2025:KER:82014

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 31ST DAY OF OCTOBER 2025 / 9TH KARTHIKA, 1947

DSR NO. 1 OF 2021

CRIME NO.242/2018 OF PUTHENVELIKKARA POLICE STATION, ERNAKULAM

AGAINST THE ORDER/JUDGMENT DATED 08.03.2021 IN SC NO.72 OF 2019 OF ADDITIONAL DISTRICT COURT, NORTH PARAVUR ARISING OUT OF THE ORDER/JUDGMENT IN CP NO.6 OF 2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, NORTH PARAVUR

COMPLAINANT:

STATE OF KERALA

BY SMT.AMBIKA DEVI S., SPECIAL PUBLIC PROSECUTOR

RESPONDENT:

PARIMAL SAHU
25/2018, S/O.GIVINDA SAHU, NEAR ANAND NURSERY,
HAGRA PULLI,SAMOGIRI POLICE STATION,
NOGAW DISTRICT, ASSAM.

BY ADVS.
SMT.MITHA SUDHINDRAN
SMT.SHREYA RASTOGI
SMT.NADIA SHALIN
SMT.MOULIKA DIWAKAR
SRI.RIJI RAJENDRAN
SMT.BHAIRAVI S.N.

THIS DEATH SENTENCE REFERENCE HAVING BEEN FINALLY HEARD ON 30.10.2025, ALONG WITH CRL.A.974/2022, THE COURT ON 31.10.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 31ST DAY OF OCTOBER 2025 / 9TH KARTHIKA, 1947

CRL.A NO. 974 OF 2022

AGAINST THE ORDER/JUDGMENT DATED 08.03.2021 IN SC NO.72 OF 2019 OF ADDITIONAL SESSIONS COURT (ADHOC-III), NORTH PARAVUR

APPELLANT/ACCUSED:

PARIMAL SAHU
AGED 29 YEARS,
NEAR ANAND NURSERY, HAGRA PULLI,
SAMOGIRI POLICE STATION, NOGAW DISTRICT,
ASSAM, INDIA, PIN - 782141

BY ADVS.
SMT.MITHA SUDHINDRAN
SMT.SHREYA RASTOGI
SMT.NADIA SHALIN
SMT.MOULIKA DIWAKAR
SRI.RIJI RAJENDRAN
SMT.BHAIRAVI S.N.

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BY SMT.AMBIKA DEVI S, SPL.G.P.
ATROCITIES AGAINST WOMEN AND CHILDREN AND WELFARE OF W AND C)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30.10.2025, ALONG WITH DSR.1/2021, THE COURT ON 31.10.2025 DELIVERED THE FOLLOWING:

“CR”

J U D G M E N T

Jobin Sebastian, J.

The above Death Sentence Reference (DSR) and the Crl. Appeal arises from the judgment dated 08.03.2021 of the Additional Sessions Judge, North Paravur, in S.C.No.72/2019, whereby the appellant/accused was found guilty of the offences punishable under Sections 449, 376A, 302, and 201 of the IPC and convicted. The accused was sentenced to rigorous imprisonment for various terms and a fine for the offences punishable under Sections 449 and 201 IPC, and sentenced to imprisonment for life for offence punishable under Section 302 IPC. Furthermore, the accused was sentenced to death and a fine for the offence under Section 376A IPC.

2. The case of the prosecution, as disclosed in the final report, can be epitomised as follows:

During the period of occurrence in this case, the deceased, a widow, was residing with her intellectually disabled son (CW2), in a house bearing No.XII/740 of Puthanvelikkara Grama Panchayat. The accused, a migrant labourer from Assam, as well as a few other migrant labourers, were residing in the rooms adjacent to the house of the deceased on a rental basis. The deceased was the landlady of the

said house. While so, between 11.00 p.m. on 18.03.2018 and 1.30 a.m. on 19.03.2018, the accused, with the intent to commit rape and murder, collected a granite stone from the courtyard of the house of the deceased and, carrying the same, knocked at the front door of the said house. When the deceased opened the front door, the accused trespassed into the hall of the said house and, with the intention to render her unconscious before killing her, he struck her on the left side of the neck, causing serious injuries. Upon hearing the commotion when the deceased's intellectually disabled son came to the hall, the accused intimidated him and thereby persuaded him to remain inside the room. Thereafter, the accused dragged the deceased, who was in an exhausted state due to the injury inflicted on her, towards the dining room of the said house and committed rape. When the deceased attempted to resist, the accused hit her on the head repeatedly and covered her mouth using his hand, causing suffocation, and thereby murdered her. Thereafter, the accused, with the intention to ensure the death of the deceased, dragged her to one of the bedrooms of the said house and wrapped a cloth around her neck, forcefully tightened it, and ensured her death. Thereafter, the accused smeared blood on the T-shirt of the deceased's intellectually disabled son to mislead the investigation. Thereafter, the accused, with an intention to cause disappearance of evidence, concealed the stone in the premises of the said house and washed the blood-stained

shirt, which was worn by him at the time of the commission of the offence, which originally belonged to CW36. Hence, the accused was alleged to have committed the above offences.

3. Upon completion of the investigation, the final report was laid before the Judicial First Class Magistrate Court-III, North Paravur. Being satisfied that the case is one triable exclusively by a Court of Session, the learned Magistrate, after complying with all the necessary formalities, committed the case to the Court of Session, Ernakulam, under section 209 of Cr.P.C. The learned Sessions Judge, having taken cognizance, made over the case for trial and disposal to the Additional Sessions Court, North Paravur. On appearance of the accused before the trial court, the learned Additional Sessions Judge, after hearing both sides under section 227 of Cr.P.C. and upon a perusal of the records, framed a written charge against the accused for offences punishable under Sections 449, 376A, 302, and 201 of IPC. When the charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried.

4. During the trial, from the side of the prosecution, PW1 to PW43 were examined and marked Exts.P1 to P51. MO1 to MO24 were exhibited and identified. A contradiction in the previous statement of a prosecution witness was marked as Ext.D1. After the completion of

the prosecution's evidence, the accused was questioned under Section 313 of Cr.P.C., during which he denied all the incriminating materials brought out in evidence against him. Thereafter, both sides were heard under Section 232 of Cr.P.C., and since it was not a fit case to acquit the accused under the said provision, the accused was directed to enter on his defence and to adduce any evidence that he may have in support thereof. Thereupon, from the side of the accused, one document was produced and marked as Ext.D2. However, no oral evidence was adduced from his side.

5. Thereafter, both sides were heard in detail, and finally, the learned Additional Sessions Judge found the accused guilty of the offences punishable under Sections 449, 376A, 302, and 201 of IPC, and he was convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- for offence punishable under Section 449 IPC. In default of payment of the fine, the accused was ordered to undergo simple imprisonment for one month. For the offence punishable under Section 302 IPC, the accused was sentenced to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- with a default clause to undergo simple imprisonment for one year. For the offence punishable under Section 376A IPC, the accused was sentenced to death, and it was directed that the accused be hanged by neck till death and to pay a fine of

Rs.1,00,000/-. In default of payment of the fine, the accused was ordered to undergo simple imprisonment for one year. For the offence punishable under Section 201 IPC, the accused was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- with a default clause to undergo simple imprisonment for one month. The substantive sentences of imprisonment were ordered to be run concurrently. Fine amount, if realised or paid, was ordered to be given to the guardian of PW4 as compensation under Section 357(1)(b) of Cr.P.C. Aggrieved by the finding of guilt, conviction, and the order of sentence passed against him, the accused has preferred the present criminal appeal. Likewise, since the death sentence imposed upon the accused is subject to confirmation by this Court under Section 366(1) of Cr.P.C., the DSR has also been placed before us for consideration.

6. I heard Smt.Mitha Sudhindran, the learned counsel appearing for the appellant, and Smt.Ambika Devi, the learned Special Public Prosecutor on behalf of the State in the Crl.Appeal as well as in the Death Sentence Reference.

7. This is a case in which a widow aged 60 years who was residing along with his intellectually disabled son was allegedly brutally assaulted, raped, and murdered by the accused in the

intervening night of 18.03.2018 and 19.03.2018. The law was set in motion on the basis of Ext.P1 FIS given by one of the relatives of the deceased to PW40, the Sub-Inspector of Police, Puthenvelikkara Police Station. The FIR registered by PW40 on the strength of the said FIS was marked as Ext.P1(a).

8. When the first informant who lodged the FIS was examined as PW1, he deposed that the deceased in this case is his relative. During the relevant period, the deceased was residing with her intellectually disabled son. Apart from the said son, the deceased had a daughter, who was residing abroad along with her husband at the time of the incident. On 19.03.2018, one of the neighbours of the deceased, named Kunjappan, came and informed him that something had happened to his relative, the deceased in this case, and asked him to reach the house of the deceased. Accordingly, he rushed to the house of the deceased and found her lying dead inside the house. He also noticed the deceased's son standing nearby wearing a blue coloured T-shirt stained with blood. During cross-examination, the learned defence counsel made a strenuous effort to establish that the son of the deceased is mentally ill. In that attempt, a specific question was put to the witnesses, suggesting that the deceased's son was intellectually disabled and mentally retarded. To this, he categorically responded that the deceased's son is not mentally retarded, and

clarified that the deceased's son is capable of understanding things.

9. Another crucial witness examined by the prosecution is PW3, who is none other than the neighbor of the deceased. On examination before the court, PW3 deposed that the deceased in this case had died on 19.03.2018. On that day, while she was inside the kitchen of her house, the deceased's son approached her and told her that his mother had sustained something and needed to be taken to the hospital. Hearing this, PW3 rushed to the house of the deceased, where she found some others gathered. The front door of the house was open, and she noticed blood in the hall room as well as on the cot placed there. Then she asked the deceased's son where his mother was, and he replied that his mother was inside the AC room. When she asked where the said room was, he pointed it out. When she attempted to open the said room, it was found locked. She also noticed blood in the kitchen area and in the corridor. A little later, the deceased's son came and brought a key and opened the door. Then she found the deceased lying beneath the cot in a partially disrobed condition. Then the deceased's son said that, Mummy is naked and ran outside the room. Then PW3 came out of the said room and asked the people present to inform the Police about the incident. At that time, the deceased's son was seen sitting on a swinging cot, and there were blood stains on his t-shirt. When she asked him what had

happened, he responded that “മുന്നയ്ക്കറിയാമല്ലോ മുന്നയോട് ചോദിക്ക്(Munna knows, ask him). Moreover, he said that “മുന്ന ബൾബ് ഊരി (Munna removed the bulb). At that time, Munna (accused) was there. When the deceased’s son repeated that Munna knows everything, she asked who Munna was. Then, a migrant labourer told that he is Munna by striking on his chest. Moreover, Munna asked the deceased’s son that “നീ അവിടെ ഉണ്ടായിരുന്നില്ലേ?” (Weren’t you there?) in a scolding tune and in Malayalam. PW3 identified the accused standing in the dock as Munna. During cross-examination, PW3 deposed that although the deceased’s son was intellectually disabled, he was not mentally retarded. She further clarified that the deceased’s son usually conversed like ordinary people and is capable of identifying things.

10. The above-discussed evidence of PW1 and PW3 clearly reveals that neither of them had direct knowledge of the actual occurrence. However, their testimony will help the prosecution to the extent of showing that during the relevant period, the deceased was residing with her son, who was intellectually disabled. From a holistic appreciation of the evidence adduced in this case, it became evident that the prosecution primarily relied upon the evidence of the deceased’s son to establish the occurrence alleged. In addition, the prosecution has also placed reliance on various circumstantial,

scientific, and recovery evidence to bring home the guilt of the accused. Before delving into a detailed discussion regarding the ocular evidence, as well as the other circumstantial and scientific evidence adduced on the side of the prosecution, it is relevant to discuss the evidence of the Doctor who conducted the autopsy of the deceased.

11. The Doctor who conducted postmortem examination on the body of the deceased was examined as PW21, and the postmortem certificate issued by her was marked as Ext.P16. A conjoint reading of the evidence of PW21 and Ext.P16 certificate reveals that thirty-three antemortem injuries were noted during the postmortem examination conducted on the body of the deceased. Referring to Ext.P16 certificate, the Doctor opined that the death of the deceased was due to the combined effect of smothering and head injury. According to PW21, injury Nos.1 to 6, which are all injuries on the head, are fatal in nature and sufficient in the ordinary course of nature to cause death. Likewise, when PW21, the Doctor was confronted with MO4 stone, the alleged weapon of offence, she opined that injury Nos.1 to 6 could be caused by using a stone like MO4. The Doctor further deposed that penetration is possible even without any injury to the vaginal portion if the woman is married. The above-discussed evidence of PW21, together with injuries noted in Ext.P16 postmortem certificate, clearly

and conclusively establishes that the death of the deceased was homicidal in nature.

12. As mentioned earlier, the solitary evidence relied upon by the prosecution to prove the occurrence is the evidence of the deceased's son (PW4). The learned counsel for the appellant, however, assailed the reliance placed on PW4's evidence mainly on the ground that PW4 is incompetent to testify due to his intellectual disability. Therefore, while considering the question whether the evidence of PW4, the son of the deceased, can be relied upon, given his intellectual impairment, it is worthwhile to refer to Section 118 of the Indian Evidence Act, which deals with the question who are all competent to testify before a court. Section 118 reads as follows:

> "118. Who may testify - All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind".

13. A plain reading of the above provision makes it clear that every person is presumed to be competent to testify, unless the court finds that such person is incapable of understanding the question put to him or giving a rational answer there to due to tender age, old age, disease, whether of body or mind, or any other cause of the same kind. Accordingly, before recording the evidence of such a vulnerable

witness, it is the duty of the trial judge to assess the competence of such a witness to understand the questions put to him and to provide coherent and rational answers. Hence, it is always advisable that the court shall conduct a competency examination, commonly known as *Voir dire* test to determine whether the vulnerable witness is capable of perceiving, remembering, and understanding the duty to speak the truth before recording the evidence of such a witness.

14. The term "*voir dire*" translates roughly as "Oath to tell the truth". The French term "*voir*" means "that which is true" and the *voir dire* test in relation to juvenile witnesses is used to determine whether that witness is competent to testify in court. S.118 of the Indian Evidence Act mandates that the court should determine whether the particular classes of witnesses specified therein are competent to take the oath or affirmation that precede the testimony to be given by them. Accordingly, a person must be competent to testify as a witness before being administered an oath or affirmation, and this competence is separate from his credibility after being administered the oath or affirmation. The attempt of the court in a *voir dire* test is invariably to determine whether, given the scope of his intellectual capacity and comprehension, the witness is capable of providing a rational explanation of what he has observed or heard on a given occasion.

15. In a recent judgment of the Supreme Court in **Agniraj & Ors. v. State through the Dy. Superintendent of Police CB-CID – 2025 SCC Online SC 1203**, the court after finding that preliminary questions to understand whether the witness understands the importance of an oath, were not put to a 10 year old girl, observed that the trial court had not followed the condition precedent before examining a minor witness and that before administering the oath, the trial judge had not satisfied himself that the witness understood the importance of the oath. Thereafter, after analysing her answers in cross-examination, the court found that the possibility of the witness having been tutored could not be ruled out. On similar lines is the judgment of the Supreme Court in **State of MP v Balveer Singh – 2025 (8) SCC 545** where the court opined that under S.118 of the Evidence Act, it is the duty of a trial judge to conduct a preliminary examination before recording the evidence of a child witness to ascertain if the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The court went on to hold that the trial judge must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. The questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the correctness of the opinion of the trial

court.

16. Keeping in mind the above-mentioned legal principles, while reverting to the facts of the present case, it is evident that the prosecution's own case is that PW4, who is the sole witness to the occurrence, is an intellectually disabled person. Likewise, it is relevant to note that the Associate Professor of Psychiatrist at Government Medical College, Ernakulam, who had examined PW4 after the incident in this case, to assess his mental capacity, was examined before the trial court as PW23. The certificate issued by him after the examination of PW4 was marked as Ext.P18. On examination before the court, referring to Ext.P18 certificate, PW23, the Doctor, testified that he had examined PW4 at the request of the Police, and that on such examination, it was found that the IQ level of PW4 was only 47. In the Ext.P18 certificate, it is stated that PW4 could be categorized as falling within the range of moderate mental retardation, and that his mental age is approximately seven and a half years.

17. From a conjoint reading of the evidence of PW23, the Doctor, and the certificate issued by him, it is evident that PW4 was having a mental age of 7½ years, though he was biologically 35 years old at the time of his examination by the Doctor. In such circumstances, it was always prudent for the trial court to conduct a

voir dire examination before recording his testimony, in order to assess whether he was competent to understand the question put to him and capable of giving rational answers thereto. The learned Judge ought to have asked preliminary questions to him to ascertain his level of understanding, and then recorded satisfaction on the basis of such preliminary interaction, that PW4 was competent to depose as a witness. However, in the present case, no such competency examination appears to have been conducted prior to recording the evidence of PW4. A perusal of the deposition of PW4 demonstrates that no preliminary questions were put to him by the trial court, and his deposition was recorded without any recorded satisfaction as to his competence to testify. The non-conduction of *voir dire* examination will certainly create serious doubts regarding the competence of PW4 to depose and the reliability of his version, particularly when a vulnerable witness like PW4 is inherently susceptible to tutoring.

18. We are not unmindful of the fact that merely because of the reason that a competency test, though always advisable, has not been conducted, it may not, in every case, be prudent to discard the testimony of a vulnerable witness outright. However, in the absence of such an examination, it becomes the duty of the trial court as well as the appellate court to scrutinize the evidence of such a witness with meticulous care and to satisfy their judicial conscience regarding the

competence of the witness to depose before a court of law.

19. Keeping in mind the above, while coming to the evidence of PW4, it can be seen that in the chief examination, PW4 had deposed as follows:

His house is at Puthanvelikara. He studied till the 10th class. His father, David, is no more, and his mother has also passed away. He could recollect all events. He had an acquaintance with Munna (the accused), and he had known him since the time his father was alive. His mother died on 19.03.2018, which was a festival day at his church. His mother died because Munna hit her on the head with a granite stone. Due to the hit, blood started oozing. Thereafter, the accused took his mother near the dining table. Thereafter, Munna smeared blood on his shirt. Munna also removed the bulb that was fitted in the sitout of the house. Munna took his mother to the AC room. In the morning, he went to the house of Nalini (PW3) and brought her to his house. Thereafter, he took the key and opened the room. PW4 identified the accused before the court.

20. However, during cross-examination, PW4 admitted that he did not state to the Police that he saw Munna strike his mother on the head with a granite stone. This admitted omission pertaining to a material aspect of the incident would amount to a contradiction. Apart

from that admitted improvement, the testimony of PW4 in the chief examination appears on the face of it to be coherent and intelligible. Yet his testimony during the cross-examination is marred by a lot of incoherent and unintelligible answers, which materially undermine his competence to depose as a witness. For clarity, it is necessary to reproduce the incoherent, unintelligible, and incorrect answers given by PW4. During cross-examination, PW4 stated that "വീടിനു മുകളിൽ, രാധാകൃഷ്ണൻ, മുന്ന, അജിത് പിന്നെ മിലിട്ടറിക്കാരനും താമസം ഉണ്ടായിരുന്നു. ഓമനച്ചേച്ചിയും താമസം ഉണ്ടായിരുന്നു". (on the upper floor of the house, Radhakrishnan, Munna, Ajith, a military man were residing. One Omana was also residing) The said evidence of PW4 is established to be incorrect by the evidence of other witnesses who deposed that the said Radhakrishnan, Munna, and Ajith were residing on the ground floor of the building situated close to the house of PW4 and not on the upper floor as deposed by PW4. Moreover, during cross-examination, when a definite question was put to PW4, that "ആരാണ് കല്ലിനിടിച്ചു എന്ന് പറയാൻ ഇപ്പോൾ പറഞ്ഞത്. (Who told you to say that Munna (accused) hit with the stone). He replied that "മുന്ന ആണ് പറഞ്ഞത് (it was Munna who said it). Undoubtedly, the said answer is wholly unintelligible and reflects confusion in his comprehension.

21. Likewise, during cross-examination, PW4 further deposed

that “സംഭവം നടക്കുമ്പോൾ ഒച്ചയും ബഹളവും ഉണ്ടായി. ഒച്ച കേട്ടാണ് മുന്ന വന്നത്” (when the incident happened, there was noise and commotion, and it was on hearing the noise that Munna came.) This version directly contradicts his earlier statement in the chief examination, where he had implicated Munna as the assailant. The said statement, therefore, casts serious doubt on PW4’s perceptive capacity as well as his ability to recollect and narrate events accurately. That apart, in cross-examination, he deposed that “ചോരപോകാതിരിക്കാൻ മുന്ന ഐസ് വച്ചു (Munna applied ice to stop the bleeding). Even the prosecution does not allege any such fact. Another statement made by PW4 during cross-examination was “ഞാൻ പറഞ്ഞതൊന്നും മജിസ്ട്രേറ്റ് എഴുതി എടുത്തില്ല. (The Magistrate did not write down what I said). Likewise, when PW4 was asked during cross-examination why he did not inform the matter to the neighbours immediately after the incident, he replied with an answer that “മറന്നു പോയി .(meaning I forgot). Such incoherent and incorrect responses persuade us to conclude that the competence of the said witness is seriously in doubt. Moreover, the fact that PW4, who appeared to withstand chief examination without much incoherence, gave incoherent and unintelligible answers during cross-examination strongly suggests that he was a tutored witness. In these circumstances, the failure of the trial judge to conduct a *voir dire* examination prior to the recording of the testimony of PW4 must be held to be a fatal

irregularity.

22. As already noted, in the present case, the prosecution rests its case primarily on the testimony of PW4, the son of the deceased, who, though biologically 35 years old at the time of giving evidence, was certified by the doctors as having an IQ of only 47, and an intellectual capacity equivalent to that of 7½ years old child. He was cited as an eyewitness to the incident involving his mother, which the prosecution described as a case of rape and murder, allegedly at the hands of the accused. What is particularly interesting is that a *voir dire* test appears to have been conducted by the JFMC, who recorded PW4's statement u/s 164 Cr.P.C., although it is trite that the recording of such statements is not preceded by any oath to be taken by the maker of the statement. Nevertheless, while the said fact ought to have been sufficient to alert the trial judge of the need to conduct a *voir dire* test before permitting PW4 to testify in court, for reasons best known to the trial judge, no such test was done. This, in our view, was a fatality on the facts and circumstances of the instant case, since a mere perusal of the inconsistencies and irrational answers given by PW4 during his cross-examination would demonstrate his incompetence to testify, as also to his vulnerability to tutoring.

23. Since PW4, the sole witness examined by the prosecution

to prove the occurrence, has been found incompetent to depose, the crucial question that now arises for consideration is whether the circumstantial, scientific, and medical evidence adduced in this case are sufficient to establish the guilt of the accused beyond a reasonable doubt. One of the main materials relied on by the prosecution to prove the guilt of the accused is the alleged extrajudicial confession purportedly made by the accused to two Doctors who had examined him after his arrest. These Doctors, to whom the accused is said to have made the confession were examined as PW17 and PW20. Among them, PW17 was a lecturer in the department of Dentistry in the Government Medical College, Ernakulam. In her testimony, PW17 deposed that she had examined the accused on 19.03.2018, and issued Ext.P13 certificate. According to her, the history was narrated by the accused himself. According to PW17, the history stated by the accused was as follows:

> "On 18.03.2018, around 11.30 p.m., I entered the house of the deceased and tried to rape her and hit her several times on her head with a stone. She then fell down. Then I dragged her to the next room and tried to rape her. She attempted to get up, then I tried to apply pressure in and around the mouth and chin with my hands from behind. First, I used my left hand, and when she bit on that hand, I attempted with my right hand. In those attempt, my right hand was lodged in her mouth, and she bit my finger. I tried to withdraw the hand forcefully. All this attempts, she did not have any response. All the injuries to my hand happened during the incident".

24. The other Doctor, before whom the accused was produced

by the Police for medical examination after his arrest, was examined as PW20. During his examination before the court, PW20 deposed that on 20.03.2018, while he was working as a casualty Medical Officer in Taluk Headquarters Hospital, North Paravur, he examined the accused and issued Ext.P15 certificate. According to him, on examination of the accused, he had noted the following injuries:

1. Four abrasions (linear) on left shoulder which were scratch mark by nails.
2. Contusion on right ring finger.
3. Contusion on right palm.
4. Contusion on left palm.
5. Contusion on left ring finger.

Furthermore, PW20 testified that the accused himself had narrated the cause of injury as follows:

> "On 18.03.2018, I had an altercation with a lady while raping".

25. The prosecution places considerable reliance on the extrajudicial confessions allegedly made by the accused to the two doctors examined as PW17 and PW20, before whom he was produced by the police for medical examination following his arrest. It is not in dispute that the accused was produced before the Doctors aforementioned while he was in Police custody. It is the case of the prosecution that the accused had narrated the reasons for the injuries

detected on his body to the doctors when he was alone with them in the examination room. The submission, in other words, is that because there were no policemen in the examination room, the details given by the accused to the doctors, and deposed to by the said doctors at the time of their giving evidence during the trial, can be used as admissible evidence against the accused. Reliance is placed by the prosecution on the judgments in **Ajay Singh v. State of Maharashtra - 2007 (12) SCC 341; 2009 KHC 470 and 2011 KHC 4108**.

26. *Per contra*, it is the submission of the learned counsel for the appellant-accused that, as per the clear wording of S.26 of the Indian Evidence Act, any confession by a person whilst in Police custody cannot be used against him. In the light of the recent pronouncements of the Supreme Court that have enlarged the scope of the phrase “custody” to embrace even such situations where an accused is not formally arrested, but his freedom of movement is nevertheless restrained by the police, the mere fact that the policemen who brought him to the hospital for medical examination were standing outside the examination room did not bring him outside the scope of the phrase ‘person whilst in Police custody’ for the purposes of S.26 of the Evidence Act.

27. It is trite that an extrajudicial confession is a weak piece

of evidence, and it has to be examined by the court with a great degree of care and caution. The court must be satisfied that it was made voluntarily and truthfully, and it should inspire the confidence of the court. The confession should be made voluntarily, and the person to whom the confession is made should be unbiased and not inimical to the accused. Such a confession will attain greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. While it has to be proved like any other fact and in accordance with law, it should not suffer from any material discrepancies and inherent probabilities (**See: Ajay Singh v State of Maharashtra - 2007 (12) SCC 341; Sahadevan v State of Tamil Nadu - 2012 (6) SCC 403; Nikhil Chandra Mohan v State of West Bengal - 2023 (6) SCC 605; Chandrabhan Sudam Sanap v State of Maharashtra -2025 (7) SCC 401**).

28. In the instant case, the question is whether the alleged confession made by the accused to the doctors can be treated as an admissible extrajudicial confession at all. As already noticed, it is not in dispute in the instant case that the accused was taken to the doctors for medical examination whilst he was in Police custody. As his being in Police custody was never in dispute and stood proved, his confession to the doctors or to any other person whilst in Police custody, is hit by

Section 26 of the Evidence Act and is inadmissible against the accused (**See: Kishore Chand v State of Himachal Pradesh - 1991 (1) SCC 286; State of A.P v Ganguly Satya Murthy - 1997 (1) SCC 272**)

29. Another material circumstance relied on by the prosecution to establish the guilt of the accused is the recovery of MO4, the stone, alleged to be the weapon of offence, said to have been effected on the strength of a disclosure statement made by the accused. Undisputedly, under Section 27 of the Indian Evidence Act, if a fact is discovered in consequence of information received from a person accused of an offence while in Police custody, so much of the that information, which distinctly lead to the discovery of the said fact, can be proved against him, and the same is a valuable piece of evidence which can be used against him. The said provision contained in the Indian Evidence Act is an exception to the general rule that confessions made to a Police Officer are inadmissible in evidence. Significantly, the fact discovered under Section 27 is not limited merely to the recovery of a physical object, but extends to the place from which it is produced and the knowledge of the accused regarding its location. Notably, the discovered fact includes the objects, their location, and the accused’s knowledge of them.

30. The rationale behind the partial lifting of the prohibition

contained in sections 25 and 26 of the Indian Evidence Act in respect of the confessions made to a Police officer is that the fact discovered affords the guarantee of truth of that portion of the statement. The admissibility of such a part of the confession is based on the doctrine of confirmation by subsequent events. This doctrine rests on the principle that if any fact is discovered on the strength of any information obtained from an accused, such discovery itself lends assurance to the truthfulness of that part of the information which distinctly relates to the discovered fact. In other words, if an accused in his confession discloses a fact, which is not in the knowledge of police earlier or from a prior source, but subsequently gets confirmed through discovery, so much of such information as relates distinctly to the fact thereby discovered, may be proved against the accused and can therefore be safely allowed to be admitted in evidence as an incriminating circumstance aganist the accused. The information given by the accused, which was not known to the police earlier, exhibits the knowledge or mental awareness of the accused, as to its existence. However, it is only when the materials on record clearly establish that the discovery was effected solely on the strength of the disclosure statement made by the accused, that the said statement, to the extent permissible under Section 27, can be used against him.

31. Keeping in view the above principle, the evidence of the

Investigating Officer, who is examined as PW43, is scrutinized, it can be seen that he effected the arrest of the accused on 19.03.2018 at 9.45 p.m. According to PW43, during the course of the interrogation, the accused had given a statement that "എന്നെ കൊണ്ടുപോയാൽ ഉപയോഗിച്ച കല്ലുവച്ച സ്ഥലം ഞാൻ കാണിച്ചുതരാം". (If I am taken, I will show you the place where the stone was put). PW43 further deposed that on the basis of the said statement and as led by the accused, he reached the compound of the house where the incident in this case had occurred, and the accused took a stone from a spot situated 7.60 meters away from the north-eastern corner of the said house and 2.3 meters away from its compound wall, and handed over the same to him. According to PW43, the stone so handed over was taken into custody by him after describing it in a mahazar. The seizure mahazar by which the said stone was recovered is marked as Ext.P12, and the relevant portion of the disclosure statement recorded therein and proved through the testimony of PW43, is separately marked as Ext.P12(a).

32. The recovery of the MO4, the alleged weapon of offence was assailed by the learned counsel for the appellant mainly on the ground that the same was recovered from a place accessible to the public. It was urged that there is sufficient material on record to show that even prior to the alleged recovery, the Police had already reached

the compound of the house from which the stone was seized. In this backdrop, it was contended that it is not prudent to believe that the recovery was effected solely on the strength of the disclosure statement given by the accused.

33. While considering the aforesaid contentions, it is pertinent to note that, as rightly pointed out by the learned counsel for the appellant, the recovery of the stone was allegedly effected on 20.03.2018 at 12.20 p.m. Notably, the inquest on the body of the deceased was conducted on 19.03.2018 at 12.45 p.m. from the crime scene itself. The inquest report (Ext.P11) was prepared by PW42, the Circle Inspector of Police, Vadakkekkara. The evidence of PW42 clearly reveals that, as part of the investigation, a dog squad had also visited the crime scene, and an observation mahazar was prepared by him. The said observation mahazar was marked as Ext.P39. Likewise, from the evidence of PW43, it is clear that on 19.03.2018 itself, he took over the investigation of this case from PW42, and on the same day, he visited the scene of occurrence. Therefore, there can be no dispute that Police Officers had already been present at the premises prior to the recovery of MO4 stone.

34. Likewise, the evidence adduced in this case shows that on learning of the incident, several persons from the locality had gathered

at the crime scene. In this background, it is significant to note that the MO4 stone was not recovered from a concealed or hidden place. Even PW43, who claimed to have effected the recovery, has not stated that when the accused pointed out the MO4 stone, it was in a concealed position. Similarly, MO24 Photographs show that MO4 was lying in an open area, and not from among a cluster of stones to make it unnoticeable by others.

35. We are cognizant that it is fallacious to assume that a recovery made from an open or publicly accessible place automatically loses its evidentiary value under Section 27 of the Indian Evidence Act. Any object can be concealed in places that are open or accessible. For example, if an article is buried on the main roadside, or if it is concealed beneath dry leaves lying in public places, or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such an article is disinterred, its hidden state would remain unhampered. The person who hides it alone knows where it is until he discloses that fact to others. Therefore, the crucial question is whether such a material was ordinarily visible to others. In the present case, even the investigating officer who effected the alleged recovery does not claim that MO4 was taken and produced by the accused from a concealed position. On the contrary, the evidence clearly establishes that the stone was recovered from an open area

within the compound of the house, where the incident occurred. Given these circumstances, the recovery of MO4, allegedly from inside the compound of the house where the incident in this case occurred, is highly doubtful. The prior presence of the Police, as well as local people at the crime scene, is well-established and raises concerns about potential manipulations. Therefore, it cannot be conclusively stated that the recovery was based solely on the strength of the disclosure statement given by the accused.

36. Another circumstance relied upon by the prosecution to prove the complicity of the accused in the commission of the alleged offence is that on the next day morning of the incident, the accused made a phone call to PW5, one of his acquaintances, and requested him to state, if questioned by the Police, that the accused had been in his vehicle. According to the prosecution, this request was made by the accused to PW5 with the deliberate intention of creating a false impression that the accused was in the company of PW5, a driver by profession, thereby rendering his presence at the crime scene improbable. On this basis, the prosecution vehemently contends that such conduct on the part of the accused itself shows that he had something to hide.

37. While considering the said contention, it is pertinent to

note that PW5 deposed before the court that he is a lorry driver by profession, and the accused had worked as a cleaner on his lorry for nine months. PW5 further testified that he, as well as the accused was working under one Binu, who was their employer. PW5 further testified that on 18.03.2018, at around 9.00 p.m., his employer, Binu, along with some of his friends and the accused came to his house to have dinner. After dinner at around 11.00 p.m., he, along with his four-year-old son, took the accused on his brother-in-law's bike and dropped him at the car porch of the house of the deceased. According to PW5, on the next morning, the accused contacted him over the phone and asked him to reach the house of the deceased and to say that the accused was with him in his vehicle, if asked by the Police.

38. While considering the question whether the conduct of the accused in making such a phone call with the above request can be treated as an incriminating circumstance indicating an attempt to fabricate an impression that he was elsewhere at the time of the commission of the offence, first of all, it is to be noted that PW5 himself admitted that it was he who dropped the accused in the car porch of the deceased shortly before the incident in this case. Therefore, his own presence in proximity to the crime scene places him under the cloud of suspicion. Therefore, PW5 cannot be regarded as a wholly reliable or sterling witness. Moreover, what the accused is

alleged to have requested to PW5 was merely to say that he was with him in the vehicle. Admittedly, during the relevant period, he was working as a cleaner in the lorry driven by PW5. Hence, even if such a request was made, it cannot, in the abstract, be unequivocally interpreted as an attempt by the accused to fabricate an alibi.

39. More significantly, the accused is a migrant laborer from Assam. Therefore, when an incident of such gravity occurred in the house close to his place of stay, it is not unnatural for him to have been apprehensive of being falsely implicated. That is more so when he is residing on a rental basis in the same compound. Such apprehension could have prompted the accused to make the alleged phone call to PW5, not necessarily with a guilty mind, but possibly as a measure of self-protection against anticipated suspicion. Therefore, the mere conduct of the accused in contacting one of his acquaintances and making such a request by itself cannot be regarded as sufficient to establish that he was the perpetrator of the offence.

40. Moreover, if the accused was the real offender of the offence, it is improbable that he would request another person to give a false statement to the Police, as such a request would naturally arouse suspicion in the mind of that person regarding his involvement

in the crime. In the ordinary course of human behavior, an offender would not take such a risk. Hence, we find it difficult to believe the evidence of PW5 to the extent that the accused asked him to give such a statement to the Police.

41. Another piece of evidence relied on by the prosecution to connect the accused with the crime is the presence of alleged bite marks on his body detected during the medical examination conducted shortly after his arrest. From the evidence, it is established that the accused was arrested in this case on 19.03.2018 at 9.45 pm, and following his arrest, he was initially taken to a Dentist attached to Government Medical College Hospital, Ernakulam. The said Doctor was examined as PW17, and the certificate issued by her was marked as Ext.P13. In Ext.P13, it is stated that on examination of the accused, the following injuries were found;

1. Superficial lacerated wound 0.3x0.2 and 0.5x0.2 c.m. placed 0.1 c.m. apart on the medial aspect right ring finger just below distal inter phalangeal joint. There was no oozing of blood and was covered with dried up secretions.
2. Superficial lacerated wound 0.5x0.5 c.m. front of right ring finger, just below its proximal end (there was no oozing of blood and was covered with dried up secretions) with an abrasion 2x0.2 to 0.5 c.m. extending downwards.
3. Two superficial contusions 0.3×0.2 c.m. each

placed 0.1 c.m. apart in the same oblique line, on palmar aspect of right hand, lower lateral one was 1 c.m. above fourth interdigital space.

4. Linear abrasion 1.5 x 0.1 c.m. almost horizontal on lateral aspect of right ring finger just below distal inter phalangeal joint.
5. Abrasion 0.3×0.2 c.m. on medial aspect of right ring finger just below distal inter phalangeal joint.

(injuries IV and V in same finger)

6. Superficial contusions 0.4 x 0.2 and 0.4 x 0.3 c.m. placed 0.1 c.m. apart one above the other on front of left hand, lower one was 1 c.m. above the base of ring finger.
7. Abrasions 0.2×0.2 and 0.3x0.1 placed 0.1 to 0.3 c.m. apart side by side, on front of proximal inter phalangeal joint (proximal knuckle) of left ring finger.

42. At this juncture, it is curious to note that, nowhere in her evidence, did PW17 state that the injuries noted by her were bite injuries. However, PW17 deposed that the accused narrated to her the following history during the medical examination;

> "On 18.03.2018, around 11.30 p.m., I entered the home of the deceased and tried to rape her and hit her several times on her head with a stone. She then fell down. Then I dragged her to the next room and tried to rape her. She attempted to get up, then I tried to apply pressure in and around the mouth and chin with my hands from the backside. First, I used my left hand, and when she bit on that hand, I attempted to with the right hand. In that attempt, my right hand was lodged in her mouth and she bit my finger. I tried to withdraw my hand forcefully. All these attempts, she did not have any response. All the injuries in my hand were happened

during the incident".

43. Likewise, in Ext.P13, the medical certificate issued by PW17, the opinion recorded is that injuries on the hands could have occurred as alleged by the subject. Moreover, during cross-examination, PW17 candidly admitted that the opinion given by her is as told by the accused. A conjoint reading of the evidence given by PW17 and the certificate issued by her reveals that she is not having a case that any of the injuries noted by her are bite marks and the opinion expressed in Ext.P13 that the injuries on the hand could have been occurred as alleged by the subject is not an opinion arrived on by her on the basis of any expertise which she had, but merely a repetition of the version formulated by the accused. Moreover, it is pertinent to note that when an accused is arrested, particularly in a case alleging rape, in view of the provisions contained under Cr.P.C., he should be produced before a registered medical practitioner. In the case at hand, it is highly suspicious why the investigating officer ventured to produce the accused before a Dentist instead of producing him before a registered medical practitioner.

44. From the evidence, it is revealed that after producing the accused before PW17, the Dentist, the accused was subsequently produced before a registered medical practitioner, who was working as

a Casualty Medical Officer at Taluk Headquarters Hospital, North Paravur. When the said Doctor was examined as PW20, he deposed that on 20.03.2018, he had examined the accused in this case and issued Ext.P15 certificate. Referring to Ext.P15, PW20 deposed that he had noted the following injuries on the examination of the accused;

1. Four abrasions linear on the left shoulder, which were scratch marks of nails
2. Contusion on right ring finger
3. Contusion right palm
4. Contusion left palm
5. Contusion left little finger.

45. According to PW20, out of the said injuries, the last four injuries mentioned by him are bite marks. Moreover, he added that the accused had narrated a history that on 18.03.2018, he had an altercation with a lady while raping. We have already found that the said statement, which the prosecution seeks to treat as an extrajudicial confession, cannot be relied upon, since it was evidently made by the accused while he was in Police custody. Furthermore, the undue haste exhibited by the police officers in producing the accused before a dentist instead of a registered medical practitioner, itself creates some doubt as to the alleged bite marks, and the same indicates that the investigating officer jumped to a conclusion that it was a bite mark. Similarly, PW20, the Doctor before whom the accused was subsequently produced, deposed that the accused himself had

narrated the cause of the injuries noted on his body. Therefore, the possibility that PW20 was under a preconception or premonition that the injuries observed by him were bite marks cannot be ruled out. At this juncture, the contention advanced by the learned counsel for the appellant that the accused was subjected to third-degree torture by the Police also cannot be lightly ignored. Consequently, the injuries allegedly found on the accused cannot be treated as a circumstance that leads to the sole conclusion that the accused is guilty of the offence, ruling out any other plausible hypothesis. Notably, in Ext.P15 certificate prepared by PW20, it is mentioned that apart from the bite marks, he noted scratches by nails on the accused. However, in the examination of nail clippings of the deceased conducted in the forensic laboratory, no epithelial cells of the accused were detected.

46. The learned Special Public Prosecutor made a strenuous effort to impress upon us that the bite marks found on the hand of the accused correspond to the dentition of the deceased. In order to substantiate the same, the learned Special Public Prosecutor invited our attention to the scientific evidence regarding bite mark comparison adduced in this case. As already noticed, after the arrest of the accused, he was produced before PW17, a Dentist attached to the Government Medical College Hospital, Ernakulam. Upon examining the accused, she prepared Ext.P13 report recording the

injuries noted on the accused's body. According to PW17, on 19.03.2018, after examining the accused, she proceeded to examine the dead body of the deceased at the Forensic department of the same hospital and took the impression of the upper and lower teeth of the deceased and prepared corresponding dental casts, which she subsequently handed over to the Police officer. During the examination before the court, she identified the said dental casts prepared by her, and the same were marked as MO3 series.

47. Likewise, the Assistant Professor, Oral Pathology, Medical College, Thrissur, who undertook the comparison of the dental casts with the injuries noted by PW17 on the accused's body and recorded in Ext.P13 report, was examined as PW22. On examination before the court, PW22 deposed that the injuries on the ring finger and the two contusions in the fourth interdigital area of the accused's hand coincided with the configuration reflected in the cast provided for comparison.

48. While appreciating the said scientific evidence, it is to be noted that there is no convincing material on record to establish that the dental casts examined by PW22 are the same casts prepared by PW17. There is no document or mahazar to show the chain of custody

or to prove that PW17 had formally handed over the cast to the investigating officer for onward transmission to PW22. Likewise, it is highly suspicious what prevented the investigating officer from taking the dental casts into custody after describing it in a mahazar. Further, there is nothing on record to show in whose custody the said dental casts remained until they reached the hands of PW22. Even PW22 does not have a case that when the same was produced before him, it was in a sealed condition. Therefore, nobody could be blamed if it is found that the dental casts reached the hands of PW22 without any chance of tampering, since the chain of custody of the same is broken. That apart, the most crucial aspect is that during the examination before the court, the MO3 series dental casts were not even shown to PW22, and he did not identify them in court. Hence, there is no guarantee that the MO3 series dental casts produced and marked in evidence are the very same casts that were used by PW22 for the purpose of comparison.

49. Apart from the above procedural lapse, it must be noted that the bite mark comparison is not an exact science. The reliability of such forensic analysis has been seriously questioned in recent times, as the rate of false positives in bite mark comparison is demonstrably high. Therefore, the evidence of PW22 and the bite mark comparison conducted by him cannot materially strengthen the prosecution case,

particularly in the absence of other substantive and corroborative evidence pointing to the guilt of the accused.

50. Turning now to the fingerprint evidence adduced in this case, it is seen that the fingerprint expert who visited the scene of occurrence, collected the chance prints found in the crime scene, and compared the same with the fingerprints of the accused, was examined as PW32. The report prepared by him was marked as Ext.P30. As per his evidence, he had altogether collected seven chance prints and out of which one chance print was collected from a water bottle, and three chance prints were collected from the door of the bedroom where the dead body was found. The remaining three chance prints were collected from a 7-Up bottle. The evidence of PW32 and Ext.P30 report prepared by him shows that out of the said seven chance prints collected, three were found to be unfit for comparison. Among the remaining four, one chance print lifted from the 7-Up bottle, which was marked as P4, was found to tally with the fingerprint of the accused. As per the prosecution's case, the said 7-Up bottle was recovered from the top of a showcase found in the dining hall of the house where the incident in question took place.

51. However, while appreciating the fingerprint expert’s evidence, it cannot be ignored that, admittedly, the accused is a tenant

in the building situated within the same compound as that of the deceased's house. In such circumstances, the presence of the accused's fingerprint on a 7-Up bottle, which was found on the top of the showcase of the dining hall of the deceased's house, cannot, by itself, be treated as a significant incriminating circumstance. There is every possibility that the accused might have used the said beverage during his casual visit. Hence, in the absence of other cogent and convincing evidence linking the accused to the actual commission of the offence, the fingerprint evidence alone cannot form basis for conviction in this case.

52. While reverting to the remaining scientific evidence, it can be seen that in the report of the Assistant Chemical Examiner, which was marked as Ext.P44, it is specifically stated that on examination of the vaginal smears and swabs of the deceased, human semen and spermatozoa were detected. However, in the Ext.P50 FSL report, it is stated that the seminal stains found in the vaginal swabs were insufficient for DNA typing. Therefore, it cannot be said that the human spermatozoa and semen detected in the vaginal swab and smears were those of the accused.

53. Likewise, according to the prosecution, at the relevant time of the commission of the offence, the accused was wearing a shirt and

a pant. It was further alleged that the said shirt originally belonged to PW6' brother and the pants belonged to PW6. The shirt was which was recovered during the course of the investigation, was marked during the trial as MO1. Likewise, the pant which was allegedly recovered on the basis of a disclosure statement given by the accused, was marked as MO5. As per the prosecution case, after the commission of the offence, the accused had washed the said pants with an ulterior intention to cause the disappearance of evidence. A perusal of Ext.P50 FSL report reveals that although the pant (MO5), corresponding to item No.40 in the record, was subjected to examination, no DNA was obtained from it. Curiously, MO1 shirt was not even forwarded for chemical examination. Similarly, no serological examination was conducted to find out whether any blood stains were present on MO5 pant. On the other hand, in the FSL report, while describing item No.40, the description in the forwarding note that “black colour pants of the accused with blood-stain worn by the accused at the time of the assault seized after washing by the accused” has been mechanically reproduced without conducting a serological examination. Moreover, it is significant to note that neither the DNA of the accused nor his epithelial cells were detected in the nail clippings of the deceased and vice versa. More curiously, although another shirt was allegedly found tied around the neck of the diseased, no investigation, whatsoever, was conducted to ascertain to whom that shirt belonged. Therefore, the

scientific evidence adduced in this case will in no way help the prosecution to prove the complicity of the accused in the commission of the offence; rather, it lends support to a hypothesis consistent with the innocence of the accused.

54. The upshot of the above discussion is that the evidence of PW4, upon which the prosecution heavily relies to prove the occurrence of the incident, has to be excluded from consideration since PW4 is found to be incompetent to testify. Furthermore, the prosecution’s reliance on the alleged extrajudicial confession is also misplaced as it is rendered inadmissible in evidence by virtue of Section 26 of the Indian Evidence Act, having been made while the accused was in Police custody. We have already found that no credence can be placed on the recovery evidence, as there are sufficient circumstances to suggest that the recovery was not effected solely on the strength of the information furnished by the accused. The other circumstances projected by the prosecution have also not been proved in a manner that excludes every reasonable hypothesis except that of the guilt of the accused. Likewise, the scientific evidence does not render any assistance to the prosecution to prove the involvement of the accused in the commission of the crime rather, it tends to help the accused in establishing his innocence.

In the result, the criminal appeal is allowed. The impugned judgment is set aside, and the appellant is acquitted of all the charges. The appellant shall be set at liberty forthwith from the prison concerned, if his continued detention is not required in connection with any other case. The death sentence reference is answered in the negative.

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

Sd/-
JOBIN SEBASTIAN
JUDGE

ncd/ANS