS,KALLANKADU, ATTAPALLAM,
PAMPAMPALLAM P.O., PUDUSSERY EAST VILLAGE, PALAKKAD, PIN-678 621.

BY ADV. SRI.JOHNSON VARIKKAPPALLIL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2020, ALONG WITH CRL.A.NO.1357/2019 AND CONNECTED CASES, THE COURT ON 06.01.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

CRA(V).No.32 OF 2019

AGAINST THE JUDGMENT DATED 25.10.2019 IN SC NO.400/2017 OF I ADDITIONAL SESSIONS COURT (SPECIAL COURT UNDER POCSO ACT), PALAKKAD

CRIME NO.240/2017 OF Walayar Police Station , Palakkad

APPELLANT/PW4:

XXX

BY ADVS.
SRI.JOHN S. RALPH,
SRI.V.JOHN THOMAS
SHRI.VISHNU CHANDRAN
KUM. KEERTHANA SUDEV
SHRI.APPU BABU AND SMT.SHIFNA MUHAMMED SHUKKUR

RESPONDENTS/DE-JURE COMPLAINANT & ACCUSED:

1 **STATE OF KERALA**
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE, NARCOTIC CELL, PALAKKAD (NOTICE TO WHOM IS SERVED ON THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN-682 031)

2 **MADHU @ VALIYA MADHU, AGED 30 YEARS,**
S/O.VELAPPAN, RESIDING AT KALLANKADU, ATTAPALLAM,
P.O.PAMPAMPALLAM, PUDUSSERY EAST, PALAKKAD-678 621

R2 BY ADV. SHRI.JOHNSON VARIKKAPPALLIL
R1 BY SRI.NICHOLAS JOSEPH, SPECIAL PUBLIC PROSECUTOR (CRIMINAL) & SENIOR PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY HEARD ON 13-11-2020, ALONG WITH CRL.A.NO.1357/2019 AND CONNECTED CASES, THE COURT ON 06.01.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

CRL.A.No.1360 OF 2019

AGAINST THE JUDGMENT DATED 25.10.2019 IN SC NO.396/2017 OF I ADDITIONAL SESSIONS COURT (SPECIAL COURT UNDER POCSO ACT), PALAKKAD

CRIME NO.43/2017 OF Walayar Police Station , Palakkad

APPELLANT/COMPLAINANT:

STATE OF KERALA,
REP. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY SPECIAL PUBLIC PROSECUTOR SRI.NICHOLAS JOSEPH
BY SENIOR PUBLIC PROSECTOR SRI S.U.NAZAR

RESPONDENT/ACCUSED:

MADHU @ VALIYA MADHU,S/O.VELLAPPAN,
AGED 28 YEARS,KALLANKADU, ATTAPALLAM,
PAMPAMPALLAM P.O., PUDUSSERY EAST VILLAGE, PALAKKAD, PIN-678 621.

BY ADV. SRI.JOHNSON VARIKKAPPALLIL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2020, ALONG WITH CRL.A.NO.1357/2019 AND CONNECTED CASES, THE COURT ON 06.01.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

CRA(V).No.31 OF 2019

AGAINST THE JUDGMENT DATED 25.10.2019 IN SC NO.396/2017 OF I ADDITIONAL SESSIONS COURT (SPECIAL COURT UNDER POCSO ACT), PALAKKAD

CRIME NO.43/2017 OF Walayar Police Station , Palakkad

APPELLANT/PW4:

XXX

**BY ADVS. SRI.JOHN S. RALPH, SRI.V.JOHN THOMAS
SHRI.VISHNU CHANDRAN, KUM.KEERTHANA SUDEV,
SHRI.APPU BABU AND SMT.SHIFNA MUHAMMED SHUKKUR**

RESPONDENTS/DE-JURE COMPLAINANT & ACCUSED:

1 **STATE OF KERALA,
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE,
NARCOTIC CELL, PALAKKAD (NOTICE TO WHOM IS SERVED ON THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM)**

2 **MADHU @ VALIYA MADHU, AGED 30 YEARS,
S/O VELAPPAN,RESIDING AT KALLANKADU,
ATTAPALLAM,P.O.PAMPAMPALLAM,
PUDUSSERY EAST,PALAKKAD-678 621**

**R1 BY SRI.NICHOLAS JOSEPH, SPECIAL PUBLIC PROSECUTOR
(CRIMINAL) & SENIOR PUBLIC PROSECUTOR SRI.S.U.NAZAR
R2 BY ADV. SHRI.JOHNSON VARIKKAPPALLIL**

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY HEARD ON 13-11-2020, ALONG WITH CRL.A.NO.1357/2019 AND CONNECTED CASES, THE COURT ON 06.01.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

CRL.A.No.1363 OF 2019

AGAINST THE JUDGMENT DATED 25.10.2019 IN SC NO.397/2017 OF I ADDITIONAL SESSIONS COURT (SPECIAL COURT UNDER POCSO ACT), PALAKKAD

CRIME NO.43/2017 OF Walayar Police Station , Palakkad

APPELLANT/COMPLAINANT:

STATE OF KERALA
REP. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY SPECIAL PUBLIC PROSECUTOR SRI.NICHOLAS JOSEPH
BY SENIOR PUBLIC PROSECTOR SRI S.U.NAZAR

RESPONDENT/ACCUSED:

SHIBU, S/O.NARAYANAN, AGED 45 YEARS,
NALUTHAIKKAL HOUSE, VALIYAMULLAKKANAM,
RAJAKKAD VILLAGE, UDUMBANCHOLA TALUK, IDUKKI,
NOW RESIDING AT C/O.SHAJI & BHAGYAVATHY, SELVAPURAM,
ATTAPALLAM, PAMPAMPALLAM P.O., PALAKKAD, PIN-678 621.

BY ADV. SRI.P.G.JAYASHANKAR(STATE BRIEF)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2020, ALONG WITH CRL.A.NO.1357/2019 AND CONNECTED CASES, THE COURT ON 06.01.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

WEDNESDAY, THE 06TH DAY OF JANUARY 2021 / 16TH POUSHA, 1942

CRA(V).No.34 OF 2019

AGAINST THE JUDGMENT DATED 25.10.2019 IN SC NO.397/2017 OF I ADDITIONAL SESSIONS COURT (SPECIAL COURT UNDER POCSO ACT), PALAKKAD

CRIME NO.43/2017 OF Walayar Police Station , Palakkad

APPELLANT/PW5:

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BY ADVS. SRI.JOHN S.RALPH, SRI.V.JOHN THOMAS, SHRI.VISHNU CHANDRAN, KUM.KEERTHANA SUDEV, SHRI.APPU BABU & SMT.SHIFNA MUHAMMED SHUKKUR

RESPONDENTS/DE-JURE COMPLAINANT & ACCUSED:

1 **STATE OF KERALA REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE,NARCOTIC CELL,PALAKKAD(NOTICE TO WHOM IS SERVED ON THE PUBLIC PROSECUTOR), HIGH COURT OF KERALA,ERNAKULAM).**

2 **SHIBU,AGED 45 YEARS, S/O.NARAYANAN,NALUTHAIKKAL HOUSE, VALIYAMULLAKKANAM,RAJAKKAD VILLAGE, UDUMBANCHOLA TALUK,IDUKKI.NOW RESIDING AT C/O.SHAJI & BHAGYAVATHY,SELVAPURAM, ATTAPALLAM,P.O.PAMPAMPALLAM,PALAKKAD-678621.**

R2 BY ADV. P.G JAYASHANKAR STATE BRIEF
R1 BY SRI.NICHOLAS JOSEPH, SPECIAL PUBLIC PROSECUTOR (CRIMINAL) & SENIOR PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY HEARD ON 13-11-2020, ALONG WITH CRL.A.NO.1357/2019 AND CONNECTED CASES, THE COURT ON 06.01.2021 DELIVERED THE FOLLOWING:

C.R.

A.HARIPRASAD & M.R.ANITHA, JJ.
.....
Crl.Appeal No.1357 of 2019
&
Crl.Appeal (V) No.33 of 2019,

Crl.Appeal No.1359 of 2019
&
Crl.Appeal (V) No.32 of 2019,

Crl.Appeal No.1360 of 2019
&
Crl.Appeal (V) No.31 of 2019

and

Crl.Appeal No.1363 of 2019
&
Crl.Appeal (V) No.34 of 2019
…….

Dated this the 6th day of January, 2021

COMMON JUDGMENT

Hariprasad, J.

Abhorrent child abuses and inexcusable indifference to the crime are one of the gravest social evils prevalent in the present society. A child can be

abused in many ways. Mental, physical and sexual abuses are some of them. Multi-dimensional complexities of human life, misuse of social media platforms and changed socio-economic conditions expose the children to new and different forms of abuses. It includes causing mental and physical injuries, neglecting, blaming, forced sexual serfdom, incest exploitation, etc. Child abuses take place in their homes, schools, orphanages and residential care facilities. Even on the streets, in work places and in prisons too such violations occur. Violence in any form will cause a deep impact and leave an indelible scar in the mind of the child. Child abuse results in a real or potential harm to the child's health, personality development and dignity.

2. Sob story unfolded from the records in these cases utterly shock our conscience. It ought to have been so for the investigator, the prosecutor and the trial court too. Unfortunately, two tender aged girl children, who are uterine sisters, departed from this world unavenged for the inexpiable sins done to them by those who should have been taking care of them.

3. On 13.01.2017, Walayar Police Station Crime No.43 of 2017 was registered under Section 174 of the Code of Criminal Procedure, 1973 (in short, “Cr.P.C.”). Contents of the first information statement (FIS), in short, are that on the above date, a girl approximately 13 years of age committed suicide by hanging inside a shed, where the victim and family were living, at a time

between 14.30 -17.00 hours. The matter was reported by the nephew of the girl's mother at 19.29 hours. After a preliminary investigation, the body was sent for postmortem examination. A postmortem certificate dated 14.01.2017 was issued by the Assistant Surgeon, Department of Forensic Medicine, District Hospital, Palakkad. The certificate reads thus:

"POST-MORTEM CERTIFICATE

The requisition for post mortem examination on the body of a female by name KRITHIKA stated to be aged about 13 years, involved in Crime No.43/17 u/s 174 CrPC of Walayar police Station was received from The S.I.of Police, Walayar Police Station at 10:15 AM on 14/01/2017 (vide Crime No.43/2017 dated 14/01/2017). The body was in charge of WCPO No.4405 who identified the same. The body was first seen by the undersigned and post mortem examination commenced at 10:20 AM on 14/01/2017 and concluded at 11:20 AM on the same day. The alleged history as stated in KPF 102 was "Hanging".

POST MORTEM FINDINGS

A. GENERAL*:Body of a moderately built and nourished adolescent female weighing 42 kg and 157 cm long. Eyes*

partly opened, conjunctiva pale, tache noir sclerotique present on both eyes, cornea hazy. Nostrils and ear canals intact. Lips with its inner mucosa, teeth and gums intact. Tongue protruded and bitten. Finger nails bluish. Salivary dribble mark 4 cm, horizontal at right angle of mouth. Ant erosions present over both eye lids along lid margin, on upper lip, inguinal region and over labia majora. Multiple healed pyoderma scars over both lower limbs and healing pyoderma over right upper limb. Anal orifice appeared stretched with multiple mucosal erosions at margins with pustular areas at places. Rigor mortis passed off from jaw and upper limbs, retained feebly on lower limbs. Post mortem staining over back of trunk and with stasis petechie in lower limbs, getting fixed. No signs of decomposition. Body was not kept in freezer.

B.INJURIES (Ante Mortem):

Neck findings*: A dark blue synthetic cloth was seen around neck measuring 145 cm with fresh cut open loop at one end measuring 41 cm with a slip knot. There were horizontal wrinkles across breadth of 82 cm*

1. Pressure abrasion, dark brown in colour, non continuous, non grooved, parchmented, having no specific pattern over upper part of neck, over and above the level of thyroid cartilage measuring 29 cm against a total neck circumference of 30 cm. It was oblique coursing upwards from right to left. The location of pressure abrasion was as follows:

6cm below right mastoid (2cm broad), 7 cm below right ear (2 cm broad), 6.5cm below right angle of jaw (2 cm broad), 7cm behind chin (1.5 cm broad), 4 cm below left angle of jaw (1.5 cm broad), 2 cm below left ear (2 cm broad), 1.5 cm below left mastoid (1 cm broad), 8 cm occipital protuberance (1 cm broad). It was not well visualised for 8 cm on left side of back of neck.

Flap Dissection of neck done in layers in bloodless field showed pale and dry subcutaneous tissue underneath the pressure abrasion. The strap muscles, thyroid gland and cartilage, hyoid bone, vessels of neck, cervical vertebrae intact.

No other injuries on the body.

C.INTERNAL: *Scalp and skull – intact. Brain weighed 1200 grams, pale. Ribs and chest wall – intact. Pleural cavities contained no free fluid or air. Diaphragm, mediastinum – intact. Air passages – un remarkable. Lungs:Right-290 grams and Left 200 grams. Both lungs were congested. Pericardial sac-intact. Heart weighed 190 grams. Walls, Valves, Chambers were intact. Coronary arteries patent. Aorta -un remarkable. Abdominal wall-intact. Peritoneal cavity contained no free fluid. Liver weighed 1000 grams. Gall bladder-intact. Biliary passages patent. Spleen weighed 100 grams, congested. Adrenals un remarkable. Kidneys: weighed 110 grams each and were congested. Stomach contained 200 grams of yellowish soft food materials and bits of few unidentifiable food particles having no unusual smell. Mucosa was un remarkable. Intestines and mesentery – un remarkable. Urinary bladder was empty. Hymen appeared intact. Genital organs intact – uterus, tubes and overies intact. Cavity contained mucoid blood. Spinal column and cord were intact.*

Blood, Viscera, Vaginal swab were preserved and sent for chemical analysis.

Opinion as to cause of death:

"POST MORTEM FINDINGS WERE CONSISTENT WITH DEATH DUE TO HANGING"."

It is strikingly clear from the postmortem certificate that anal orifice of the dead was having multiple mucosal erosions at margins with pustular areas at places. Despite the above finding, none of the responsible persons did bestow any attention to find out what could have been the root cause for the girl's suicide. Investigation was in a cold storage until the happening of the unnatural death of the younger girl on 04.03.2017. Again, Walayar Police Station Crime No.240 of 2017 was registered under Section 174 Cr.P.C. on the information furnished by a neighbour of the deceased's family. In the FIS it is mentioned that on 04.03.2017 at about 18.00 hours the informant heard the mother of deceased girl screaming from her house and when he, along with others, went there found the girl aged about 9 years hanging on a rafter inside the shed. Thereafter police forwarded the body for postmortem examination and a postmortem certificate dated 05.03.2017 was issued by the Police Surgeon, Palakkad District Hospital. Contents therein read thus:

"POST-MORTEM CERTIFICATE

The requisition for postmortem examination on the body of a female by name SHARANYA, stated to be aged about 9 years, involved in Crime No.240/2017 of WALAYAR Police Station was received from S.I. of Police, Walayar police station at 01.30 pm on 05-03-17 (vide Crime No.240/17 dated 05-03-17). The body was in charge of Sajitha, W.C.P.O. No.6848 who identified the same. The body was first seen by the undersigned and postmortem examination commenced at 01.50 pm on 05-03-17 and concluded at 03.00 pm on the same day. The alleged cause as stated in KPF 102 was "death due to hanging".

Post-mortem findings

A.General*:Body of a moderately built and nourished female child of length 129 cm and weight 22 kg. The length from sole of heel to tip of right middle finger with right upper limb fully extended upwards was 151 cm. Eyes right half open and left open, cornea hazy, pupil on left side more dilated than the right and conjunctiva pale on left side and congested on right side.*

White fine lathery froth was seen as a bunch at nostrils. Lips and finger nails were blue. Inner aspects of lips and cheeks were normal and devoid of any ante-mortem injuries. Rigor mortis started passing off from jaw and left upper limb and was not present in right upper limb (broken for examination at scene, during visit to the scene of crime). Right mortis was fully established and retained in the lower half of trunk and in lower limbs. A small patch of greenish discoloration was just appearing in right iliac fossa. There were no postmortem bullae or peeling of cuticle anywhere on the body. Marbling of skin was not appeared anywhere on the body. Postmortem staining on right side of face and back of trunk and limbs was fixed. Two postmortem ant bite marks were seen over an area of 1.5x1 cm, one linear and the other curved, on right side of chest, 4 cm below top of front armpit fold (described as injuries in KPF 102). Multiple postmortem ant bite marks were also seen over an area of 4x3 cm on right side of chest, 3 cm below top of back armpit fold. Spot like postmortem ant bite marks were

also seen at a few places on the body. Few live red ants were seen crawling on the body. External genitalia were normal except for the postmortem staining on sides and back of vaginal orifice. Hymen was intact and just admitted the tip of finger. There were no ante-mortem injuries in the vagina. The anal orifice was dilated, admitting two fingers loosely. On lateral traction, the orifice measured 3.3 cm and was patulous with the anal canal having a roomy appearance. Healed linear scars were seen along the edges of the anal orifice on all aspects, in a radiating manner. There were no fresh ante-mortem injuries in the anal orifice or anal canal.

***B.Neck**: A pressure abrasion of size 25x1.5 to 5 cm is seen coursing upwards and backwards from at and above thyroid cartilage in midline front of neck, 6 cm below chin (breadth 1.2 cm) to its right end at 5 cm behind right ear lobule (breadth 2.5 cm) and to its left end at 3 cm behind left ear lobule (breadth 5 cm). The base of the mark was dry and parchmented like in appearance on front and right side. There was no evidence of*

contusions or blood infiltrations along the base and edges of the mark. The mark was oblique and non-continuous, being absent on back of neck. Postmortem ant bite mark, 0.3x0.2 cm was seen on right half of front of neck 2 cm above the pressure abrasion and 4.7 cm outer to midline.

Flap dissection of neck in a bloodless field showed firm and pale subcutaneous tissues underneath the pressure abrasion. All the midline structures of neck including muscles, thymus and thyroid glands, thyroid and cricoids cartilages, hyoid bone and cervical vertebrae were intact. There was no evidence of any blood infiltrations on front and sides of neck. Dissection of back of neck in layers did not show any blood infiltrations or contusions.

***C.Injuries (Ante-mortem)**:*

1. Contused abrasion modified by postmortem ant bite marks, 1.2x0.6 cm on left half of lower lip, just inner to left angle of mouth.

2. Healing abrasion covered by reddish brown scab, 0.4x0.2 cm, on inner aspect of right leg, 12 cm below

knee.

3. Partially healed abrasion covered by brownish black scab, 0.3x0.2 cm, on inner aspect of left ankle, 2 cm below inner malleolus.

4. Partially healed abrasion covered by brownish black scab, 1.5x0.5 cm, on upper aspect of left foot 3 cm in front of ankle.

***D.Other Findings**:Scalp was normal and devoid of any contusions. Skull was intact. Brain was intensely congested and showed patchy area of subdural haemorrhage over right cerebral hemisphere.Lungs were congested and edematous. Heart walls were congested and valves and chambers were normal. Liver, spleen and kidneys were congested. Stomach contained undigested chewed bits of ripe mango skin and pulp like particles and other unidentified food particles in a yellowish thick fluid medium without any unusual smell, mucosa normal. Urinary bladder was empty. Uterus and appendages were seen in a developing stage. Spinal column and cord were intact. All other organs were congested, otherwise*

normal. Vaginal swabs and anal swabs and saline swabs from inner thigh regions were preserved to look for semen and spermatozoa. Viscera and blood were preserved for chemical analysis.

***Opinions as to cause of death**:*

"Postmortem findings are consistent with the history of death due to HANGING. Approximate time since death could be more than 18 (Eighteen) hours and less than 24 (Twenty four) hours of the time, the body was first seen by the undersigned (01.50 p.m. on 05-03-2017) and within 6 (six) hours of her last meal consisting of the contents of the stomach. There was evidence suggestive of unnatural sexual offence on the child, in the form of multiple episodes of anal penetrations in the past. In view of the age of the child (nine years) and the length from sole of heel to tip of right middle finger with right upper limb fully extended upwards (151 cm), the possibility for homicidal hanging needs to be ruled out by correlating with measurements at scene of crime and through investigation."

4. Records in these cases reveal that the Deputy Superintendent of Police (Dy.S.P.), Narcotic Cell, Palakkad conducted the investigation as authorised by the Additional Director General of Police. He took over the investigation on 09.03.2017, ie. a couple of days after the death of the second child. As mentioned earlier, till then there was no meaningful investigation into the cause of death of the elder child.

5. We may give a broad picture about the relationship between the victims and some of the witnesses. Mother of the deceased children was examined in all these cases. Shaji @ Sheri is the second husband of the children's mother. Admittedly, the elder girl was born in her first marriage. Thereafter, she started living with Shaji @ Sheri and in that relationship the second child was born. In short, the deceased children were uterine sisters. It appears that public outcry prodded the police to start an investigation into the mysterious death of these two tender aged children. Thereafter, separate crimes were registered implicating four accused persons in various offences under the Indian Penal Code, 1860 (in short, “IPC”) and Protection of Children from Sexual Offences Act, 2012 (in short, “POCSO Act”).

6. According to the prosecution, the investigation revealed that Madhu @ Valiya Madhu had committed offences punishable under Sections 450, 354, 376(2)(f), (i) and (n), 377 and 305 IPC and Section 7 read with

Section 8 and Section 5(l), (m) and (n) read with Section 6 of the POCSO Act in respect of the younger child. He had also committed all the aforementioned offences, except the offence under Section 5(m) of the POCSO Act, on the elder child. After investigation, a final report was filed before the Special Court and he was tried in S.C.Nos.396 of 2017 and 400 of 2017 in respect of the offences committed on the elder and younger ones respectively. Since both these cases ended in acquittal, the State and the mother of the children, who is a victim under Section 2(wa) of the Cr.P.C., have preferred Crl.Appeal No.1360 of 2019 and Crl.Appeal (V) No.31 of 2019 against the judgment in S.C.No.396 of 2017 and Crl.Appeal No.1359 of 2019 and Crl.Appeal (V) No.32 of 2019 against the judgment in S.C. No.400 of 2017.

7. It was further revealed that the accused Shibu had committed offences punishable under Sections 376(2)(i), 377 and 305 IPC, Section 5(n) read with Section 6 of the POCSO Act and Sections 3(1)(w)(i) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (in short, “SC/ST (PA) Act”) in respect of the elder girl. After investigation, a final report was filed before the Special Court and he was tried in S.C.No.397 of 2017.Since this case too ended in an acquittal, the State and the mother of the deceased have preferred Crl.Appeal No.1363 of 2019 and Crl.Appeal (V) No.34 of 2019.

8. Investigation into the case additionally revealed the commission of sexual offences by yet another accused by name Madhu @ Kutti Madhu too on the elder girl. Therefore he was booked for the offences punishable under Sections 450, 354 and 305 IPC and Section 7 read with Section 8 of the POCSO Act. After investigation, a final report was filed before the Special Court and he was tried in S.C.No.399 of 2017. Since he was acquitted, the State and the mother of the deceased have preferred Crl.Appeal No.1357 of 2019 and Crl.Appeal (V) No.33 of 2019.

9. In the course of investigation, it was disclosed that one Pradeep Kumar had also committed offences punishable under Sections 376(2)(i) and (n), 377, 305 and 354 IPC, Section 5(l) read with Section 6 and Section 7 read with Section 8 of the POCSO Act and Sections 3(1)(w)(i) and 3(2)(va) of the SC/ST (PA) Act in respect of the elder girl and offences punishable under Sections 376(2)(i) and (n), 377, 305 and 354 IPC, Section 5(l) and (m) read with Section 6 and Section 7 read with Section 8 of the POCSO Act and Sections 3(1)(w)(i) and 3(2)(va) of the SC/ST (PA) Act in respect of the younger girl. After investigation, police filed two final reports against him before the Special Court and he was tried in S.C.Nos.398 of 2017 and 401 of 2017. Since both the cases culminated in acquittal, the State as well as the mother of the deceased have preferred Crl.Appeal No.1358 of 2019 and Crl.Appeal (V)

No.35 of 2019 and Crl.Appeal No.1361 of 2019 and Crl.Appeal (V) No.30 of 2019 respectively.

10. Above mentioned Pradeep Kumar died during the pendency of the appeals. Therefore the appeals filed against his acquittal have been abated.

11. It is noteworthy that all the judgments challenged in these appeals are pronounced on the same day. Case records would reveal that the accused were tried separately and the cases were disposed of by separate judgments.

12. We heard Sri.Nicholas Joseph and Sri.S.U.Nazar, learned Senior Public Prosecutors, Sri John S. Ralph, learned counsel for the victim and Sri.Johnson Varikkappallil and Sri.P.G.Jayasankar, learned counsel for the accused persons.

13. Learned prosecutors vehementally argued that the impugned judgments are legally unsustainable on many counts. It is fairly conceded by the learned prosecutors that there are flaws in the initial investigation. It is their submission that the prosecutor who appeared before the trial court utterly failed to discharge her duty to the victims and the Court. It is fairly submitted that they have no moral or legal ground to justify the perfunctory role played by the prosecutor in these cases involving grave allegations. They also raised a complaint that the trial court did not play its part properly and remained as a mute spectator. According to them, shortcomings on the part of the

investigative machinery and the prosecuting agency, coupled with lack of concern for the truth shown by the trial court, resulted in handing out unmerited acquittals to the accused persons. They would further contend that in these cases, justice has become a casualty on account of the lack of will shown by all the functionaries responsible for a fair trial. Learned prosecutors urged before us that utter callousness shown by the persons concerned at the time of investigation and trial has resulted in miscarriage of justice and this Court should set it right by setting aside the judgments and remanding the cases for fresh and fair trial, after affording the investigating agency a further opportunity to conduct a deeper probe into the matter. Learned counsel appearing in the victim's appeals supported the arguments of the Prosecutors.

14. Per contra, learned counsel for the accused persons contended that failure of the prosecution to adduce proper evidence shall not be taken as a reason to permit them to have a fresh investigation and a de novo trial. Prosecution has no right to claim a de novo trial as it will adversely affect the accused's accrued right of maintaining the order of acquittal.

15. Before appreciating the legal issues involved in these cases, we shall consider the facts involved in the above Sessions Cases separately. Since the nature of evidence in all these cases has similarity and evidence has to be appreciated in the same manner and, importantly, the questions of law

raised in all these cases are identical, we shall dispose of all these cases by this common judgment.

S.C.No.396 of 2017

16. As stated above, accused Madhu @ Valiya Madhu stood charge sheeted in this case for the aforementioned offences. When the elder girl aged 13 years was found hanging herself on a rafter in the shed on 13.01.2017, except the registration of a first information report (FIR) and sending the body for postmortem, nothing else was done by the S.I. of Police, Walayar. Thereafter, on 04.03.2017, her younger sister aged 9 years also committed suicide in the very same manner. After registering a crime for unnatural death, as usual, the initial investigation was done by the said Sub Inspector. Presumably due to fierce public agitation the investigation was handed over to the Inspector of Police, who in turn found that the girls had been subjected to sexual abuse. By then, considerable time was elapsed. He filed a report before the court to incorporate penal provisions under Sections 376, 377 and 306 IPC and Section 5 read with Section 6 of the POCSO Act. While so, a special investigation team headed by the Dy.S.P., Narcotic Cell, Palakkad had to be constituted to pacify the pressing demand by local people. The accused in this case was arrested on 09.03.2017 and he was remanded to judicial custody. After investigation, a final report was filed.

17. From the records produced it will be clear that the deceased girls with their family were residing in an improvised shed. Prosecution case, in short, is that from April 2016 till 13.01.2017 on various occasions the accused in this case trespassed into the shed and subjected the deceased girl to carnal intercourse against the order of nature. Prosecution further contended that the offence was once again perpetrated by the accused on the victim from the house of her grandmother. Further, he had sexually assaulted the girl from her house by touching her breasts and private parts. On account of the intolerable sexual assaults and harassment meted out by this accused and other accused persons, the victim committed suicide on 13.01.2017 between 14.30 – 17.00 hours by hanging herself. It is pertinent to note that the accused in this case is the cousin of the victim's mother.

18. In order to substantiate the prosecution case, 30 witnesses were examined and 39 documents marked. Exts.D1 and D2 are the records marked on the defence side. No oral evidence was adduced by the defence. MOs 1 to 12 are the material objects. On an appreciation of evidence, the court found no material to convict the accused. We shall briefly consider the evidence in this case.

19. PW1 Unnikrishnan's mother and the deceased girl's mother are sisters. PW1 was residing half a kilometer away from the victim's shed. He

informed the factum of the elder girl's death to police. He deposed that the mother of the victim informed him on the fateful day at 4.15 p.m. that the girl was unwell. When he went to her house, he found the girl hanging on the rafter. After a few weeks, the younger girl also committed suicide in the same manner. According to PW1, the accused persons had sexually abused the girls and that could be the reason for their death. However, PW1 had not seen any sexual assault done by the accused on the deceased girls.

20. Along with the final reports in all the cases, memoranda of evidence, showing the names of the charge witnesses (CWs) cited by the prosecution and purpose of their examination, have been attached. When we go through the deposition of the prosecution witnesses, it can be clearly seen that the prosecutor, in a slipshod manner and without verifying the records in the case diary, led the evidence at the trial. It is obvious that the purpose of examining the witnesses and what fact each witness was supposed to prove were not considered at all.

21. PW2 was cited to prove the fact that the elder girl committed suicide by hanging and also that the accused used to meet the victim in her shed at times when her parents were absent. In his chief examination, he did not depose that crucial fact. When he refused to support the prosecution case, although the prosecutor sought and obtained permission from the court to put

questions to him, which might be put in cross-examination by the adverse party by invoking Section 154 of the Evidence Act, 1872 (in short, “Evidence Act”), no answer was attempted to be elicited to prove that he was uttering falsehood. Strangely, his case diary statements were not put to him so as to elicit material contradictions.

22. PW3 is a witness to Ext.P2 inquest report. It is brought to our notice that the charge witness no.7, Radhakrishnan was cited in the final report to prove the facts that he was a neighbour of the deceased and that the accused was present in the shed shortly before the death of the victim. This information was furnished to him by the younger girl and CW13. Further, he was supposed to state the fact that the accused used to visit the shed on many occasions in the absence of the girl's parents. Records show that without assigning any reason this witness was given up by the prosecutor. Learned prosecutors pointed out that no endorsement was made by the trial prosecutor at the time of giving up any of the material witnesses.

23. PW4 was cited to prove a relevant fact that he had seen the accused committing sexual act on the deceased girl and also that he was informed by CW10 about the nefarious act committed by the accused on the girl. It is painful to note that none of these aspects was elicited from this witness when he refused to support the prosecution case. After declaring him

hostile to the prosecution and seeking permission to cross-examine him, only one question was put by the prosecutor to this witness and that too an irrelevant one. Shockingly the deposition of this crucial witness is limited to a single page.

24. PW5 is the step father of the deceased girl. In his chief-examination, he deposed about his relationship with the deceased girls. He testified that the accused is the first cousin of his wife (PW6). According to his testimony, in 2016 while he was laid up due to sprain on his leg, he asked his children to fetch some drinking water. When nobody responded to his call, he crawled to get some water. When he tried to stand up by holding to a window, he found the accused having carnal intercourse against the order of nature on the victim. The girl informed PW5 that the accused defiled her by threatening to kill her, if she had informed the matter to her parents. PW5 deposed that as he was laid up, he could not question the accused about that issue. He informed the matter to PW6, his wife, when she came back after work. The issue was communicated to the family of the accused and the accused was restrained from visiting their shed. PW5 further deposed that he knew later that on the date of the girl's death, the accused had come to their house. PW5 did not inform the matter to police considering the fact that the girl was of tender age. In cross-examination, nothing worthwhile could be elicited to discredit the

testimony of PW5.

25. PW6 is the mother of the deceased. She testified in tune with the deposition of PW5. She came to know of the incident as informed by PW5. She also deposed that six months prior to her daughter's death, the accused had caught hold of the victim's breast from their half completed house. On seeing PW6, the accused ran away. In connection with that incident, PW6 had scolded the accused. She was under the impression that the accused had stopped misbehaving towards the victim. According to PW6, all these facts were not divulged to anyone fearing that it could affect the future of the girl children. Despite cross-examination on this witness, no reason could be brought out to discredit her assertions in the chief-examination. It has come out in evidence that a teenaged boy had given a love letter to the deceased girl on one day. PW6 had taken up this as an issue to the school authorities and the boy was reprimanded. She also deposed that she had beaten the deceased and admonished her. It was tried to be brought up by the defence that such acts could have driven the victim to commit suicide. This defence case is highly improbable, if we go through the testimony of PW6.

26. PW7 is the mother of PW6. In other words, she is the grandmother of the deceased children. She deposed that the children loved her. They used to visit her house after returning from school. This witness was

cited to prove that in the absence of elders she had seen the accused taking the deceased girl inside her house and spending time with her in a suspicious manner. However, this aspect was not spoken to by this witness. Despite putting questions to this witness under Section 154 of the Evidence Act, nothing was tried to be elicited to find that this witness was unduly favouring the accused.

27. It is very important to note that although the prosecutor sought permission from the court to cross-examine the witnesses, who were disloyal to the prosecution, in accordance with Section 154 of the Evidence Act, no part of the case diary statements was brought to their notice and no attempt was made to contradict them. Stated differently, the procedure envisaged under Section 145 of the Evidence Act was not resorted to at all on the witnesses who refused to support the prosecution case. This is a major flaw in the prosecution of all the cases.

28. PW8 is a childhood friend of the deceased. She was working at Thrissur at the material time. PW8 deposed that she used to give her used dress materials to the deceased. About one month prior to her death, when PW8 came home, she had met the deceased. At that time, the deceased wanted to inform PW8 a secret and elicited a promise from PW8 that she would never disclose the secret to anyone. When PW8 promised, the

deceased informed her that she was having pain in her bottom and asked whether PW8 could give some medicine. PW8 asked the deceased to wash the area with salted lukewarm water. After the deceased had washed, she asked how the injury happened. Then the deceased informed PW8 that she sustained injury inside her anus because the accused had done something hurting her. This witness identified the accused from the dock. Despite cross-examination, credibility of this witness could not be impeached. PW8 in cross-examination deposed that she did not disclose the information given by the deceased to anyone since she had promised her to keep it as a secret. This witness also to a certain extent supported the prosecution case.

29. PW9 is a child witness. He was cited to prove that the accused was present in the deceased's shed immediately prior to her death. When he refused to support the prosecution case the way they wanted it, he was subjected to cross-examination, but none of the case diary statements supporting the prosecution version was put to this witnesses to mark them as contradictions. Prosecution derived no benefit from the testimony of this witness.

30. PW10 is also cited for proving that the accused was present in the shed shortly before the victim's death and he used to visit the deceased's shed frequently in the absence of the victim's parents. When he declined to support

this prosecution case, the prosecutor obtained permission from the court under Section 154 of the Evidence Act and put some questions in a half-hearted manner. Strangely, none of the previous statements of this witness too was put to him to contradict.

31. PW11 was cited by the prosecution to prove that the accused used to take the girl to his house in the absence of other inmates. He did not utter any word in support of the prosecution case and not even in the chief examination any attempt was made to elicit answers from him in the aforementioned manner.

32. PW12 is a witness to Ext.P3 scene mahazar. PW13 is a photographer who had taken photos of the body at the time of inquest. Ext.P4 series are the photographs. Ext.P5 is the compact disc containing photographs proved under Section 65B of the Evidence Act. PW14 is the Headmaster in the Government High School, Kanjikode. He was cited to prove the admission register extract to show that the date of birth of the deceased girl was 14.09.2004. PW15 is a witness to Ext.P7 mahazar. PW16 is a witness to Ext.P8 scene mahazar. PW17 is a witness to Ext.P9 mahazar through which the dress materials of the accused were seized.

33. PW18 is the Doctor who conducted autopsy on the body of the victim. Ext.P10 is the postmortem certificate, the contents of which we have

extracted above. It is disheartening to note that the prosecutor has not elicited any answer from this witness to probabilise the prosecution case that the victim could have been subjected to carnal intercourse against the order of nature. In fact no such question was put to this witness on behalf of the prosecution. During cross-examination, this witness answered that the findings regarding anal orifice recorded in the postmortem certificate cannot be regarded as a common finding in the case of hanging. She deposed that the anal area of the victim was infected. To a pointed question, this witness answered that stretching and multiple erosions noted in the anal area was not due to lack of cleanliness. According to her testimony, the findings noted above could not be due to piles.

34. PW19 is the Civil Police Officer who signed as witness to Ext.P11 mahazar through which some documents were seized. He had signed on Exts.P12 and P13 mahazars as well. PW20 was taken as a member in the special investigation team while he was working as senior Civil Police Officer in Chittur Police Station. His evidence is not very material in this case.

35. PW21 is the Scientific Assistant in the Regional Forensic Science Laboratory, Thrissur. As per the requisition of the investigating officer, he examined the scene of occurrence on 09.03.2017 and collected whatever materials available. It is pertinent to note that the death in this case had

occurred on 13.01.2017.

36. PW22 is the Grade A.S.I., in Chittur Police Station. He too was a member in the investigation team. He is a witness to Ext.P16 mahazar. He took the accused on 10.03.2017 for medical examination to the District Hospital, Palakkad. He had attested Ext.P14 seizure mahazar.

37. PW23 is the Village Officer who visited the place of occurrence and prepared Ext.P17 scene plan. He prepared the plan, with respect to the accused's house, which is marked as Ext.P18. Relationship certificate issued by this witness is Ext.P19. Income certificate of the victim’s mother is Ext.P20.

38. PW24 is the Secretary of Pudussery Grama Panchayat, who issued Exts.P21 and P22 ownership certificates with respect to the shed and the half completed house. PW25 is the Woman Civil Police Officer who recorded the statements of witnesses. She recorded the statements of the victim’s teachers and fellow students. On the fateful day, the children had not attended the school and they had gone for grazing goats. In fact some of the contradictions of the material witnesses, if properly elicited, could have been proved through this witness. In the absence of putting the material part of the case diary statements to the witnesses concerned, it could not have been put to the police officer who recorded it. Fundamental principles regarding marking the contradictions in the previous statements have been violated by the

prosecutor.

39. PW26 is a Doctor attached to the District Hospital, Palakkad. He collected the blood samples for DNA profiling and issued Ext.P24 certificate. PW27 is the Additional Sub Inspector of Police, Walayar Police Station, who recorded Ext.P1 FIS and registered Ext.P1(a) FIR.

40. PW28, the Sub Inspector of Police, Walayar Police Station, took over the investigation on 14.01.2017 itself and visited the place of occurrence. He conducted an inquest on the body of deceased and prepared Ext.P2. He forwarded the properties to the court as per Ext.P25 property list. Material objects 1 to 6 including the dress materials were forwarded for chemical examination.

41. At the time of hearing it is submitted by the prosecutors very honestly that if PW28 had shown due diligence at the proper time, at least death of the second child could have been averted. It is disappointing to note the insensitivity shown by PW28 in this regard. Normally, a truthful and dutiful investigator should have had a hunch that there was something extraordinary which drove the girl to end her life. No such intuition worked on PW28.

42. PW29 is the Inspector of Police, Hemambika Nagar who took over the investigation on 06.03.2017.Ext.P3 is the common scene mahazar in both these cases of death since the place of occurrence is the same. He filed a

report before the court to alter the charging Sections. Although this witness deposed that he had questioned Dr.Priyatha, who conducted autopsy on the body of the deceased girl, no information material to the case was collected from her. In cross-examination this witness deposed that the injuries on the anal region of the deceased could be due to unnatural sexual intercourse as deposed to by the Doctor who conducted the autopsy. According to his version, he had conducted investigation for three days only.

43. PW30 is the Dy.S.P., Narcotic Cell, Palakkad, who took over the investigation from PW29 on 09.03.2017. It is true that he came in the picture only after the death of the younger girl. As per Ext.P16, material objects were recovered. On 09.03.2017 at about 5.00 p.m. the accused was questioned and his arrest was recorded. He filed Ext.P32 report before the court stating the name and address of the accused. As part of the investigation, Dy.S.P. questioned the accused and as informed by the accused he had gone to his house and recovered the accused's dress materials. He filed Ext.P36 report before the court to delete Section 306 and to add Section 305 IPC instead. After closing the investigation, a final report was filed.

44. In cross-examination, he admitted that he had not taken any action against the accused for knowingly concealing the sexual offence committed on the minor girl. It is his deposition that no scientific evidence

could be collected to show that the accused had sexually assaulted the victim. Learned prosecutors submitted that the dead bodies of the victims had been cremated before PW30 had taken over the investigation.

45. It is pointed out by the learned prosecutors that some of the witnesses, enlisted in the memorandum of evidence, were not examined without assigning any reason. Further, the witnesses who showed clear inclination to support the prosecution version were not given full opportunity at the time of trial. Most importantly, the witnesses who refused to support the prosecution case were not properly dealt with as required under the provisions of the Evidence Act.

46. It is also argued that the trial court has committed a grave mistake in not considering the statement of the relevant witnesses recorded under Section 164 Cr.P.C. It is disgusting to note that no question was asked by the prosecutor at the time of examining the witnesses, who gave statements under Section 164 Cr.P.C., and no opportunity was availed of at the time of examining them to see whether they supported their versions in the statements under Section 164 Cr.P.C. In fact, none of the statements was marked at all. We are of the opinion that prosecution's callousness was at its peak in this case. We find no justification for the half-hearted and insincere prosecution of the case. Ultimately, the court below acquitted the accused

finding that no evidence was let in against him.

47. Learned prosecutors opposed the finding entered by the trial court in paragraph 49 of the judgment. Despite having sufficient evidence given by PWs 5 and 6 to implicate the accused in the offences, the court below on flimsy grounds acquitted the accused. It is also argued that the court below failed in its duty to invoke the power under Section 165 Evidence Act at the time of trial. According to the prosecutors, the cumulative effect of a defective investigation, thoroughly incompetent and insincere prosecution and a trial without court's proper involvement resulted in the acquittal.

S.C.No.397 of 2017

48. Shibu is the accused in this case. Offences alleged against him are indicated in the earlier paragraph. It is alleged that he perpetrated the aforementioned offences on the elder girl, who committed suicide on 13.01.2017. After trial, he was also acquitted. It is pointed out by the learned prosecutors that the same amount of negligence and callousness are shown by the first investigating officer and the prosecutor in this case as well. We shall briefly look into the evidence in this case.

49. All the cases relating to the death of the elder girl emanated from the same FIS and FIR which we have already mentioned in S.C.No.396 of 2017. PW1 is cited to prove the FIS in this case also. PW2 is a witness to

Ext.P2 inquest report. PW3 is also a witness to the inquest report. He deposed that the accused at the material time stayed along with the deceased's family. PW4 is the stepfather of the deceased. In this case he deposed that the accused was staying with them in the shed. According to his chief-examination, the accused had confessed on one day, in an inebriated mood, that he had misbehaved towards the deceased girl. From his deposition, we can only presume that this witness clearly understood the fact that the accused had sexually exploited the deceased. In cross-examination, this witness deposed that when the accused confessed his guilt, PW4 had not consumed alcohol and was in a sober-state. Learned prosecutors pointed out that the trial court did not appreciate the testimony of this witness in the correct perspective remembering the social strata to which he belongs and did not consider the scope of Section 29 of the Evidence Act while appreciating the alleged confession of the accused.

50. PW5 is the mother of the victim. In fact, she did not speak anything against the accused, except saying that he had stayed with them in the shed. PW6 is a witness to Ext.P3 scene mahazar. PW7 is the Headmaster, Government High School, Kanjikode who was cited to prove Ext.P4 admission register to show that the victim was born on 14.09.2004. PW8 is a witness to Ext.P5 seizure mahazar through which the admission register was seized.

PW9 knew the deceased and her younger sister long prior to the incident. She used to give her used dresses to the elder girl. On one day, when she came from her work place at Thrissur, the deceased girl informed her that she was having an injury in anus and requested to give some medicine. This witness asked her to wash that part by using lukewarm water. She informed PW9 that Madhu @ Valiya Madhu had sexually abused her. When PW9 further asked, the victim said that the accused in this case also had behaved towards her in an unfair manner and she was reluctant, if not scared, to inform about the violations to her mother. Despite cross-examination, credibility of this witness could not be challenged.

51. PW10 is the doctor who conducted autopsy on the body of the deceased. We have already mentioned the details of the postmortem examination in the earlier paragraphs. PW11 is a witness to Ext.P7 seizure mahazar. PW12 is the ASI, Chittur Police Station who was a member in the special investigation team. He is the signatory to Ext.P8 seizure mahazar. He had also signed on Ext.P9 seizure mahazar through which the dress worn by the accused was seized. PW13 is yet another police officer who worked in the special investigation team and he signed on Ext.P9 mahazar. Testimony of these witnesses have no impact on the prosecution case, except proving some formalities done in the course of investigation.

52. PW14 is the Scientific Officer, Regional Forensic Science Laboratory, Thrissur. He collected samples involved in this case and signed on Ext.P8 seizure mahazar. PW15 is the Village Officer, Pudussery East Village who prepared Ext.P11 site plan. Income certificate of the victim's mother is Ext.P12. PW16 is the Tahsildar, Palakkad. He issued Ext.P13 certificate to show that the victim and her family are members of a Scheduled Caste Community.

53. PW17 issued Ext.P14 certificate in respect of the accused to show that he is not a member of the Scheduled Caste Community. PW18 recorded the statements of the witnesses as directed by the investigating officer. PW19 examined the accused and furnished Exts.P15 and P16 certificates showing that he was potent.

54. PW20 is the Secretary, Pudussery Grama Panchayat who issued Ext.P17 certificate showing that the death occurred in the shed belonging to the mother of victim. PW21 recorded Ext.P1(a) FIR under Section 174 Cr.P.C. PW22 conducted inquest on the dead body and prepared Ext.P2 inquest report. PW23 conducted the investigation in the case. His deposition is almost in the same lines as that in the previous Sessions Case. PW24 was the Inspector of Police, Hemambika Nagar as on 06.03.2017. He conducted initial investigation from whom PW23, Dy.S.P. took over.

55. Learned prosecutors pointed that many of the witnesses cited in the memorandum of evidence, submitted along with the final report, were not examined. No specific reason is seen mentioned by the prosecutor for giving up such witnesses. Moreover, there was no attempt to clearly elicit the alleged extra judicial confession made by the accused to PW4. It is therefore pointed out that the prosecutor in the trial court failed to discharge her duty in a legal manner.

S.C.No.399 of 2017

56. Madhu @ Kutti Madhu stood a trial and secured an acquittal in this case for the aforementioned charges. This trial was also conducted in a perfunctory manner as in the other cases, contended the learned prosecutors. We shall go through the evidence.

57. PW1 is the informant at whose instance Ext.P1 FIS and later Ext.P1(a) FIR are recorded. He is a witness common in all these cases. This case is also pertaining to the death of the elder girl. PW1 is the elder brother of the accused. In chief-examination, PW1 deposed that the victim's mother had told him once about the misbehaviour of the accused towards the deceased girl. According to the information received by PW1, the victim's mother had seen the accused attempting to remove bottom of the dress worn by the deceased and she had beaten him with a broom. It is brought out in the cross-

examination that this fact was not stated by the witness when he was questioned by police.

58. PW2 is a witness to Ext.P2 inquest report. PW3 is the stepfather of the victim. He deposed that the accused is his wife's sister's son. In the month of August, 2016, they celebrated birthday of the younger child. During that night, PW3, Shibu and the accused slept outside the shed. CW11 Haripriya, the deceased girls, PW4 and their son Appu slept inside. Deceased children and Haripriya were sleeping on a bed and others on the floor. At about 11 o' clock in the night PW3 heard some noise from inside and he found PW4 beating the accused with a broom. When asked, PW4 informed him that she saw the accused lowering pants worn by the deceased. Accused was sent out of the shed. In spite of a searching cross-examination on this witness, his testimony remains credible.

59. PW4, mother of the victim, also supported the testimony of PW3. She testified that when they were sleeping inside their shed, she suddenly woke up on hearing the sound of a falling utensil. When she switched on light, she saw the accused standing nude and he was untying the pants worn by the deceased. Immediately she beat him with a broom and sent him out. This testimony remains credible even after cross-examination on this witness.

60. PW5 is the girl who was sleeping inside the shed when the

alleged incident took place. According to her testimony, she stayed in the victim's house one night. That was on birthday of the younger girl. She deposed that the accused did not visit the shed. She refused to support the prosecution case and she was cross-examined by the prosecutor with the permission of the court. Even though some irrelevant questions were put to this witness, her case diary statements were not contradicted and no answer was attempted to be elicited to disprove the version spoken to by her at the time of evidence.

61. PW6 is a witness to Ext.P3 mahazar. PW7 is the Headmaster who was cited to prove the date of birth of the victim. PW8 is a witness to Ext.P5. PW9 conducted autopsy on the body of the deceased and proved the postmortem certificate. PW10 is a witness to Ext.P7 seizure mahazar. PW11 is the Scientific Officer, Regional Forensic Science Laboratory, Thrissur. He collected samples from the scene of occurrence on 09.03.2017. PW12 is the ASI, Chittur Police Station who was a member in the special investigation team. He is a witness to Ext.P8. PW13 is the Civil Police Officer attached to Chittur Police Station. He was also a member in the special investigation team. He is a witness to Ext.P9 mahazar. PW14 Village Officer proved Ext.P10 plan and Ext.P11 certificate. PW15 examined the accused to find out whether he was potent and issued Exts.P12 and P13 certificates showing his potency.

PW16 is the Secretary, Pudussery Grama Panchayat who issued Ext.P14 ownership certificate in respect of the shed. PW17 is the Woman Civil Police Officer who recorded the statement of some of the witnesses. In cross-examination, she deposed that PW4 had informed her about the lascivious behaviour of the accused towards the deceased.

62. PW18 is the ASI, Walayar Police Station. He recorded the FIS and registered the case. PW19 is the SI of Police, Walayar Police Station. He conducted initial part of the investigation. As pointed out earlier, he did not suspect any serious offence committed on the victim till the death of the second child almost two months after. In cross-examination he stated that though he probed into the unnatural death, he did not get any clue regarding the sexual assault on the victim.

63. PW20 was the Dy.S.P. who conducted the investigation. He arrested the accused and questioned some of the witnesses. PW21 was the Inspector of Police, Hemambika Nagar. Before the start of investigation by PW20, he conducted the investigation for a couple of days. It is pertinent to note that none of the investigating officers could unearth any scientific clue, except postmortem certificate, regarding the sexual assault on the victim.

S.C.No.400 of 2017

64. Madhu @ Valiya Madhu again faced trial for the earlier mentioned

offences on the allegation that he sexually abused the younger girl. PW1 signed on Ext.P1 inquest report when police conducted an inquest on the body of the deceased. He is an attestor to Ext.P2 seizure mahazar too, whereby certain articles were recovered. PW2 is the informant in Ext.P3 FIS. Through this witness no relevant evidence was elicited except marking the FIS. PW3 is the father of the deceased girl. He deposed that when he saw his daughter hanging, he had an intuition that she must have been sexually abused. He handed over the dress material, MO1 and a lunki used as ligature, MO2. This witness deposed that the accused is his wife's cousin. Even though he did not speak about any act of sexual assault by the accused on this girl, going by the memorandum of evidence, we find that this witness was supposed to speak about some questionable behaviour of the accused towards his daughter. But, nothing was elicited from this witness except the aforementioned aspects.

65. PW4 is the mother of the victim. She was cited to depose the fact that she had witnessed the accused doing sexual assault on the elder girl. It is her evidence that when she saw the accused misbehaving towards her elder daughter, she had prevented him from coming to her house. She stated that the younger girl also must have been sexually abused.

66. PW5 is the maternal aunt of the accused. She was cited to prove that she had seen the accused taking the victim to a nearby thatched shed and

shortly thereafter the elder girl committed suicide. But when examined, she deposed that she never knew the reason for the girl's death. She turned hostile to the prosecution and stated that she never informed police that the accused ill-treated the girls. Despite asking some formal questions in the form of cross-examination by the prosecutor, none of the previous statements of this witness in the case diary was confronted to her.

67. PW6 is a witness to Ext.P4 mahazar. PW7 is the Scientific Officer, DCRB, Thrissur. She issued Ext.P5 report. PW8, Civil Police Officer, was a member in the special investigation team. He is a witness to Ext.P6 mahazar. PW9 was also a member in the special investigation team. He is a witness to Exts.P7 to P9 seizure mahazars. PW10 is the Assistant Surgeon in District Hospital, Palakkad. He examined the accused and conducted a potency test. Blood sample, pubic hair and body hair were collected from him. Exts.P10 and P11 are proved through this witness. PW11 is the Scientific Officer, Regional Forensic Science Laboratory, Thrissur. He inspected the scene of occurrence and collected some samples. PW12 is the Headmaster of Government High School who proved the admission register Ext.P12 showing the date of birth of the deceased girl as 31.08.2007. PW13 is a witness to Ext.P13 seizure mahazar through which the school admission register was recovered. PW14 Village Officer prepared Ext.P14 site plan. He issued the income certificate in

respect of the victim's mother which is marked as Ext.P15. Relationship certificate proved through this witness is Ext.P16.

68. PW15 is the Forensic Surgeon who conducted autopsy on the body of the victim. We have extracted the postmortem report earlier. PW15 testified that he came to a conclusion regarding the unnatural offence done on the victim on the basis of his findings in the report. Defence suggestion that linear scars seen on the anal orifice could be due to piles is denied by this witness.

69. PW16 is the Secretary, Pudussery Grama Panchayat, who issued ownership certificate in respect of the shed where the victim stayed. It is marked as Ext.P18. PW17, S.I. of Police, Walayar Police Station registered Ext.P3(a) FIR. He conducted inquest on the body. Ext.P1 report was prepared by him. PW18 Dy.S.P. conducted the investigation from 09.03.2017. As in the other cases, he had questioned some witnesses and gathered whatever evidence available. PW19 was the Inspector of Police, Hemambika Nagar. He also conducted a part of the investigation before PW18 took over.

70. As in the other cases, we find some of the charge witnesses who were cited to prove the suspicious beheaviour of the accused, like taking the deceased girl inside a house in the absence of elders and taking unreasonable liberty with the deceased. But, it appears that the prosecutor gave up these

witnesses without applying mind.

71. Having considered the nature of evidence adduced in the above Sessions Cases, we shall look into the reasons mentioned by the learned trial Judge to acquit the accused persons.

72. In S.C.No.396 of 2017, learned Sessions Judge raised 11 points for consideration and points 1 to 9 were considered together. It appears that by clubbing different aspects arising in the case together, the learned trial Judge has lost sight of certain vital aspects. Consideration of heterogeneous questions together has caused not only confusion but also omission of important aspects arising for determination. Learned prosecutors pointed out that in this case the testimonies of PWs 5 and 6 clearly indicate the guilt of the accused. It is their complaint that the learned trial Judge did not attach due weight to the testimonies PWs 5 and 6 regarding the criminal act committed by the accused on the victim. From the records it is evident that these witnesses were questioned on 17.01.2017 by PW28, the S.I. of Police in the presence of PW25, a Women Civil Police Officer. In the testimony of PW28, according to the learned prosecutors, there are sufficient indications that the victim was subjected to a sexual assault. Despite that PW28 did not take any step to alter the penal provision or to probe further into the matter until the death of the second child on 04.03.2017. Learned prosecutors argued that though the

postmortem certificate was received on 14.01.2017, PW28 thoroughly failed in his duty to probe deep into the matter. It is pertinent to note that the report for altering the penal provisions was submitted before the Magistrate concerned only on 06.03.2017 by PW29, the Inspector of Police. None of these aspects was considered by the trial court.

73. Our attention has been drawn to paragraphs 49, 50, 54 and 55 of the trial judgment. In paragraph 49, testimonies of PWs 5 and 6 have been considered by the trial Judge. PWs 5 and 6 were disbelieved on the reasoning that if they, as parents, were really bothered about the welfare of their daughter definitely they would have taken action against the accused at least after the death of the girl. According to the learned trial Judge, after two months only the parents revealed the sexual offence allegedly committed by the accused on the victim. Learned trial Judge assumed that it was an afterthought. It is seen from the deposition of these two witnesses that they did not inform the matter to anyone apprehending a blemish on the teenager. Acceptability of this version was not at all considered by the learned trial Judge. It is to be borne in mind that the victim's family members hail from a socially and economically backward background. The way in which they look at their life is also important.

74. Learned prosecutors relying on the testimony of PW8 contended

that the court below wrongly appreciated her evidence and entered a wrong finding that the principles governing the applicability of dying declaration do not arise in this case. It is also contended that the decisions cited, relating to the application of dying declaration, were wrongly understood and mis-applied by the trial Judge. According to the learned prosecutors, consideration of irrelevant matters and non-consideration of relevant matters resulted in the mistaken acquittal.

75. Learned counsel for the accused contended that the evidence was considered by the trial Judge from the correct perspective and the acquittal is legally justifiable. Besides, it is contended that the right accrued to the accused shall not lightly interfered with.

76. Insofar as the challenge against the acquittal in S.C.No.397 of 2017 is concerned, the learned prosecutors contended that apart from the wrong appreciation of evidence, inadequacies of the prosecutor resulted in an unmerited acquittal of the accused. Relying on paragraph 42 of the trial judgment, it is contended that the court below did not consider the scope of the extra judicial confession made by the accused to PW4, the stepfather of the deceased girl. According to his testimony, the accused had admitted on one day that he had misbehaved towards the victim. At that time the accused was under the influence of alcohol. It is seen from the judgment that the learned

trial Judge was of the opinion that PW4 did not specifically state what was the misbehaviour of the accused towards the victim. PW4's testimony was disbelieved only on the reason that he did not specifically state the nature of misbehaviour. Moreover, undue importance was attached to the fact disclosed by PW4 that the accused was under the influence of alcohol. Observation by the learned trial Judge, that it had come out from the questions put to PW4 during his cross-examination and from the evidence of PWs 23 and 24 (investigating officers) that the confession of the accused, as deposed to by him before the court, did not find a place in his statement recorded by the investigating officer under Section 161 Cr.P.C. is factually incorrect, according to the prosecutors. It is a well settled principle that the court cannot look into the statement of a witness recorded by police under Section 161 Cr.P.C. Learned prosecutors pointed out that no question was put in cross-examination to PWs 4 and 23 regarding the absence of any such mention in PW4's statement under Section 161 Cr.P.C. so as to bring it out as an omission. Learned prosecutors, therefore, contended that it is not clear wherefrom the trial Judge deduced this reasoning. In paragraph 46 also we find certain discussions regarding evidence of PW4 in respect of the alleged confession by the accused and his non-mentioning about the confession in his previous statement under Section 161 Cr.P.C. There also the learned trial

Judge has not considered the effect of absence of cross-examination on this aspect. It is therefore contended that wrong appreciation of evidence coupled with incorrect application of legal principles resulted in the erroneous acquittal. Here also the learned counsel for the accused contended that the appellate court shall not disturb the finding of innocence without any sufficient reason.

77. According to the learned Prosecutors, the acquittal in S.C.No.399 of 2017 is also legally unjustifiable. It is the contention of the learned prosecutors that at the time of trial, material evidence was not let in before the trial court. This is said to be because of the lack of involvement and callousness of the trial prosecutor. Some of the material witnesses, who could have proved the prosecution case, were not examined and they were dispensed with assigning no reason. Moreover, the witnesses who refused to support the prosecution case were not effectively cross-examined and their previous statements were not put in order to confront them. Statements of material witnesses recorded under Section 164 Cr.P.C. were also not attempted to be proved through the witnesses and by examining the Magistrate concerned. No acceptable reason can be seen for this serious laches on the part of the trial prosecutor. Learned prosecutors contended that acquittal of the accused is the end product of a mock trial. Learned defence counsel's contention that the acquittal shall not be disturbed is without any

basis, contended by the learned prosecutors.

78. Judgment in S.C.No.400 of 2017 is also under a serious attack. Here also all the 9 points out of 11 points raised were considered together. As in the other cases, material evidence was not properly collected at the time of investigation and whatever evidence collected was not presented before the court in a legally acceptable manner. Non-marking of the statements of the witnesses recorded under Section 164 Cr.P.C. coupled with the failure to contradict the witnesses' previous statements resulted in miscarriage of justice. Here also the contention of the learned prosecutors is that the trial was a mockery. Learned prosecutors vehementally contended that defect in the early part of the investigation and incompetent prosecution shall not confer any undue benefit on the accused when there is substance in the prosecution case.

79. Glaring legal mistakes commonly arising in these cases can be considered together. As pointed out earlier, material witnesses who deviated from their previous statements were not effectively cross-examined. Although in some cases the prosecutor had put some vague questions under Section 154 of the Evidence Act with the permission of the court, we find that the prosecutor miserably failed to confront the witnesses with their previous statements. A Division Bench of this Court, speaking through one of us

(Justice A.Hariprasad) in **Azeez @ Abdul Azeez v. State of Kerala (2017 KHC 351 : 2017 (1) KLD 716)**, after considering various binding precedents held thus:

> *"Let us clearly state the law regarding proof of contradictions. In the case of a previous statement of a witness in the form of writing, i.e., one falling under second part of S.145 of Evidence Act, what is required is the substantial compliance of that provision. When, at the time of examination, a witness gives evidence contrary to his previous statement, then his attention must be drawn to the specific part of his previous statement which goes against his evidence and he should be given a reasonable and fair opportunity to explain the contradictions. In order to prove it through the person who recorded the previous statement, it is essential that the witness must have denied any specific statement which is sought to be proved. Therefore, that portion of the previous statement of the witness, which he denied at the time of examination, should be put to the person who recorded the statement. If he asserts that the witness had stated so at the time of recording his statement,*

then the contradiction is properly proved."

In the above decision, reference was made to some other binding precedents dealing with the same principles, viz., **George v. State (1988 (1) KLT 256) and Thankappan Mohanan v. State of Kerala (1990 (1) KLT 21)**. In this case, the trial prosecutor did not follow the basic rules with regard to marking of contradictions. It is also a complaint raised by the learned prosecutors that the trial Judge was a mute spectator to the incompetent prosecution of the case.

80. We need not highlight the role to be played by a trial Judge in the wake of Section 165 of the Evidence Act, which reads thus:

> *"**165. Judge's power to put questions or order production.**- The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :*
>
> *Provided that the judgment must be based upon*

facts declared by this Act to be relevant, and duly proved :

Provided also that this section shall not authorize any Judge as to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

This Section is intended to empower the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this Section is that in order to get to the bottom of the matter before it, the court should be able to look at and inquire into every fact, whatever it be. A trial Judge, in order to discover or to obtain proper proof of relevant facts, may exercise wide powers. He may approach the case from any point of view and is not tied down to the ruts marked out by the parties. He can ask (1) any question he pleases, (2) in any form, (3) at any time, (4) of any witness, (5) or of the parties and (6) about any fact relevant or irrelevant. No party is entitled to object to any such

question or order or to cross-examine the witnesses without getting leave of the court. Therefore under Section 165 of the Evidence Act the court has a right to ask the witness any relevant or even irrelevant question and the parties or their counsel cannot raise any objection to any such question (Also see **Sanjay Kumar v. State of Bihar- 2014 (1) SCALE 751**).

81. In the introduction to the Evidence Act, **Sir James Stephen** stated: "A Judge or Magistrate in India frequently has to perform duties which in England would be performed by police officers or attorneys. He has to sift out the truth for himself as well as he can, and with little assistance of a professional kind. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this Section is that in order to get to the bottom of the matter before the court, he will be able to look at and enquire into every fact whatever". The above expressions by the draftsman of the Evidence Act himself will throw light on the vast powers wielded by a trial Judge. We are afraid, in this case the learned trial Judge utterly failed to exercise his powers under Section 165 of the Evidence Act to get at the bottom to find the truth.

82. Learned counsel for the accused persons contended that powers of this Court referable to Section 386 of Cr.P.C. cannot be exercised in this case to dislodge the benefit of acquittal accrued to the accused persons after

fulfledged trials. Legal principles settled by a long line of decisions in this regard can be summarised like this: While exercising the power conferred under Section 386 of Cr.P.C. and before reaching its conclusions upon the facts, the High Court should, and will always, give proper weight and consideration to matters such as (i) the views of the trial Judge as to the credibility of the witnesses (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial (iii) the right of accused to the benefit of any doubt and (iv) the slowness of the appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (see **Sanwant Singh v. State of Rajasthan-AIR 1961 SC 715, M.K.Kulkarni v. State of Maharashtra-AIR 1963 SC 200, Sohrab v. State of M.P.-AIR 1972 SC 2020, Bhim Singh v. State of Maharashtra-AIR 1974 SC 286, S.H.Kemkar v. State of Maharashtra-AIR 1974 SC 1153** and **Solanki Chimanbhai Ukabhai v. State of Gujarat-AIR 1983 SC 484)**

83. The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court is summarised by the learned authors **Ratan Lal and Dhiraj Lal in the Code of Criminal Procedure** (20th Edition) as under:

"1. In an appeal against an order of acquittal, the

High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

2. The High Court has the power to reconsider the whole issue, reappraise the evidence, and come to its own conclusion and findings in place of the findings recorded by the Trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

3. Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the Trial Court that the accused is entitled to acquittal.

4. In reversing the finding of acquittal, the High Court had (sic) to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the Trial

Court.

5. If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

6. The High Court has also to keep in mind that the Trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box.

7. The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

8. Unless the High Court arrives at definite conclusion that the findings recorded by Trial Court are perverse, it would not substitute its own view on a totally different perspective.

9. The appellate Court in considering the appeal

against judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference."

84. On a perusal of Section 386(a) of Cr.P.C. it will be evident that the appellate court in an appeal from an order of acquittal may (i) reverse such order or direct further inquiry be made (ii) order the accused be re-tried or committed for trial, as the case may be, or (iii) find him guilty and pass sentence on him according to law. According to the learned prosecutors, in the captioned cases there was no trial worthy to be reckoned. It is highlighted that the investigative machinery failed to muster proper evidence. The prosecutor before the trial court miserably failed to place the entire evidence in a legalistic manner at the time of trial. Apart from that the learned trial Judge failed to discharge his duty by seeing that proper evidence was adduced in the case. Indisputably, the aforementioned principles governing the exercise of appellate powers in an appeal against acquittal will arise only if there was a proper trial in the legal sense.

85. It is true, criminal courts are not functioning only to enter

convictions in all the trials and to take away life and liberty of individuals who could have been, at times, wrongly implicated in crimes. At the same time, the observations in **Stirland v. Director of Public Prosecutions (1944 AC (PC) 315)** to the effect that it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished, but a Judge also presides to see that a guilty man does not escape have been approved by the apex Court in many decisions. In **Shivaji Sahabrao Bobade and another v. State of Maharashtra (AIR 1973 SC 2622)** and **State of U.P. v. Anil Singh (AIR 1988 SC 1998)** the principles relating to reappreciation of evidence in an appeal against acquittal have been elaborated. Equally settled is the proposition that interference can be made in an appeal against acquittal only if the decision of the trial court is found to be perverse.

86. In this case, the learned counsel for the accused tried hard to sustain the judgments, whereas the learned prosecutors opposed the impugned judgments for the aforementioned reasons. We are of the considered view that two important functionaries in the criminal trial have egregiously failed to perform their duties. Faulty initial investigation and slipshod prosecution throughout are the established reasons prompting us to find that the trial was an empty formality. Besides, lack of involvement by the trial Judge has also contributed to a great extent in not digging out the true

facts. We are of the considered view that the appellate court cannot shirk its responsibility to interfere and set things right when it is established that the functionaries in a criminal trial unjustly failed to perform their assigned roles resulting in miscarriage of justice. We have no hesitation to hold in the facts and circumstances of the cases, as borne out from the records, that the accused cannot clinging on to the unmerited acquittals in the sham trials.

87. To buttress the above proposition, learned prosecutors relied on certain decisions. The Supreme Court in **State of Punjab v. Ramdev Singh ((2004) 1 SCC 421)** laid down a proposition that if the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant and insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefits thereof where none reasonably exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. It is also observed that an unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females or minor children.

88. A decision rendered by a three Judge Bench of the Supreme Court in **Mohd.Hussain v. State (Govt. of NCT of Delhi) ((2012) 9 SCC 408)**

is cited before us to canvass for a re-trial in these cases since the acquittals happened to be passed at the end of ineffective trials. According to the learned prosecutors, in all these cases failure of justice is writ large. In the above case, two learned Judges differed in their views. While one of them held that the case should be sent to the trial court for a de novo trial, the other learned Judge was of the opinion that no de novo trial was necessary. Hence the matter was placed before a three Judge Bench. True, that was a case laid before the Supreme Court from a judgment of conviction by the High Court. In that context, the Supreme Court made the following observations:

> *"41.The Appellate Court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code. That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A de novo trial or retrial of the accused should be ordered by the Appellate Court in exceptional and rare cases and only when in the opinion of the Appellate Court such course becomes indispensable to avert failure of justice. Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna.*

A retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal Court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked."

89. We are of the view that the ratio can be applied in appeals against acquittal as well.

90. Learned Prosecutors forcefully argued that the accused cannot take advantage of the mistakes committed by the investigating and prosecuting agencies. According to them, the word "lacuna" cannot be equated with fall out of oversight. The word "lacuna" means inherent weakness. It is therefore argued that the acquittals were not the outcome of projecting any inherent lacunae in the prosecution case, but on account of unjust failure to adduce proper evidence. The word "lacuna", according to the decision in

Rejendra Prasad v. Narcotic Cell ((1999) 6 SCC 110) is thus:

> *"8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."*

91. Learned prosecutors cited **Zahira Habibulla H.Sheikh v. State of Gujarat ((2004) 4 SCC 158)** to highlight the concept called "fair trial". This case, commonly known as "Best Bakery Case", gave rise to a finding that when the State's machinery fails to protect the citizens' life, liberty and property and the investigation is conducted in a manner to help the accused persons, the Supreme Court should step in to prevent miscarriage of justice.

In this context, the concept “fair trial” was considered in paragraphs 35, 36, 38, 43, 52, 53, 54 and 56. We are not extracting the entire paragraphs because of their voluminous nature. It has been observed in paragraph 38 thus:

> *“A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not about over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.”*

In paragraph 43 it is observed that the court has to take a participatory role in a trial. Further, the courts are not expected to be tape recorders to record

whatever is being stated by the witnesses. Again, it is observed that Section 311 of Cr.P.C. and Section 165 of the Evidence Act conferred vast and wide powers on presiding officers of the court to elicit all necessary materials by playing an active role in the evidence collecting process. We shall extract paragraph 44 for the sake of completion:

> *"The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In Mohan Lal v. Union of India (1991 Supp (1) SCC 271) this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, "any Court" "at any stage", or "any enquiry or trial or other proceedings" "any person" and "any such person" clearly spells out that the Section has expressed in the widest possible terms and do*

not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case – "essential" to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth."

92. This decision was considered and explained in a later decision by the apex Court in **Satyajit Banerjee v. State of West Bengal ((2005) 1 SCC 115)** wherein it is held that the observations in Best Bakery Case cannot be applied to all cases unmindful of the facts and circumstances. Paragraphs 25 and 26 are extracted hereunder for clarity:

> *"25. Since strong reliance has been placed on the Best Bakery Case (2004) 4 SCC 158 (Gujarat Riots Case) it is necessary to record a note of caution. That was an extraordinary case in which this Court was convinced that the entire prosecution machinery was trying to shield the accused i.e., the rioters. It was also found that the entire trial was a farce. The witnesses were terrified and intimidated to keep them away from the Court. It is in the aforesaid extraordinary circumstances that the Court not only directed a de novo trial of the whole case but made further directions for appointment of the new prosecutor with due consultation of the victims. Retrial was directed to be held out of the State of Gujarat.*
>
> *26. The law laid down in the 'Best Bakery Case' (supra) in the aforesaid extraordinary circumstances, cannot be*

applied to all cases against the established principles of criminal jurisprudence. Direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence. In Best Bakery case, the first trial was found to be a farce and is described as "mock trial'" Therefore, the direction for retrial was in fact, for a real trial. Such extraordinary situation alone can justify the directions as made by this Court in the Best Bakery Case (supra)."

In the facts and circumstances of the cases on hand we do not hesitate to hold that the acquittal of the accused persons cannot be said to be solely due to want of adequate evidence. It is mainly because of the dereliction of solemn duty bestowed on the functionaries in the trial process.

93. The Supreme Court in **Pooja Pal v. Union of India and others ((2016) 3 SCC 135)** made certain observations regarding fair trial in the following manner:

"53. This Court in the above disquieting backdrop in Zahira Habibulla Sheikh's case (2004) 4 SCC 158, did underline that discovery, vindication and establishment of truth were the avowed purposes underlying the existence of

the courts of justice. Apart from indicating that the principles of a fair trial permeate the common law in both civil and criminal contexts, this Court underscored the necessity of a delicate judicial balancing of the competing interests in a criminal trial – the interests of the accused and the public and to a great extent that too of the victim, at the same time not losing the sight of public interest involved in the prosecution of persons who commit offences.

54. It was propounded in Zahira Habibulla Sheikh's case (supra) that in a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. That the concept of fair trial entails the triangulation of the interest of the accused, the victim, society and that the community acts through the State and the prosecuting agency was authoritatively stated. This Court observed that the interests of the society are not to be treated completely with disdain and as persona non grata. It was remarked as

well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community."

94. Considering the above legal principles and applying the same to the facts in this case, we are fully convinced that the perfunctory initial investigation and cursory, desultory and unskilled prosecution coupled with the lack of involvement by the trial Judge resulted in miscarriage of justice and the consequential unmerited acquittals in all these cases. Certainly, the fact situations in these cases reveal extraordinary circumstances requiring extraordinary remedies. Therefore, we have no hesitation to hold that trial in all the above Sessions Cases have been lowered to the level of mock trials.

95. A point raised by the learned defence counsel deserves a mention. According to him, the extra judicial confession relied on by the prosecution in S.C.No.397 of 2017 cannot be accepted since the exact words

of confession were not mentioned by PW4. In order to meet this argument, learned prosecutors placed reliance on **Ajay Singh v. State of Maharashtra ((2007) 12 SCC 341)**. In the decision it was held that an extra judicial confession can form the basis of conviction, if persons before whom it is stated are unbiased and not even remotely inimical to the accused. In paragraph 8 the following principles are laid down:

> *"We shall first deal with the question regarding claim of extra judicial confession. Though it is not necessary that the witness should speak the exact words but there cannot be vital and material difference. While dealing with a stand of extra judicial confession, Court has to satisfy that the same was voluntary and without any coercion and undue influence. Extra judicial confession can form the basis of conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely inimical to the accused. Where there is material to show animosity, Court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is made. It is not invariable that the Court should not accept such evidence if actual*

words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by the accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may be able to repost exact words and there may be many who are possessed of normal memory and do so. It is for the Court to Judge credibility of the witness' capacity and thereafter to decide whether his or her evidence has to be accepted

or not. If Court believes witnesses before whom confession is made and is satisfied confession was voluntary basing on such evidence, conviction can be founded. Such confession should be clear, specific and unambiguous."

96. It is the complaint raised by the learned prosecutors that the above principle also was not considered by the learned trial Judge.

97. Although the learned counsel for the accused in S.C.No.397 of 2017 attacked credibility of the extra judicial confession on the basis of a decision rendered by the Supreme Court in **C.K.Raveendran v. State of Kerala (AIR 2000 SC 369),** we find that the above decision can be distinguished on facts. In **C.K.Raveendran**'s case the Supreme Court found that the prosecution witnesses failed to reproduce extra judicial confession alleged to have been made by the accused in the exact words or even in the words as nearly as possible. It was also rejected on the basis that there was no material to hold that the confession by the accused could be regarded as voluntary and truthful one. Differences in the facts and circumstances make it clear that the ratio in the above decision cannot be applied to this case.

98. In this context, we may point out that the learned trial Judge overlooked the significance of Section 29 of the Evidence Act which reads as follows:

> *"**Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc**.-If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him."*

This Section clearly shows that if confession is otherwise relevant, it does not become irrelevant merely because of certain circumstances referred to in the Section. Under this Section a relevant confession does not become irrelevant merely it was made under:

(i) a promise of secrecy, or

(ii) in consequence of a deception or artifice practised on the accused, or

(iii) when he was drunk, or

(iv) because it was elicited in answer to a question, or

(v) because no warning was given that he was not bound to say anything and that whatever he might say would be used as evidence against him.

It is axiomatic, this Section applies to criminal cases and is to be read along with Section 24 of the Evidence Act. These principles were not noticed by the learned trial Judge when he discarded the alleged extra judicial confession of the accused.

99. Upshot of the above discussion is that on a consideration of the entire evidence adduced in each case and the legal principles applied by the learned trial Judge to record the findings of acquittal, which we consider unjustified in law, we are of the view that this Court is bound to exercise its powers under Section 386 of Cr.P.C. to set aside the order of acquittal in each case and direct re-trial in all the cases. We make it clear that we do not intend to efface the evidence already adduced in the cases. We are of the firm view that the prosecution should be allowed to adduce additional evidence in all the cases, if they so choose, so as to have effective and meaningful trials. We have no doubt, fair trial is a right available to the prosecution as well as to the accused. In this case, on account of the faulty investigation conducted at the inception, coupled with the perfunctory prosecution, the cause of justice has suffered a serious set back. We firmly believe and therefore hold that this

Court, in such cases, is duty bound to exercise its powers under Section 386 of Cr.P.C. as well as the constitutional powers to see that the cases are decided on merit in a legalistic manner. Following the observations in **Pooja Pal**'s case that a constitutional court, in exceptional circumstances, may direct de novo investigation and trial if it is satisfied that non-interference would ultimately result in failure of justice, we hold that de novo trials, and if necessary, further investigation, should be ordered to meet the ends of justice.

100. Before concluding, we deem it fit to remind the investigating and prosecuting agencies that their failure to such a magnitude will be a travesty of justice. Section 24 of Cr.P.C. deals with the appointment of Public Prosecutors. Needless to mention, under the constitutional scheme, maintenance of law and order and crime investigation are matters falling in List II of the 7th Schedule to the Constitution. In other words, these are subjects falling within the responsibility of the State Governments. Insofar as a welfare State is concerned, it is its bounden duty to see that rule of law is maintained through out the territory. It is the unshirkable responsibility of the State Government to establish and maintain honest, efficient, effective and skillful investigative machinery and prosecuting agency. They shall be committed to truth alone. The relationship of district government counsel/public prosecutors with the Government is that of a counsel and client (see **Shrilekha Vidyarthi v. State**

of U.P. - AIR 1991 SC 537). A Division Bench of the Karnataka High Court in **State v. Ramegowda (2002 Cr.L.J. 4396)** has held that if the public prosecutor does not examine material witnesses like medical officer and investigating officer due to negligence or for ulterior reasons, the trial Judge can take action against the erring officer and also compel the attendance of the witnesses. The function of a public prosecutor relates to a public purpose, entrusting him with the responsibility of acting only in the interest of administration of justice. It is to be borne in mind that a Sessions Case can be prosecuted only through a public prosecutor appointed under Section 24 of Cr.P.C. Most importantly, the cases under the POCSO Act, especially perpetrated against children of tender age, that too hailing from socially and economically weaker classes, should be handled with utmost care and caution. We are in complete agreement with the prosecution case that utter failure on the part of the trial prosecutor to adduce proper evidence has resulted in unmerited acquittals making justice a casualty.

101. Learned prosecutors produced two circulars issued by the Home (C) Department of the Government of Kerala dated 29.11.2014 and 18.09.2017. They are relating to the appointment of special public prosecutors. Government has issued guidelines in this regard. It appears that these circulars are issued under Section 24(8) of Cr.P.C. Notoriously well known is

the fact that the successive Governments make appointments to the posts of public prosecutor and additional public prosecutor mainly considering their political leanings and affinity towards the ruling dispensation. It is a matter of concern that no effective consultation with the District and Sessions Judges happen before appointing public prosecutors for the District Judiciary. Many a time, suitability, integrity and merit are not regarded as the prime considerations. Appointments of Government pleaders and public prosecutors, including the special public prosecutors, can never be regarded as part of any social welfare scheme of the State Government so as to benefit a particular class of advocates disregarding their suitability, merit, integrity and capability. In other words, such posts are not intended to provide employment to the favourites of the ruling dispensation on extraneous considerations. State Government is a constitutional entity and it is duty bound to remember that they are appointing Government pleaders and public prosecutors to discharge their constitutional obligations to maintain law and order.

102. Inasmuch as an investigator's powers and duties under the Cr.P.C., it need not be emphasised that he should be honest, sincere and hardworking to get to the bottom of the facts relating to a crime. He is bound to place all the relevant facts involved in the case truly before the court so as to enable the court to take a legally correct decision in either way. He is a public

functionary through whom the constitutional obligation of the State to maintain the rule of law is discharged.

103. Every citizen in this country has a right to have not only a fair trial, but also a fair investigation, which is an essential concomitant of a fair trial. Police officers conducting investigation into heinous crimes should be scrupulously honest and committed to their duties and responsibilities. Level of integrity and capability expected of the police officers investigating into the offences against women and children, especially those under the POCSO Act, are very high. They should get proper legal training to understand the nuances of law. Besides, they should be properly instructed to gather scientific evidence in such cases. More importantly, they should be sensitive to the emotions and sentiments of the victims, their family and the society at large while investigating such grave crimes. We are constrained to observe that the initial part of the investigation in these cases was utterly disgusting. Despite a reasonably good job done by the Dy.S.P., the investigating officer, who was deputed to investigate these cases almost a week after the younger girl's death, he could not gather any proper scientific evidence. Materials on record clearly indicate that the poor girls were living in an unsafe family environment. We are able to visualize the predicament in which the unfortunate children could have been placed; whom to be trusted? An incompetent and insincere

police officer is a disgrace to the whole police force in the State. It is high time for the political and bureaucratic executive to understand that inexcusable flaws in the investigation into serious offences will only bring disrepute to the administrative set up. It is high time that the State Government take up serious steps to educate and sensitize the Station House Officers to deal with such cases when reported directly to them. It is because the initial flaws may destabilize the whole case. It is a common experience that most likely the victims may approach them at the first instance.

104. We are disheartened to note the manner in which the learned Judge conducted the trial. He failed to perform a proactive role at the time of taking evidence. As observed by the Apex Court in **Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeria (dead) through L.Rs. (AIR 2012 SC 1727)**, it is fundamental that truth is the guiding star in a judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. The Supreme Court reminded that Judges at all levels should seriously engage themselves in the journey of discovering the truth and that is their mandate, obligation and bounden duty. Most importantly, justice dispensation system will acquire credibility only when people get convinced that justice will be based on the foundation of truth.

We conclude this judgment by issuing the following directions:

I. The captioned appeals are allowed. Judgments passed by the 1st Additional Sessions Judge (Special Judge), Palakkad in S.C.Nos.396 of 2017, 397 of 2017, 399 of 2017 and 400 of 2017 are hereby set aside. The cases are remanded to the above Court for re-trial and disposal.

II. Learned trial Judge shall consider the plea, if any raised by the investigating agency, for permission to conduct further investigation into the cases by filing appropriate applications under Section 173(8) of Cr.P.C.

III. Learned trial Judge shall, in all cases, permit the prosecution and if sought for the defence also, to adduce fresh evidence in the form of oral or documentary evidence.

IV. Learned trial Judge shall consider, if situation so warrants, the invocation of his powers under Section 311 of Cr.P.C.

V. The Director, Kerala Judicial Academy shall periodically arrange special training programmes for the Additional Sessions Judges handling POCSO cases in order to guide and sensitize them on the legal, social and psychological aspects involved in such cases.

VI. A copy of this judgment shall be sent to the Chief Secretary to the State of Kerala for taking necessary steps to avoid the aforementioned serious flaws in future in the matter of investigation and prosecution of such

cases.

VII. The accused shall appear before the trial court on 20.01.2021.

Sd/-

A.HARIPRASAD,
Judge.

Sd/-

M.R.ANITHA,
Judge.

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