2025:KER:76072

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 15TH DAY OF OCTOBER 2025/23RD ASWINA, 1947

D.S.R.NO.3 OF 2019

CRIME NO.933/2016 OF KOVALAM POLICE STATION, THIRUVANANTHAPURAM
AGAINST THE JUDGMENT DATED 11.04.2019 IN S.C.NO.1085 OF 2016 OF II ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM ARISING OUT OF THE ORDER/JUDGMENT IN C.P.NO. 38 OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT (TEMPORARY), NEYYATTINKARA

PETITIONER:

STATE OF KERALA,
REPRESENTED BY THE SPECIAL PUBLIC PROSECUTOR
SRI.V.S.VINEETH KUMAR.

BY SMT.AMBIKA DEVI, SPECIAL PUBLIC PROSECUTOR
BY SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR

RESPONDENT:

ANIL KUMAR @ KOLUSU BINU,
AGED 41 YEARS, S/O.SUSHEELAN, RESIDING AT THE HOUSE OF SELVI, THEKKETHERUVU, KASINADHAPURAM, KASINADHAPURAM VILLAGE, ALAKKULAM TALUK, THIRUNELVELI DISTRICT, FROM THOTTARIKATHU VEEDU, KALLUVAKKUZHI, KANAKKODU, VEMBAYAM PANCHAYATH, VATTAPPARA VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN – 695 028.

BY ADV.SMT.RAJATHA P.

THIS DEATH SENTENCE REFERENCE HAVING BEEN FINALLY HEARD ON 09.10.2025 ALONG WITH CRL.A.NO.79 OF 2020 & CRL.A.NO.401 OF 2021, THE COURT ON 15.10.2025 DELIVERED THE FOLLOWING:

2025:KER:76072

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 15TH DAY OF OCTOBER 2025/23RD ASWINA, 1947

CRL.A.NO.79 OF 2020

CRIME NO.933/2016 OF KOVALAM POLICE STATION, THIRUVANANTHAPURAM
AGAINST THE JUDGMENT DATED 11.04.2019 IN S.C.NO.1085 OF 2016 OF II ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM ARISING OUT OF THE ORDER/JUDGMENT IN C.P.NO. 38 OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT (TEMPORARY), NEYYATTINKARA

APPELLANT/1ST ACCUSED:

ANIL KUMAR @ KOLUSU BINU
AGED 41 YEARS
S/O.SUSHEELAN, RESIDING AT THE HOUSE OF SELVI, THEKKETHERUVU, KASINADHAPURAM, KASINADHAPURAM VILLAGE, ALAKKULAM TALUK, THIRUNELVELI DISTRICT, FROM THOTTARIKATHU VEEDU, KALLUKKUZHI, KANAKKODU, VEMBAYAM, PANCHAYATH, VATTAPPARA VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN-695 028

BY ADV.SMT.RAJATHA P.

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN-682 031

BY SMT.AMBIKA DEVI, SPECIAL PUBLIC PROSECUTOR
BY SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.10.2025 ALONG WITH D.S.R.NO.3 OF 2019 & CRL.A.NO.401 OF 2021, THE COURT ON 15.10.2025 DELIVERED THE FOLLOWING:

2025:KER:76072

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 15TH DAY OF OCTOBER 2025/23RD ASWINA, 1947

CRL.A.NO.401 OF 2021

CRIME NO.933/2016 OF KOVALAM POLICE STATION, THIRUVANANTHAPURAM
AGAINST THE JUDGMENT DATED 11.04.2019 IN S.C.NO.1085 OF 2016 OF II ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM ARISING OUT OF THE ORDER/JUDGMENT IN C.P.NO. 38 OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT (TEMPORARY), NEYYATTINKARA

APPELLANT/2ND ACCUSED:

CHANDRASEKHARAN @ CHANDRAN
AGED 41 YEARS
S/O.SUBRAMANIYAN, RESIDING AT 2ND STREET, SANTHAMEDU,
ODUGATHUR VILLAGE, VELOOR TALUK, VELOOR DISTRICT,
TAMIL NADU STATE, PIN - 632 103.

BY ADV.SRI.J.R.PREM NAVAZ
BY ADV.SRI.SUMEEN S.

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 032.

BY SMT.AMBIKA DEVI, SPECIAL PUBLIC PROSECUTOR
BY SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.10.2025 ALONG WITH D.S.R.NO.3 OF 2019 & CRL.A.NO.79 OF 2020, THE COURT ON 15.10.2025 DELIVERED THE FOLLOWING:

2025:KER:76072

"C.R."

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

The Criminal Appeals are preferred by accused nos.1 and 2 respectively, in Crime No.933 of 2016 of Kovalam Police Station, aggrieved by the judgment dated 11.4.2019 of the Additional Sessions Judge - II, Thiruvananthapuram in Sessions Case No.1085 of 2016 whereby the appellant [accused no.1] in Crl.A.No.79 of 2020 was sentenced to (i) death for the offence punishable under Section 302 of the Indian Penal Code [hereinafter referred to as the 'IPC'] and to pay a fine of Rs.1,00,000/-, (ii) rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- in default, to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 34 IPC, (iii) rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- in default, to undergo rigorous imprisonment for one year for the offence punishable under Section 307 read with Section 34 IPC, (iv) rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- in default, to undergo rigorous imprisonment for one year for the offence punishable under Section 397 read with Section 34 IPC and imprisonment for the reminder of the natural life of the appellant under Section 376A of the IPC; and the appellant [accused no.2] in

Crl.A.No.401 of 2021 was sentenced to (i) undergo rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- in default, to undergo rigorous imprisonment for one year for the offence punishable under Section 449 read with Section 34 IPC, (ii) rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- in default, to undergo rigorous imprisonment for one year for the offence punishable under Section 307 read with Section 34 IPC, (iii) rigorous imprisonment for seven years and to pay a fine of Rs.25,000/- in default, to undergo rigorous imprisonment for one year for the offence punishable under Section 397 read with Section 34 IPC, and to undergo imprisonment for life and to pay a fine of Rs.25,000/- for the offence punishable under Section 302 read with Section 34 IPC. D.S.R.No.3 of 2019 is placed before us at the instance of the Sessions Judge for confirmation of the death sentence of accused no.1 as provided in Section 366(1) of the Code of Criminal Procedure [hereinafter referred to as the 'Cr.P.C.'].

The Prosecution Case:

2. The case of the prosecution was that Mariyadas, the deceased and his wife, the injured [to maintain anonymity, the injured is hereinafter referred to as the 'victim'] were residing along with their children Ancy Das and Abhaya Das at their own house Chanalkaraputhen veedu, PRA 232, TC. 58/1689, Koliyoor in Thiruvallam village. During the intervening night of 6.7.2016/7.7.2016, the husband and wife were sleeping in the hall room and their children were sleeping

in the adjacent room. At about 4.30 am, on 7.7.2016, when the daughter Ancy Das woke up to attend the nature's call, she saw her parents lying in a pool of blood on the mat, they slept yesterday. On hearing the loud cries of the children, the neighbours rushed up to the house. The Police reached the place of occurrence as informed and guarded the scene of occurrence. The victim's fingers were found moving. The victim was therefore immediately taken to the Medical College Hospital. PW4 and PW8 accompanied her to the hospital. Thereafter, the deceased was also taken in the Police Ambulance to Medical College Hospital, where he was declared dead.

The investigation:

3. The First Information Report was registered by PW62, Ajaya Kumar F. based on information given by PW1 Vijaya Kumar, a neighbour. Thereafter, PW74 S. Nuooman conducted inquest on the body of the deceased. Ext.P5 is the Inquest Report. Ext.P79 post-mortem certificate was then drawn up. The victim was examined by PW35 Dr. Naveen K., who issued Ext.P28 wound certificate. She was later subjected to detailed medical examination and procedures following which Ext.P31 certificate was issued by a Medical Board which confirmed that the victim was in a vegetative state that was likely to continue.

4. Based on information collected by them, the Investigating team arrested accused no.1 from Nanganeri in Tamil Nadu and his arrest was

recorded in Trivandrum at 13:00 hours on 9.7.2016. Accused no.2 was thereafter arrested from Amboor in Tamil Nadu and his arrest was recorded in Trivandrum at 19:00 hours on 10.7.2016. Based on body searches conducted on the accused, and information obtained from them, recoveries were effected of material objects and the details thereof were recorded in mahazers that were simultaneously marked.

Proceedings before the trial court:

5. The appellants pleaded not guilty to the charges. In the trial that followed, the prosecution examined 76 witnesses as PW1 to PW76 and marked Exts.P1 to P99 documents. MO1 to MO49 were identified. Thereafter the appellants were examined under Section 313 of the Cr.P.C. when they filed written statements on the following lines:

Statement of accused no.1:

> The 1st accused was acquainted with the deceased and his wife. He along with his family resided in a rented house in the neighbourhood of the deceased Mariyadas. While so, he developed intimacy with the victim. Because of the said fact the deceased Mariyadas was in enmity with him. Accordingly he left that place. But he continued his physical relationship with the victim in the absence of deceased Mariyadasan. While so, he demanded money from the victim to clear his debts. As there was no liquid money with her she agreed to give her gold ornaments for arranging money by pledging the same on condition that the ornaments would be returned after releasing the debt. Accordingly on 6-7-2016 in the night, he went to the house of the victim and concealed himself in the cattle shed. For having physical relationship with the victim, after changing his track suit he had worn a 'kavi lungi' which was seen kept there. At about 11 pm, by opening the door of the kitchen, she came outside and he had sexual intercourse with the victim. Thereafter, she had given the gold ornaments in a plastic box. When he was about to return, the deceased Mariyadas came out through the kitchen door and hit the victim on her head with a vessel. The 1st accused was fisted and hit by the deceased. When the victim went inside the room with her head injured, the

deceased Mariyadas followed her stating that she would be killed. Then the victim bolted the door from inside. Mariyadas opened the door by hitting forcefully with his legs. On apprehending that the victim would be killed, the 1st accused also entered the house. Then Mariyadas took some article with heavy weight and hit on her head. Then she fell down. Thereafter the deceased Mariyadas by pointing a heavy object shouted towards the 1st accused stating that he would also be killed. Apprehending that he would be killed, he took a heavy object kept in the room, and hit with the same on the face of Mariyadas. He came outside, changed the kavi lungi and wore the track suit pants and went out with the plastic box containing gold ornaments. Then he again came back inside the house. On touching the hands of the victim, he realised that her fingers were moving, but Mariyadas had no movements. Then he noticed bloodstains in his track suit and chappals. After coming outside he took out the gold ornaments from the plastic box and threw the plastic box towards the pile of rocks on the back side of the house. On the next day he sold the gold ornaments in Alukkas Jewellery and bought a new chain and Rs.10,000 in exchange.

Statement of accused no.2:

The 2nd accused is acquainted with the 1st accused. The 1st accused invited the 2nd accused to Thiruvananthapuram stating that he would arrange job for him and he got job in a hotel for preparing parotta. As it was Ramzan on the next day, the shop was closed. Thereafter, on 7.7.2016, he went back to his native place. On different occassions there were phone contacts between him and the 1st accused. He had no connection with this case.

6. The appellants were then heard under Section 232 Cr.P.C. Finding them not entitled to an acquittal at that stage, the appellants were called upon to adduce evidence in their defence. However, no defence evidence was adduced. The trial court thereafter proceeded to hear the learned counsel on either side and convict the appellants as charged. The appellants were then heard under Section 235(2) Cr.P.C. on the question of sentence, and the sentence as noted above was passed against them.

The Appeals before us:

7. In the appeals before us, we have heard Smt. Rajatha P., the learned counsel for the appellant in Crl.A.No.79 of 2020, Sri.J.R.Prem Navaz, the learned counsel for the appellant in Crl.A.No.401 of 2021 and Smt.Ambika Devi, the learned Special Public Prosecutor for the State.

8. The submissions of the learned counsel for the appellants briefly stated, are as follows:

- There were serious irregularities in the investigation conducted by the Investigating Agency. It is pointed out that while many items that were seen at the scene of crime were not sent for forensic analysis, there is also no property list seen in the files. It is contended therefore that the identification of material objects was procedurally vitiated, and the said objects could not have been taken as evidence to implicate the appellants.

- The prosecution's case is based on fabricated evidence and irregular procedures. In particular, it is pointed out that while the prosecution alleged that the 2nd accused was identified and traced based on data extracted from the phone of the 1st accused that was seized on 9.7.2016, PW75 Investigating Officer claimed to have received the photo of the 2nd accused and dispatched teams to Tamil Nadu on 8.7.2016 itself, that is, a day before the seizure of the phone of the 1st accused. It is further pointed out that while MO12 hammer and MO13 crowbar were allegedly recovered at the instance of the 2nd accused, MO13 crowbar had no blood stains, thereby rendering its use in a brutal assault a forensic impossibility. It is also pointed out that in as much as Ext.P14 Recovery mahazar did not describe MO12 hammer with all its identification features, the recovery of MO12 hammer could not be seen

as proved. Likewise, MO33 T-shirt and MO34 track suit, which were allegedly recovered at the instance of the 2nd accused, are of a very small size, making them an unsuitable fit for a person of the 2nd accused's height and weight. The Recovery mahazar under which the said items were seized was also in Malayalam, a language that the 2nd accused does not understand, and the recovery witnesses PW21 Thirupathi S. and PW22 S. Anitha had turned hostile during their examination before the trial court. That apart, although PW75 Investigating Officer deposed to having availed the services of PW74, who was part of the Investigating team, for translating the statement given by 2nd accused to him, the translator, PW74 did not depose that he had, in fact, translated the said statement. Reliance is placed on the decisions in **Sanjay Oraon v. State of Kerala – [2021 (5) KHC 1], Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra - [2023 KHC 6605]** and **State of Karnataka v. David Razario & another - [2002 KHC 1878]** in support of the above contention.

- The appellants assail the testimony of PW11 Shaji, who was the sole eyewitness relied upon by the Prosecution. It is pointed out that while PW11 Shaji claimed to have seen both the accused at 03:15 a.m. near the crime scene, no independent witness or evidence was produced to corroborate his testimony. The fact that his testimony was recorded twice by the Investigating agency is also suggestive of tutoring. There was also no test identification conducted and PW11 Shaji had identified the accused only in the dock. Since accused no.2 is a permanent resident of Salem and PW11 Shaji allegedly saw him for the first time only in the dark, the absence of a test identification parade was fatal to the acceptance of PW11 Shaji's testimony. Reliance is placed on the decision reported in **Karandeep Sharma @ Razia @ Raju v. State of Uttarakhand - [2025 KHC 6320]**.

- On behalf of the 2nd accused, it is contended that there was no forensic evidence such as blood, semen, DNA or fingerprints that

connected 2nd accused to the crime. Even chance fingerprints from the jewel box and door did not match that of 2nd accused. That apart, it is the 1st accused's written confession during the course of Section 313 examination that is used to complete the link in the chain of circumstances while implicating the 1st accused. The said evidence cannot be used against the 2nd accused, and consequently, the common intention of accused nos.1 and 2 for the purposes of invoking Section 34 IPC is not made out in the instant case. Reliance is placed on the decisions in **Hate Singh Bhagat Singh v. State of Madhya Bharat - [1953 KHC 398]** and **Sanatan Naskar & Another v. State of West Bengal - [2010 KHC 4463].**

- It is trite that the Prosecution must prove the guilt of the accused beyond reasonable doubt and that suspicion cannot replace proof. In a case where circumstantial evidence is relied upon, the chain of circumstances must be complete to such an extent that it excludes every other hypothesis than that of the guilt of the accused. In the instant case, it is contented that the Prosecution had not discharged its burden of proving the guilt of the accused beyond reasonable doubt. Reliance is placed on the decision in **Abdul Wahid v. State of Rajasthan - [2025 KHC 6202]**.

9. Per contra, the submissions of the learned Special Public Prosecutor, briefly stated, are as follows:

- The oral evidence of PW1 Vijaya Kumar, PW4 K. Babu, PW6 Ancy Das, PW7 Abhay Das, PW8 Sudha and PW13 Vasantha Kumari established the crime that was committed and the presence of MO8 gold locket on the body of the victim. This evidence has not been challenged in cross examination. The evidence of PW7 Abhay Das is also corroborated in many particulars by the Section 313 Statement of the 1st accused. Medical evidence on record establishes that the injury that

caused the death of Mariyadas could be caused by MO12 hammer and the other injuries could be caused by MO13 crowbar. That the death was homicidal is therefore established through the above evidence.

- As regards the clotted blood that was found on the wall/floor near the window of the house and recorded in the scene mahazar, the allegation that this was not analysed is baseless since there is evidence to suggest that sufficient quantity of material could not be obtained for the purposes of forensic analysis. As regards blood found near the grinder, it is pointed out that the blood was that of the victim who was bleeding at the time of being carried out of the house to the hospital, which fact is evident from the testimony of the doctor, who examined the victim, who deposed that there was bleeding at the time of examination. The said blood being that of the victim that was shed much after the commission of the crime, and while she was being carried to the hospital, could not be seen as forming part of the scene of occurrence.

- The evidence of PW6 Ancy Das, PW25 Sr. Jessin Joseph, PW26 C. Rixy Henry, PW29 J. Rakesh and PW30 Dileep Kumar S. read with Exts.P20, P21, P21(a), P22 and P24 established that there was an enmity between the 1st accused and the deceased and also that 1st accused harboured lust towards the victim. The said evidence clearly points to the motive of the gruesome acts committed by 1st accused on the deceased and the victim. The evidence on record also shows that the injuries inflicted on the victim could have been caused by MO12 hammer and MO13 crowbar and that those injuries resulted in her vegetative state. This is borne out through the depositions of PW35 Dr. Naveen K., through whom Ext.P28 was marked, PW36 Dr. Prasanth Ashar, through whom Ext.P30 series was marked, PW37 Dr. Anil Kumar S., through whom Ext.P31 was marked and PW60 Dr. Joby John. The arguments by counsel for the appellants regarding the illegality/irregularity of recovery of the various material objects are only to be rejected since it is apparent from a reading of the evidence tendered by various witnesses

who were involved with the recovery that there was no challenge to the recoveries effected at the time of cross examination. It is also pointed out that even if, in any particular case, the recovery in terms of Section 27 of the Evidence Act was demonstrated to be irregular, the conduct of the accused in retrieving the concealed articles and handing over the same to the Investigating Officer would be relevant for the purposes of Section 8 of the Evidence Act. Reliance is placed on the decisions in **A.N. Venkatesh & another v. State of Karnataka - [(2005) 7 SCC 714], Prakash Chand v. State (Delhi Administration) - [(1979) 3 SCC 90]** and **State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru - [(2005) 11 SCC 600].**

- Relying on the judgment in **Chetan v. State of Karnataka - [2025 KHC 6563]**, it is contended that the Prosecution has clearly discharged its burden of proof and establish the guilt of the appellants beyond reasonable doubt. It is the case of the prosecution that the appeals lack merit and are hence to be dismissed. The Prosecution would also contend that the DSR is to be allowed by confirming the death sentence imposed on the 1st accused [appellant in Crl.A.No.79 of 2020].

Discussions and Findings:

10. On a consideration of the rival submissions and on a perusal of the records, we are of the view that the impugned judgment of the trial court, to the extent it finds the appellants guilty of the offences charged against them, does not call for any interference. That the murder of the deceased Mariyadas and the injuries on his wife, the victim herein, were committed in a most brutal manner is evident from the unimpeached testimonies of PW69 Dr. Saritha S.R., who conducted the post-mortem examination on the body of deceased Mariyadas and

PW35 Dr. Naveen K, PW36 Dr. Prashanth Asher, PW37 Dr. Anil Kumar and PW60 Dr. Joby John, all of whom had examined the victim in the immediate aftermath of the gruesome incident. While the aforesaid medical experts have clearly and unambiguously stated that the injuries inflicted on the deceased were the cause of his death and that the injuries on both the deceased and the victim could have been caused by MO12 and MO13 weapons, there were no questions put to any of them in cross-examination so as to discredit their evidence. The absence of cross-examination of these witnesses assumes added significance in the instant case because the victim, who would have been the best witness on behalf of the prosecution, being an eye witness to the incident and an injured witness too, could not give evidence in this case because of the persistent vegetative state in which she was consequent to the assault on her. Her inability to depose has also been recorded by the trial court in its judgment. The prosecution had therefore to rely on circumstantial evidence to prove its case against the appellants-accused.

11. As already noted, the prosecution case is built entirely on circumstantial evidence, and the trial court relied on as many as sixteen circumstances, proved against the appellants herein, to support its finding of guilt against them. While hearing these appeals, we embarked upon a re-appreciation of the evidence in relation to all the circumstances relied upon by the trial court to convict the appellants, and found no reason to interfere with the findings of the trial court based on the proved circumstances. For the purposes of this judgment,

however, we deem it apposite to deal merely with the evidence/circumstances on which detailed arguments were advanced by the appellants at the time of hearing of their respective appeals. The said evidence/circumstances are as follows:

i. That accused no.1 was acquainted with the family of the deceased.

ii. That accused nos.1 and 2 were seen together near the scene of the crime immediately thereafter.

iii. That items allegedly stolen/missing from the house and person of the victim were recovered from Thirunelveli at the instance of the 1st accused.

iv. That recovery of the weapons and the clothes worn by accused nos.1 and 2, containing blood stains that matched the blood of the deceased, was effected at the instance of accused nos.1 and 2.

v. That the medical evidence on record clearly suggests that the weapons seized could have caused the injuries on the deceased and the victim, and that such injuries caused the death of the deceased and the vegetative state of the victim.

vi. That the forensic evidence on record connects accused nos.1 and 2 with the blood of the deceased, and accused no.1 with the spermatozoa detected in the vaginal swabs taken from the victim.

12. While the learned counsel for the appellants would dispute the finding of the court below that there was evidence to support the

suggestion that the 1st accused was acquainted with the family of the deceased, we find that the oral testimony of PW6 Ancy Das, the daughter of the deceased and PW7 Abhay Das clearly suggest that the 1st accused was acquainted with the family of the deceased and that there was some hostility between the 1st accused and the deceased. The children of the deceased have deposed that their deceased father had helped Priyanka, the wife of the 1st accused, to lodge a complaint against the 1st accused and that when the police came to look for him, he had absconded from there. There is also the evidence of PW13 Vasantha Kumari, the sister-in-law of the deceased, who deposed that the 1st accused was, in fact, living near to the house of the deceased till about one and a half years prior to the incident, as also the evidence of PW25 Sr. Jessin Joseph, who was in charge of the shelter home where the 1st accused's wife Priyanka and child were admitted at the instance of the deceased. She also identified the 1st accused in court as the person who had tried to contact Priyanka at the shelter home and whose visit she had reported to the police. The evidence of PW29 SHO Rakesh corroborates the said deposition of PW25 Sr. Jessin Joseph that the 1st accused had attempted to meet his wife Priyanka at the shelter home where she was lodged, and that he had responded to a complaint made therefrom and gone to the shelter home to investigate the matter. The aforesaid evidence which has not been challenged in cross examination, conclusively proves that the 1st accused was indeed acquainted with the family of the deceased.

13. Considerable arguments were advanced on behalf of the appellants with regard to the evidence of PW11 Shaji, a milkman by vocation, who deposed that he had seen accused nos.1 and 2 together near a water tank close to the house of the deceased at about 03:15 a.m. on 7.7.2016. PW11 Shaji also deposed to having seen them carrying a gunny bag with them. He also identified accused nos.1 and 2 in court. In cross examination, he further deposed that he saw accused nos.1 and 2 when they turned towards him upon hearing the sound of a milk can hitting against his bicycle.

14. While analysing the reliability of the testimony of PW11, it is to be noted at the outset that, his statement that he is a milkman by vocation, was not challenged in the cross examination. Notably, neither of the accused had any case that PW11 Shaji bore any sort of animosity towards them so as to falsely implicate them in a case of this nature. In the absence of any motive for false implication, we find no reason to doubt the evidence of PW11 Shaji that he had seen both the accused together carrying a gunny bag near the place of occurrence immediately after the incident. Moreover, PW11 Shaji being a milkman, the nature of his vocation itself makes his presence in the early hours of the morning quite natural.

15. The evidence of PW11 Shaji was further assailed by the learned counsel for the appellants on the ground that the identification of the accused made by PW11 Shaji cannot be acted upon since no

identification parade was conducted during the course of investigation. While considering the said contention, first of all it is to be noted that, PW11 Shaji, in his evidence, categorically deposed that he saw both the accused under the light provided by a street light. He also stated that he had prior acquaintance with the 1st accused who had been residing in a rented house in his locality. However, even according to the prosecution, PW11 Shaji did not have any prior acquaintance with the 2nd accused. Notably, as already mentioned, PW11 Shaji identified both the accused in court. There is no inflexible rule that, in order to rely upon an identification made by a witness, there must invariably, be a test identification parade. If the accused is already acquainted with the witnesses, identification for the first time in the dock would be sufficient. Likewise, if the witness had sufficient opportunity to see the accused, at the time of the incident, and the court is satisfied about the credibility of such identification, the absence of a test identification parade would not, by itself, render the evidence unreliable.

16. Undisputedly, the substantive evidence of identification is that which is made before the court. The identification made in a test identification parade would only serve to lend assurance and corroboration to the identification made before the court. However, as already mentioned, there is no abstract or universal rule that every identification made before the court must necessarily be corroborated by an earlier identification parade. Keeping in mind the above principles, while reverting to the case at hand, it can be seen that PW11

Shaji has, in unequivocal terms, deposed that he saw both the accused in the presence of the street light. He further deposed that he has prior acquaintance with the 1st accused and that he saw both accused nos.1 and 2 when they turned towards him upon hearing the sound of a milk can striking against his bicycle. A holistic reading of the evidence of PW11 Shaji along with the surrounding circumstances discussed above, persuades us to conclude that there is nothing to doubt the identification of accused nos.1 and 2 made by PW11 Shaji before the court, particularly when neither of the accused had suggested any motive on his part to falsely implicate them. In essence, the presence of accused nos.1 and 2 near the scene of crime immediately after the occurrence of the incident in this case stands clearly established by the evidence of PW11 Shaji.

17. The other aspect that implicates the 1st accused is the recovery of gold ornaments that were allegedly taken from the house of the deceased/person of the victim from Thirunelveli at the instance of the 1st accused. The evidence on record clearly shows that the 1st accused was arrested at 13:00 hours on 9.7.2016 as evidenced by Exhibit P88 arrest memo and Exhibit P89 remand report. MO9 plastic box that was kept by the victim for collecting money in her shop was recovered at the instance of the 1st accused. According to PW75 Sudhakaran Pillai, the Investigating Officer, on 10.7.2016, when the 1st accused was questioned, he had given information to the effect that he had thrown the plastic box towards the pile of rocks near the house of

the deceased. It was based on the said information given by the accused and as led by him that PW75 Sudhakaran Pillai reached the place and recovered MO9 plastic box from among the pile of rocks in the premises and recorded the seizure as per Exhibit P12 mahazar. PW16 Rajesh Kumar, who was an independent witness to the said recovery mahazar, deposed that the 1st accused took MO9 plastic box from the nearby place of the house of the deceased and handed over the same to the Investigating Officer. MO9 plastic box was also identified by PW6 Ancy Das, the daughter of the deceased as the plastic box kept by her mother to keep money collected from the shop. The evidence of PW6 Ancy Das, PW16 Rajesh Kumar S.R. and PW75 Sudhakaran Pillai as regards the recovery of MO9 plastic box has not been discredited in cross examination.

18. After the recovery of MO9 plastic box, based on a statement given by the 1st accused and as led by him, PW75 the Investigating Officer reached at Thankineri, Mele Rethaveedhi at Tamil Nadu from where MO30 lungi, MO31 grey colour shirt and MO32 VKC chappals were taken and handed over by the 1st accused to PW75 Sudhakaran Pillai and the same was seized as per Ext.P75 mahazar. The recovery of these items has not been seriously challenged in cross examination. Thereafter, at the instance of the 1st accused, PW70 Ammakutty, who was residing along with him, produced a carry bag containing the receipts, a gold chain and documents containing vehicle dealings. The said MOs were seized as per Ext.P76 mahazar. PW75 Sudhakaran Pillai

identified MO14 as the chain, MO49 as the plastic cover, MO48 as the carry bag and Exts.P18, P19 and P19(a) as the bills. Further questioning of the 1st accused revealed that he had exchanged the chain and two crosses in a jewellery shop of Joy Alukkas for a chain that was purchased by him. In furtherance of the information given by the 1st accused, the Investigating Officer proceeded to Joy Alukkas and confronted PW44, Mr. Arun George, the Manager of Joy Alukkas with Ext.P18 and Ext.P19 series of receipts. PW44 Arun George then deposed that after exchanging old gold, the scrap gold was transformed into gold pieces and the gold pieces thereafter transformed into MO20 series gold ingots. MO20 series contained three pieces of gold. PW44 Arun George then gave computer printouts of the duplicate bills of Exts.P18 and P19 series and identified the said duplicate bills as Ext.P42 series. PW75 Sudhakaran Pillai then deposed that MO20 series and Ext.P42 series were seized as per Ext.P41 mahazar prepared by him based on Ext.P41(a) information given to him by the 1st accused. Accused no.1 had also received Rs.15,690/- over and above the gold purchased by him on exchange basis. It is significant that the exchange and the transaction between the sale person and the customers, namely the 1st accused and his mother-in-law Ammakutty on 7.7.2016 were recorded in the CCTV footage. The scenes from the CCTV footage were played by PW54 Jomon Jose, the CCTV camera operator at Joy Alukkas, Thirunelveli. After observing the scenes played by the CCTV operator in the presence of the 1st accused, the Investigating Officer prepared Exhibit P43 mahazar and thereafter recovered the hard disks containing

CCTV footages under Ext.P44 mahazar. The hard disks were thereafter sent to Forensic Science Laboratory, where they were examined by PW50 Shaji P., the Assistant Director (documents), FSL. The DVDs containing the CCTV footages copied and certified by the experts in terms of Section 65B of the Indian Evidence Act were played before the trial court where it showed that the 1st accused together with PW70 Ammakutty had reached the shop at 11 a.m. where they met PW23 Suraj Itty John, the salesman and the 1st accused had given scrap gold to PW23 Suraj Itty John and thereafter they returned at 12.45 a.m. after purchasing a new chain and collecting the balance amount. PW23 Suraj Itty John, the salesman and PW44 Arun George, the Manager of Joy Alukkas, identified the two customers as the 1st accused and PW70 Ammakutty. The CCTV footage coupled with the evidence of PW23 Suraj Itty John and PW44 Arun George clearly proves that on the same day as that of the incident, scrap gold was given by the 1st accused to the jewellery shop, and in exchange, he has received MO14 gold chain and Rs.15,690/- as per Exts.P18, P19 and P19(a) bills. The recovery of the aforementioned items missing from the scene of crime at the instance of 1st accused, implicates 1st accused not only in the charge of robbery, but also in the charge of murder of the deceased. This is more so in the light of the explanation offered by 1st accused during his examination under Section 313 of the Cr.PC wherein some of the statements made therein, to the extent they corroborate the evidence adduced by the Prosecution in that regard, clearly place the 1st accused at the scene of crime at the time of its commission and establish the role played by the

1st accused in inflicting injuries on the deceased.

19. It might not be out of place to mention here that Section 114 of the Indian Evidence Act enables the court to presume the existence of certain facts which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (a) to Section 114 states that the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In **Mohan Lal v. Ajith Singh – [AIR 1978 SC 1183],** it was held that the question whether a presumption under clause (a) of Section 114 should be drawn against the accused is a matter which depends upon the evidence and circumstances of each case; that the nature of the recovered articles, the manner of their acquisition by the owner, the nature of evidence about their acquisition by the owner, the nature of evidence about their identification, the manner in which the articles were dealt with by the accused, the place and circumstances of their recovery, are some of the circumstances. In **Ronny alias Ronald James Alwaris & Ors. v. State of Maharashtra – [AIR 1998 SC 1251],** the court found that when the articles belonging to the family of the deceased were recovered from the possession of the accused soon after the robbery and the murder of the deceased remained unexplained by the accused, the presumption under Illustration (a) of Section 114 of the Evidence Act would be attracted

and it could be concluded that the murder and the robbery of the articles were part of the same transaction. Further, as observed by the Supreme Court in **Ganesh Lal v. State of Rajasthan – [(2002) 1 SCC 731],** recovery of stolen property from the possession of the accused enables the presumption as to commission of offence other than theft or dacoity being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied, namely, (i) the offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offences and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstance, other than mere recovery of the articles, connecting the accused with such other offence; (iv) caution on the part of the Court to see that suspicion, how so ever strong, does not take the place of proof. In such cases, the explanation offered by the accused for his possession of the stolen property assumes significance in the sense that, when the case rests on circumstantial evidence, the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by itself would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it is for him to have offered an explanation for the same.

20. The appellants would argue that the recoveries of the weapons and the clothes allegedly worn by them at the time of commission of the crime were never effected at their instance. They suggest that the items were planted by the Investigating Agency and hence cannot be used against them in the proceedings. However, on analysis of the evidence before us, we are of the considered view that the said contention cannot be sustained. We find no reason to suspect the evidence of the Investigating Officer that MO9 plastic box was recovered on the strength of the disclosure statement given by the 1st accused. The recovery mahazar in terms of which MO9 plastic box was recovered is marked as Ext.P12 and the relevant portion of the disclosure statement given by the 1st accused and recorded in Ext.P12 mahazar is separately marked as Ext.P12(a). Notably, when the Investigating Officer Sudhakaran Pillai was examined as PW75, the relevant portion of the disclosure statement made by the accused was deposed by him and stood proved. Similarly, MO30 lungi, MO31 grey colour shirt, the dress allegedly worn by the 1st accused at the time of commission of the offence and MO32 VKC chappals were allegedly recovered on the strength of a disclosure statement given by the accused. The said recovery was effected after describing it in Ext.P75 mahazar. The relevant portion of the statement which led to the recovery of the said items and proved through PW75 Sudhakaran Pillai, the Investigating Officer is separately marked as Ext.P75(a). The recovery of MO30, MO31 and MO32 in which blood stains were detected

in the subsequent FSL examination will also point to the complicity of the 1st accused in the commission of the offence. Therefore, on an analysis of the evidence before us, we find that in so far as the recoveries effected at the instance of the 1st accused are concerned, as already noticed, there is no serious challenge to the mahazars drawn in connection with the recoveries of MO9 plastic box, MO30 lungi, MO31 grey colour shirt and MO32 VKC chappals, and hence, those recoveries satisfy the requirements of Section 27 of the Evidence Act, to make the relevant portions of the confession statement of 1st accused admissible in evidence **[Pulukuri Kottaya and Ors. v. King Emperor –** [**AIR 1947 PC 67]]**.

21. As for the recoveries of MO12 hammer, MO13 crowbar, MO33 Tshirt and MO34 track suit that were recovered based on the disclosure statement of the 2nd accused, it is the case of the 2nd accused that he does not know Malayalam and his statement was given in Tamil, but was recorded by PW75 Sudhakaran Pillai, the Investigating Officer, in Malayalam. This, according to him, vitiates the recording of his confession statement, and he relies on the judgments in **Siju Kurian v. State of Karnataka - [2023 KHC 6396], Sanjay Oraon v. State of Kerala - [2021 (5) KLT 30]** and **Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra – [2023 KHC 6605]** in support of the said contention.

22. Per contra, the learned Special Public Prosecutor would

submit that the above decisions deal with particular situations where the improper recording of the statement was challenged by the accused concerned in cross examination, and further, the accused in those cases had brought out in evidence adduced by them that there was no proper recording of the confession statements.

23. In the proceedings before us, we find that the evidence of PW75 Sudhakaran Pillai, the Investigating Officer, who clearly deposed to having recorded the disclosure statement of the 2nd accused in Malayalam, after obtaining a verbatim translation of the same from Tamil to Malayalam, using the assistance of PW74 Nuooman, who knew Tamil, was not challenged in cross examination by the defence. Further, no such suggestion was put to PW74 Nuooman when he mounted the box to give evidence. If the 2nd accused had any objection regarding the recording of his statement, he ought to have challenged the evidence of PW75 Sudhakaran Pillai, the Investigating Officer and then confronted PW74 Nuooman, the translator with the suggestion that he had not effected a verbatim translation of his statement from Tamil to Malayalam. This not having been done, the 2nd accused cannot be heard to contend that there was a discrepancy in the recording of his disclosure statement by the Investigating Officer. Further, the evidence adduced in this case clearly establishes that the relevant portion of the confession statement given by the 1st accused and which led to the recovery of the weapon of the offence has been recorded by the Investigating Officer with the help of PW74 Nuooman, the translator in

Ext.P14, the Recovery mahazar itself. The said portion of the statement was deposed by the Investigating Officer and hence stands proved. Even otherwise, it is trite that for the purposes of invoking Section 27 of the Evidence Act against an accused, it is not necessary that the relevant portion of the disclosure statement must be recorded in writing. It is sufficient that the statement given by the accused, is deposed to by the Investigating Officer during his evidence along with a further deposition by him to the effect that recoveries were in fact effected based on such information obtained from the accused. In **Suresh Chandra Bahri v. State of Bihar – [1995 Supp (1) SCC 80]**, while repelling a similar contention raised on behalf of the accused, the Supreme Court observed as follows at paragraphs 70 and 71:

> "**70.** However, learned counsel appearing for the appellants relying on the decision in the case of *Nari Santa v. Emperor – [AIR 1945 Pat 161] and Abdul Sattar v. Union Territory, Chandigarh – [AIR 1986 SC 1438]* vehemently urged that the alleged recovery of blanket, piece of saree and rope said to have been made by the investigating agency at the instance of the appellant Gurbachan Singh in the absence of any disclosure statement and without any pointing out memo of the place of recovery and without the public witness to the alleged recovery could not be treated as valid recovery in the eye of law within the meaning of Section 27 of the Evidence Act. It is true that no disclosure statement of Gurbachan Singh who is said to have given information about the dumping of the dead body under the hillock of Khad gaddha dumping ground was recorded but there is positive statement of Rajeshwar Singh, PW59, Station House Officer of Chutia Police Station who deposed that during the course of investigation Gurbachan Singh led him to Khad gaddha hillock along with an Inspector Rangnath Singh and on pointing out the place by Gurbachan Singh he got that place unearthed by labourers where a piece of blanket, pieces of saree and rassi were found which were seized as per seizure memo Ext.5. He further deposed that he had taken two witnesses along with him to the place where these articles were found. Rajeshwar Singh PW59 was cross-examined with regard to the identity of the witness Nand Kishore who is said to be present at the time of recovery and seizure of the articles as well as with regard to the identity of the articles seized vide paragraphs 18, 21 and 22 of his deposition but it may be pointed out that no cross-examination was directed with regard to the disclosure statement made by the appellant Gurbachan Singh or on the point that he led the police party and others to the hillock where on his pointing out, the place was

unearthed where the aforesaid articles were found and seized. It is true that no public witness was examined by the prosecution in this behalf but the evidence of Rajeshwar Singh PW 59 does not suffer from any doubt or infirmity with regard to the seizure of these articles at the instance of the appellant Gurbachan Singh which on TI parade were found to be the articles used in wrapping the dead body of Urshia. According to the evidence of PW1 and PW2 as said earlier the saree pieces were part of the saree of Urshia that she was seen wearing by these witnesses, the blanket piece was a part of the blanket which was seen on the *takht* in the house of the appellant Suresh Bahri and the piece of rope was the part of the rope said to be taken out from the cot kept in the verandah of the house of Suresh.

71. The two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. In the present case it cannot be disputed that although these essential requirements existed on the date when Gurbachan Singh led PW59 and others to the hillock where according to him he had thrown the dead body of Urshia but instead of the dead body the articles by which her body was wrapped were found. The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. In the present case as discussed above the confessional statement of the disclosure made by the appellant Gurbachan Singh is confirmed by the recovery of the incriminating articles as said above and, therefore, there is reason to believe that the disclosure statement was true and the evidence led in that behalf is also worthy of credence."

24. There is yet another aspect of the matter. In the instant case, even if the appellants contention that the confession was not properly recorded for the purposes of Section 27 of the Evidence Act, in relation to the recoveries of MO33 Tshirt and MO34 track suit were to be accepted, the conduct of the 2nd accused in retrieving the bloodstained MO33 Tshirt and MO34 track suit from his house and handing them over to the Investigating Officer in the presence of witnesses, would be admissible as evidence under Section 8 of the Evidence Act, more so when the evidence of PW75 Sudhakaran Pillai, the Investigating Officer and the mahazar witnesses who deposed to having seen 2nd accused

handing over the MOs to the Investigating Officer were not discredited in cross examination **[A.N. Venkatesh & another v. State of Karnataka - [(2005) 7 SCC 714], Prakash Chand v. State (Delhi Administration) - [(1979) 3 SCC 90], State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru - [(2005) 11 SCC 600]]**.

25. The unimpeached medical evidence tendered by PW36 Dr. Prashanth Ashar, PW37 Dr. Anil Kumar and PW40 Dr. K. Sasikala and PW69 Dr. Saritha clearly suggest that MO12 hammer and MO13 crowbar, could have caused the injuries that were found on the deceased Mariyadas and the victim. The said evidence also suggests that it was the injuries inflicted on deceased Mariyadas that caused his death. Ext.P79 post-mortem report by PW69 Dr. Saritha S.R. makes this abundantly clear. As regards the forensic evidence on record, MO15 and MO16 vaginal swabs and slides taken from the victim, together with the expert evidence of PW40 Dr. Sasikala, PW38 Dr. Lakshmi Prabha and PW49 Sreevidhya K.V., Assistant Director, DNA, read with Ext.P32 Certificate of chemical analysis, Ext.P33 Forwarding letter, Ext.P37 Medico Legal Certificate and Ext.P55 Forensic Science Laboratory Report, clearly reveal that the 1st accused had sexual intercourse with the victim. There is also evidence in the form of the oral testimony of PW49 Sreevidhya K.V., read with Ext.P55 Forensic Science Laboratory Report, to prove that the bloodstains found on the clothes worn by accused nos.1 and 2 at the time of commission of the offence matched with the blood sample taken from the deceased. The evidentiary value

of the aforesaid evidence is fortified by the explanation offered by the 1st accused at the time of his examination under Section 313 Cr.P.C., wherein, he admits to having had sexual intercourse, albeit consensual, with the victim, as also to having assaulted the deceased with a heavy weapon. As observed in **Sharad Birdhi Chand Sarda v. State of Maharashtra – [(1984) 4 SCC 116]**, in cases dependent on circumstantial evidence, the inference of guilt can be made if all the incriminating facts and circumstances are incompatible with the innocence of the accused or any other reasonable hypothesis than that of his guilt, and provide a cogent and complete chain of events, which leave no reasonable doubt in the judicial mind. When an incriminating circumstance is put to the accused and he either offers no explanation, or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. If the combined effect of all the proven facts taken together is conclusive in establishing the guilt of the accused, a conviction would be justified, even though any one or more of those facts by itself is not decisive. On the facts of the instant case, when all the circumstances discussed above are taken together, they lead to only one inference, namely that, in all human probability, the murder of the deceased was committed by accused nos.1 and 2 jointly after committing the act of house trespass and further, that the act of rape as defined under Section 376A IPC was committed by the 1st accused, whose spermatozoa was detected in the vaginal swabs taken from the victim. The medical evidence of PW60 Dr. Joby John, a member of the Medical Board, who

certified the victim to be in a persistent vegetative state that is likely to continue, brings the case against the 1st accused squarely within the ambit of Section 376A IPC. We are hence of the view that the proved circumstances are sufficient to hold the appellants guilty of the charges levelled against them, as rightly found by the trial court.

Sentencing

26. As we have confirmed the findings of the trial court and upheld the conviction of the appellants under various Sections of the IPC, we have now to consider the sentences to be imposed on the appellant in Crl.A.No.79 of 2020 [1st accused] under Sections 302 and 376A of the IPC. This becomes all the more necessary because while the 1st accused had appealed against his conviction and sentence under both the above provisions, the trial court has imposed the death sentence on the appellant in Crl.A.No.79 of 2020 and a reference has been made to this Court for confirmation of that sentence [D.S.R.No.03/2019].

27. In matters of sentencing, especially when called upon to consider sentences of death, imprisonment for life or imprisonment for a particular term of years, we are to be guided by the principles stated in **Bachan Singh v. State of Punjab – [(1980) 2 SCC 684]** and later cases, which can be enumerated as follows:

> (i) The general legislative policy that underlines the structure of our criminal law, principally contained in the Indian Penal Code and the Criminal Procedure Code, is to define an offence with sufficient clarity and to prescribe

only the maximum punishment therefor, and to allow a very wide discretion to the judge in the matter of fixing the degree of punishment.

(ii) No exhaustive enumeration of aggravating or mitigating circumstances, which should be considered when sentencing an offender, is possible.

(iii) The impossibility of laying down standards is at the very core of the criminal law as administered in India, which invests the judges with very wide discretion in the matter of fixing the degree of punishment.

(iv) The discretion in the matter of sentencing is to be exercised by the judge judicially after balancing all the aggravating and mitigating circumstances of the crime. This is because the exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguard for the accused.

(v) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the IPC, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.

(vi) Section 354 (3) of the Cr.PC now clarifies that the extreme penalty should be imposed only in extreme cases where the exceptional reasons are founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

28. In **Shankar Kisanrao Khade v. State of Maharashtra – [(2013) 5 SCC 546]** the Supreme Court held that instances such as hired killings, as also where the crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society, can be seen as aggravating circumstances for the purposes of punishment. The gravity of the offence committed by the appellant does not call for extending any leniency to him in the matter of punishment. That said, we cannot be oblivious to the fact that in **Rajendra Pralhadrao Wasnik v. State of Maharashtra – [(2019) 12 SCC 495]**, it was held that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by

the courts before awarding the death sentence. It is for the Prosecution and the courts to determine whether a criminal, notwithstanding his crime, can be reformed and rehabilitated. Towards that end, we perused the reports obtained in relation to the aforementioned appellant from the Superintendent of the prison where he is currently lodged as also from the Probation Officer, Tenkasi. We have also perused the report obtained through a mitigation study conducted by the Square Circle Clinic, National Academy of Legal Studies and Research [NALSAR], New Delhi, and also heard the learned counsel for the appellant in Crl.A.No.79 of 2020 as well as the learned Special Public Prosecutor on the question of sentence.

29. The report dated 19.9.2025 of the Superintendent, Central Prison and Correctional Home, Thiruvananthapuram opines that the appellant/1st accused in Crl.A.No.79 of 2020 cannot be seen as a reformed person. His conduct inside the prison was not satisfactory since during the incarceration period he breached the prison rules on multiple occasions. It is stated that three criminal cases were registered against him at the Poojappura Police Station for his possession of contraband articles inside the prison. It is stated that on 19.9.2021, he further attempted to smuggle prohibited items into the prison, and as a result, 15 days of his remission were forfeited in accordance with Section 82(i)(d) of the Kerala Prisons and Correctional Services (Management) Act, 2010. The report dated 13.9.2025 of the Probation Officer, Tenkasi, who conducted an enquiry in the area where the

appellant/1st accused was living at the time of his arrest on incarceration shows that the relationship between the appellant and his present wife is not healthy. An FIR appears to have been registered against the appellant for inflicting burns on his wife which was subsequently withdrawn at the insistence of her mother. The Probation Officer's report also find that the people of the area expressed negative views about the appellant and that his family has been living in a rental house and earning their livelihood by doing cooli work. The findings in the report prepared by Sri.Biju A.S. are as follows:

> "The evidence gathered through this mitigation investigation makes it abundantly clear that Anil Kumar does not meet the threshold of "extreme culpability" as required by *Bachan Singh v. State of Punjab – [(1980) 2 SCC 646]* framework. His life has been scarred by the cumulative weight of poverty, chronic neglect, domestic violence, physical abuse, sexual abuse, early substance exposure possibly leading to the onset of his untreated mental illness. These factors did not merely "influence" his life they fundamentally stripped him of the stable foundations upon which autonomous, rational, and socially responsible decision-making is built. In *Manoj & Ors. v. State of Madhya Pradesh – [(2023) 2 SCC 353]*, the Supreme Court held, "*the criminal is not a product of only their own decisions, but also a product of the state and society's failing...*". To attribute extreme culpability to him in disregard of this context would be to ignore the State and society's undeniable failures that shaped his trajectory.
>
> At the same time, the efforts made by Anil Kumar prior to his incarceration (alleviating his family out of poverty, providing for his children) and during incarceration (vocational training, sustaining family ties) amply demonstrate the efforts he has made towards his reformation and rehabilitation. Despite facing solitary confinement, repeated assaults, harassment, and a total lack of therapeutic care, he has consistently shown positive conduct. His attempt at taking part in different reformatory programmes in prison; completion of over seven vocational courses, for instance engagement in yoga, printing and binding, aluminium fabrication etc Above all, his sustained effort to remain connected to and provide for his children even while enduring significant distress during incarceration- indicates that he has clearly demonstrated possibility of reformation.
>
> Anil Kumar is a victim of extreme structural, familial, and societal failings, and yet, even within a punitive and hostile environment, he has displayed extraordinary resilience, empathy, and the will to change. Therefore, if this Hon'ble Court convicts Anil Kumar, it is urged that the Hon'ble Court recognise that due to familial, social, and structural adversities, Anil

> Kumar's culpability is far from extreme and that his demonstrated probability for reformation suggests that the punishment of death be commuted to life imprisonment. Given his lowered culpability and demonstrated possibility of reformation, the least possible sentence would be the appropriate punishment for him."

30. In our jurisprudence, the death sentence is reserved only for those cases that qualify as the "rarest of the rare". The Supreme Court in **Mohd. Farooq Abdul Gafur and Another v. State of Maharashtra – [(2010) 14 SCC 641]** has held that as a rule of prudence and from the point of view of principle, a Court may choose to give primacy to life imprisonment over death penalty in cases which are solely based on circumstantial evidence. Further crystallising the developments in death penalty sentencing jurisprudence, the Supreme Court in **Manoj & Ors v. State of Madhya Pradesh - [(2023) 2 SCC 353]**, laid down practical guidelines to ensure that mitigating circumstances are placed before the court properly and in a timely manner. The Supreme Court affirmed the duty of the courts to ensure that relevant sentencing materials are placed before them before they determine the appropriate sentence in individual cases. It held that individualized sentencing requires comprehensive information about the offender, beyond the facts of the crime, to be placed before courts. The Supreme Court also explained the purpose of mitigating information as "*Mitigating factors in general, rather than excuse or validate the crime committed, seek to explain the surrounding circumstances of the criminal to enable the judge to decide between the death penalty or life imprisonment*". It thereafter provided an illustrative list of pre-offence circumstances that

could be considered as mitigating. These included (a) offender's age, (b) early and present family background, (c) history of neglect or violence, (d) education, socio-economic circumstances, (e) income and employment status, (f) criminal antecedents, (g) mental and psychological health, and (h) evidence of social behaviour or alienation etc. The Supreme Court required the State to furnish three kinds of reports including psychological assessment reports, jail conduct report and other records pertaining to the appellant's conduct in jail, and a probation officer's report as necessary part of sentencing exercise. The Court also acknowledged that the defence has the same opportunity to place on record information on mitigating factors as well as rebut the information brought forward by the State. Recently, in **Vasanta Sampat Dupare v. State of Maharashtra – [W.P.(Crl.).No.371 of 2023]**, the Supreme Court further built on **Manoj [supra]** and elevated the status of these procedural requirements in sentencing hearings to a fundamental right. It held "*this corrective power is invoked precisely to compel rigorous application of the **Manoj [supra]** safeguards in such cases, thereby ensuring that the condemned person is not deprived of the fundamental rights to equal treatment, individualized sentencing, and fair procedure that Articles 14 and 21 of the Constitution of India secure to every person*".

31. Taking note of the submissions made by the learned counsel for the appellant in Crl.A.No.79 of 2020 during the hearing on sentence, the report obtained in relation to the appellant, and the probability of

his reformation, we feel that the imposition of stricter terms of life imprisonment would strike the right balance between the conflicting interests of the appellant and the public at large and go a long way towards sustaining public confidence in our legal system.

32. Recently, the Supreme Court had occasion to consider the issue as to whether it was possible for a constitutional court to impose a modified sentence even in those cases where the trial court had not imposed a death sentence. Referring to the earlier decision in **Swamy Shraddananda (2) v. State of Karnataka – [(2008) 13 SCC 767]** and the Constitution bench decision in **Union of India v. V. Sriharan – [(2016) 7 SCC 1]**, it was held in **Shiva Kumar @ Shiva v. State of Karnataka – [(2023) 9 SCC 817]** that even in a case where capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by 'secondly' in Section 53 IPC, shall be of the fixed period of more than fourteen years. The fixed punishment cannot be for a period of less than fourteen years in view of the mandate of Section 433-A of the Cr.P.C. It is also significant that in the report of the *Committee on Reforms of Criminal Justice System, 2003*, headed by Justice (Retd.) V.S. Malimath, it was observed that "punishment must be severe enough to act as a deterrent but not too severe to be brutal. Similarly, punishments should be moderate enough to be human but cannot be too moderate to be ineffective".

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In the result, we confirm the conviction imposed on the appellant in Crl.A.No.79 of 2020 by the trial court in respect of the offences under Sections 302, 307, 376A, 397 and 449 read with Section 34 IPC. As for the sentences imposed for the offences under Sections 302 and 376A of the IPC, we deem it appropriate to modify the sentence to one of life imprisonment with the further condition that he shall undergo mandatory imprisonment without remission for a period of thirty years for both the offences. The sentences shall run concurrently. Save for the aforesaid modification of the sentences imposed on the 1st accused in respect of the offences under Sections 302 and 376A, we uphold the impugned judgment of the trial court in relation to accused nos.1 and 2. The Crl.A.No.79 of 2020 is thus partly allowed, Crl.A.No.401 of 2021 is dismissed and the DSR is answered in the negative i.e. by refusing to confirm the death sentence.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

prp/