

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN  
&  
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

Thursday, the 23<sup>rd</sup> day of June 2022 / 2nd Ashadha, 1944

CRL. M.A 2/2021 IN CRL.A NO. 64 OF 2021

SC 1114/2011 OF SPE/CBI COURT, THIRUVANANTHAPURAM

APPLICANT/APPELLANT:

SISTER SEPHY, D/O JOSEPH, ST. JOPSEPH'S GENERALATE, S H MOUNT,  
KOTTAYAM, KERALA, (KANGRATHUMOOHY HOUSE, KURUMULLOOR, KOTTAYAM,  
KERALA)

RESPONDENT/RESPONDENT:

THE CENTRAL BUREAU OF INVESTIGATION REPRESENTED BY THE SPECIAL  
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031.

Application praying that in the circumstances stated therein the High Court be pleased to suspend the sentence imposed on the applicant/appellant by the judgement conviction and sentence in S.C.No. 1114/2011 of the Court of the Special Judge(SPE/CBI), Thiruvananthapuram, dated 23.12.2020 and release the applicant/appellant on bail pending disposal of the above criminal appeal.

This Application coming on for orders, upon perusing the Application and upon hearing the arguments of P.VIJAYA BHANU (SR.) SRI. THOMAS J. ANAKKALLUNKAL, SRI. SOJAN MICHEAL, SRI. CHACKO SIMON, SMT. MARIA PAUL Advocates for the petitioner and ASGI for the Respondent, the Court passed the following

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ

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Crl.M.A.No.2 of 2021 in Crl.Appeal No. 42 of 2021 and  
Crl.M.A.No.2 of 2021 in Crl.Appeal No.64 of 2021  
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Dated this the 23<sup>rd</sup> day of June, 2022

ORDER

Vinod Chandran, J.

The instant case evoked a lot of public outrage and the initial inference of suicide and repeated requests made by the investigating agencies to close the case as untraceable, created a frenzy which put officers, men and institutions on the dock; often in the extended media trial. A final report was filed eventually by PW49, the last of the Investigating Officers (I.O) from the Central Bureau of Investigation (C.B.I), in July 2009; he having taken over the investigation on 1.11.2008. The deceased was a Nun residing in a Convent which also had a Ladies Hostel. A1 to A3 were arrested on 18.11.2008 and contrary to the earlier inferences, a charge under Section 302 was levelled. The accused filed applications for discharge, of which, that filed by A2 alone was allowed. Challenge was made by both A1, A3 and a public spirited person, PW24, and the C.B.I;

the last two against A3's discharge; all of which stood rejected by this Court.

2. A1 and A3 faced trial and was convicted for offences under Sections 302, 201, r/w 34 & A1 also under Section 449 IPC. Both the accused were sentenced with imprisonment for life and fine of Rs.5 lakhs each, for the offence under Section 302 r/w 34 and seven years rigorous imprisonment with fine, each of Rs.50,000/-, under Section 201 r/w 34. The first accused also was sentenced to life imprisonment and fine of Rs.1,00,000/- for the offence under Section 449. Suitable default sentences were also imposed. The appellants have filed the above applications for suspension of sentence till the hearing of the appeal.

3. We heard Sri.B.Raman Pillai, learned Senior Counsel for A1, Sri.P. Vijaya Bhanu, learned Senior Counsel for A2 and Sri.P.Sooryakaran Reddi, learned Addl. Solicitor General for the C.B.I.

4. According to Sri.Raman Pillai, the very allegation of the prosecution was that A1 to A3 together committed the crime and when A2 was discharged; the very

foundation of the allegation is put to peril and there could be no successful prosecution carried out. It is pointed out that in the earlier investigation, though an axe was recovered from the premises; allegedly the offending weapon, later it was altered as a 'kaikodali' (transliterated roughly as 'hand-axe'). However both these weapons were neither seized or recovered nor produced before Court, despite the Doctor, who conducted post-mortem, spoke of a hand-axe having been shown to him. Obviously the alteration regarding the weapon was only since the original axe could never have caused the minor injuries found on the deceased. The allegation against A1 to A3 of having been found in suspicious circumstances, was later altered to having been found engaging in sex; so as to incite public condemnation especially since the accused were persons conferred with holy orders; a Priest and a Nun. The circumstances listed out by the learned Sessions Judge were referred and each of them assailed, vehemently. According to A1, he was not at all present in the Convent and the disturbance found in the kitchen does not incriminate him. The presence of

A1 in the Convent was spoken by PW3 who admittedly entered the Convent in the wee hours to thief from the premises. The inherent weakness of the testimony of a thief coupled with the discrepancies in the versions, in the deposition and prior statements, as to how he saw A1 in the Convent and later identified him, were pointed out. The trial Judge found PW8 to have corroborated PW3, which corroboration, if at all can only be to the declared vocation of PW3, a thief, and not at all with respect to his presence at the Convent or the identification of A1. PW8 was a witness in a number of cases against PW3; judgments in which were produced by the prosecution across the Bar after the evidence was closed, clearly indicating his testimony to the contrary. PW3's prior statements regarding the person to whom he sold stolen property was a different person altogether.

5. PW3 also has alternatively spoken of having seen A1 climbing the stairs with another and only of seeing them both walk on the terrace of the building with lit torches. If the evidence of PW3 is believed, that, from the time he entered the convent at 3.00 a.m. till the

time he left at 5.00 a.m, A1 and another was in the terrace of the building; the crime definitely could not have happened as alleged by the prosecution. The identification made is from the terrace of a five storied building, while the witness was standing in the neighbouring compound separated by a wall. Specifically D1 to D5 contradictions were pointed out and it is also argued that no period was mentioned in which the third incident of theft in the Convent, by PW3, had occurred. PW3 admitted to have stolen two Water Metres on his leaving the Convent on the crucial day, both of which were not recovered. CWs 105 and 106 were arrayed in the final report as house owners from whose compound the Water Metres were thieved, both of whom were not examined before Court. The admission of A1, which is another circumstance found against him, is allegedly made to PW6, a known vexatious litigant and trouble maker; to whom such statements would never have been made by A1, who had no prior acquaintance with him. PW6 also prevaricates on the time when such confession was made; which even if made, reveals only an illicit relationship and not

involvement in the crime of murder. The subsequent conduct, another circumstance, is spoken of by PW24 who had been heading an Action Council against the so called lackadaisical investigation and who was almost in the role of a Prosecutor in the case. The medical evidence by the experts was in contra distinction with each other and vary considerably from the findings of the post-mortem examination.

6. Learned Senior Counsel Sri.Vijaya Bhanu takes us through the specific grounds in the application for suspension of sentence at paragraph No. 4. It is argued that there is no evidence at all to show that A1 and A2 had been together on the crucial night or met each other or carried out any activity together or inflicted the wounds found on the deceased or dumped the body of the deceased into the well. The Court merely presumes on unreliable testimonies that A1 and A3 had been in an illicit relationship and while engaged in it, was chanced upon by the deceased, leading to the murder; to silence the deceased. It is vehemently argued that A3 was medically found to be a virgin and the court presumed

that she had carried out medical intervention to escape detection; without any evidence on that count. The admission of A3 said to have been made to PW19 is vague and not incriminating A3 in the crime. The post-mortem report, Ext.P6, clearly indicates death by drowning which was attempted to be deviated from by PW23, in the laboured questioning in chief examination. The six injuries noted by PW3 were simple and minor injuries which were sought to be mooted as possibly fatal injuries caused by a weapon; the details of which are spelt out from imagination. PW31 another expert examined is not at all believable and his deposition was to the effect that the death was due to the combined effect of drowning and injuries on the head; quite contrary to the post-mortem findings and a communication authored by him, confronted to him in Court. A3 was normally residing in the room and her presence outside the room was not seen by anyone. It was pointed out that the learned trial Judge has given a free play of his smattering knowledge in physics, psychology and medicine to rubbish the expert testimony and that of the other inmates of the Convent, throwing to



the winds all principles of criminal jurisprudence, while carving out a unique jurisprudential thought not sanctioned by extant laws.

7. The learned ASG commenced his arguments with the submission that there is no direct evidence and the case is based only on circumstantial evidence. It has been established that A1 had an amorous relationship with A3; quite in opposition to the vows of the holy order both of them took, and clandestinely carried it on. A1's visits to the Convent in the day light has been spoken of by the inmates and his visits at night to the Ladies Hostel was obviously to carry on the illicit relationship with A3. His presence in the Convent on the subject night has been spoken of by PW3, as corroborated by CW8. The evidence of PW3, 6 and 8 having established the illicit relationship and the presence of A1 at a very odd hour, that too in a Ladies Hostel, necessarily requires a valid explanation which does not come forth from A1. The disturbances found in the kitchen as noticed by the Cook in the morning, could not have escaped the notice of A3, who was in the adjacent room. A3 had purposefully chosen the room in the

cellar, to carry on her amorous activities especially when even the maids were accommodated in the first floor. The slippers and the veil worn by nuns, found in the kitchen at the Cellar floor of the building belongs to the deceased. The death by homicide is found by the learned trial Judge, after considering expert opinion and the post-mortem report. PW31 is an expert of exceptional credentials who was relied on by the Sessions Judge; rightly so. The ante-mortem injuries were noticed and so were the injuries on the head which were caused by a hand axe. The trial judge having meticulously gone through the evidence relied on the deposition of PW7, the Photographer, who spoke of nail marks on the neck of the victim; indicating external pressure being applied on her, which rules out suicide. Each of the circumstances were elaborately discussed by the Sessions Judge and there is no reason to even *prima facie* find the conviction to be based on no evidence, especially at this stage. There is no ground for suspending the sentence, concludes the learned ASG, who canvasses the continued incarceration of the accused convicted of a ghastly

crime, violating the conscience of any civilised society; committed only to hide their carnal escapades which also violate the vows of chastity taken by them.

8. As we noticed at the outset, the instant case was in the public eye for long and there was no resolution to the cause underlying the sad death of a young nun, which purportedly was achieved by the impugned conviction. But that shall not deter us from considering the evidence led by the Prosecution as to the culpability of the two accused who stood trial. We are undaunted by the fact that the accused are ordained members of a Church nor intimidated by the outrage displayed in public. We also remind ourselves that we are only on a *prima facie* consideration of whether the accused, from the evidence led, can be found to have committed the crime, beyond all reasonable doubt. The Sessions Judge has first listed out the issues, which at serial number one deals with the various aspects leading to a conclusion of homicide and at serial numbers 2 to 5 regarding the culpability of the accused of the actual crime of murder. We would consider the aspects in the

reverse order; first the circumstances which form an unbroken chain linking the accused and then as to the causation of death.

9. The circumstances as listed out by the learned Session Judge were ten in number: (i) the abnormal disturbances in the kitchen, work & wash area found on the morning of 27.3.1992, (ii) solitary presence of A3 in the cellar of the Convent on the night of 27.3.1992; both spoken of by PW11, (iii) the presence of A1 deposed by PW3 and corroborated by PW8 (iv) admission of A1 to PW6 about an illicit relationship with A3, (v) admission of A3 to PWs 19&29 Doctors about her amorous relationship, (vi) subsequent conduct of A3 of medical intervention to cover up her loss of virginity, (vii) failure of the accused to explain the incriminating circumstances, (ix) the bizarre version put forth by the accused regarding the cause of death alleging it to be a suicide and (x) destruction of vital evidence.

10. The first two circumstances are spoken of by PW11, an employee in the kitchen of the Convent. PW11 was the first one to come to the kitchen area on the morning

of 27.3.1992, who had closed the doors from the work area to the outside, before retiring on the previous night. She had gone with the deceased to a Bible Convention on the previous day and returned at about 8.30 p.m after which they went about their individual affairs in the Convent; the deceased being an inmate-student and the witness, a maid. PW11 is said to have got up about 5 a.m. in the morning and on reaching the kitchen, saw the lights on, which she had put off on the previous night. She also saw the exit door from the work area, which she closed from the inside, open in the morning with a head gear worn by nuns, hooked on the door. Two slippers were also found near the fridge and wash basin. She asked her co-employee to call Sister Stephy (A3) and when the Mother came; obviously the head of the Convent, she was told that the headgear and slippers belong to the deceased. Despite the witness being declared hostile, the Court relied on her testimony; rightly so. But the disturbances were the slippers and veil found, in addition to the 'kaikodali' seen only by PW4, the Sub Inspector who reached the crime scene a little later. The

presence of the weapon, not spoken of by PW11, will be dealt with later. The so called disturbances found in the kitchen by PW11, being the abandoned slippers and veil of the deceased, do not incriminate anyone, especially when the deceased was missing and later found dead in the well.

11. Admittedly an inmate of the convent had died on the previous night and her body was recovered from the well. According to PW11, she was with the deceased on the previous day and they parted company only at night after they returned from the Bible Convention. The testimony of PW11 definitely does not lead to any inference of the deceased having nurtured any suicidal thoughts nor does it warrant an inference of murder; by itself. As far as the solitary presence of A3 in the Cellar, it is deposed by PW11 that, one Sister Helen who was the roommate of A3, was not available for 4 to 5 days. It cannot for a moment be assumed that A3 chose the Cellar room to carry on her amorous jaunts since she had a regular room-mate staying there, who was temporarily absent. Even the trial Court does not find this

circumstance to be engineered and *prima facie* we are of the opinion that the above stated circumstances cannot be considered as incriminating A3 and definitely not A1.

12. The next circumstance is the sighting of A1, by PW3 at the Convent. According to PW3, who declared himself to be a petty thief, he had entered the convent thrice in the night with the intention of theft. He used to pluck coconuts from the neighboring property from where he saw the copper plates on the lightning arrester. He used to climb the cocoa tree in the neighboring property, to scale the wall of the Convent and steal the copper plates. He also deposed that he used to sell the stolen plates to a Muslim, whose name he was not aware of. It was deposed in chief examination that, on the third occasion, when he reached the cocoa tree, he saw two persons, males, coming to the staircase with torch lights who were identified as A1 and A2. According to him, he had also seen A1 near the Convent on the next morning while he was proceeding to sell the water meters stolen on the previous day. He immediately testifies that he saw the commotion near the Convent when he was

returning after selling the stolen water meters. Anyway, next morning seeing a commotion near the Convent, he made inquiries and was told that a nun is found dead, in the well, where he also saw A1.

13. Ext.D1 contradiction marked form PW3's Section 161 statement reads as the witness having found two persons standing on the terrace, watching the nearby areas with the aid of torch light, which PW3 denied in cross examination. According to PW3, he reached the cocoa tree between 3.30 and 4 a.m, contrary to his S. 164 statement that it was between 2 and 2.30 a.m (Ext. D4). He admitted in cross that he remained there till 5 a.m when the siren sounded. PW3 also spoke of not having carried out any theft for reason of having seen two persons in the terrace, but spoke of taking two water meters and selling them on the same day. There is no recovery made of the said water meters, which could have corroborated the version of PW3 and also pinpointed the site from which such water meters were thieved. More pertinently the deceased was seen alive at 4.15 a.m. and PW11 was woken up at 5 a.m. PW11 also came down to the



Cellar, where she detected the 'disturbances'. PW3 says he was in the neighboring property till 5.00 a.m., watching the two persons on the terrace of the building. If true, PW3 definitely would have witnessed a part of the alleged crime.

14. The deposition that PW3 had sold the water meters assumes relevance especially in the circumstance of the trial court having relied heavily on the testimony of PW8 for corroboration of the evidence of PW3. PW8 in his deposition stated that he used to regularly purchase things from PW3 and that PW3 was familiar with him as also his family members. However, PW3 in his 161 statement feigned ignorance of the name of the person to whom he sells the stolen articles. In the 164 statement to the Magistrate, PW3 named his regular fence as one Ashraf and PW8 deposed that PW3 used to bring articles to his uncle Ashraf. One other interesting aspect is the various judgments produced by the prosecution across the Bar, before the trial Court, after the evidence was closed. These are judgments in which PW3 was accused of theft and in all of them he stood acquitted. PW8 was a

witness in the said cases where he feigned total ignorance of PW3 and denied having purchased stolen articles from PW3. PW8's evidence was relied on, coupled with the allegations of custodial torture of PW3, to find manipulations by a Police Officer; which cannot incriminate the accused.

15. PW3 also spoke of having seen A1 in torch light on the previous night; with whom he had no prior acquaintance. He says he also recognized the said person from a crowd near the convent on the next day morning. He saw A1, as per the prior statement, in pitch dark from near the cocoa tree of the neighboring property; while A1 was in the terrace of the five-storied building of the Convent. PW3 in Court, said he saw two persons approaching the staircase of the Convent, from the next property separated by a wall. Both these versions are highly improbable and in any case not sufficient to enable a valid identification, *inter alia*, as there is no source of light spoken of. The Section 161 statement from which the contradictions were marked was taken on 11.07.2007, 15 years after the alleged crime and there is

no TIP conducted to identify A1 who was arrested much later on 18.11.2008. The first identification of a person, whom PW11 saw in the year 1992, was made at the time when he deposed before Court in the year 2019, making it a very weak piece of evidence.

16. The fourth circumstance relied on by the trial court is the testimony of PW6. PW6 claims to be a social worker; who the defense allege is a vexatious litigant. According to him, he had contacted A1 when there was a report in the media that the accused in this case were being subjected to Narco analysis test. He contacted the Bishop's house at Kottayam and obtained an appointment with A1. According to PW6, A1 was with A2 and the conversation was with respect to Narco analysis. A leading question was put to him as to the physical and mental status of A1 at the time of interview and PW6 responded that A1 was apprehending something and was aghast with fear. When PW6 tried to calm A1, he caught hold of his cassock and told the witness with anguish that he was also a human being inside the dress and he was not made of stone or iron. He is said to have

confessed that he committed a mistake and he was living with Stephy as husband and wife. He also implored that he alone was being crucified while everyone was indulging in such activities. This is styled as an extra-judicial confession; quite strange since the crime alleged is of murder and not lewd immorality. When the witness mounted the box on the next day for cross examination, without any prompting, he volunteered that the interview with A1, he spoke of in his chief examination, occurred after the Narco analysis. We cannot but notice that A1 is not being tried for the illicit relationship with a woman, even a nun and if at all it is established, it does not establish his involvement in the crime, unless there are other cogent circumstances. Pertinent also is the fact that PW6 did not say the name of A3 as having divulged to him by A1, in the Section 161-statement. Together with this, we have to look at the sixth circumstance of the subsequent conduct of A1 as spoken of by PW24. PW24 was heading the action council for justice to the family of the deceased. According to him, A1 threatened him with dire consequences if he continues challenging the Church,

specifically with the instant case. In fact, PW24 has a contention that his own brother was incensed with his actions against the Church and had attacked him physically. The threat of A1, if at all levelled against PW24, does not establish his involvement in the crime since the acts spoken of by PW24, could have been motivated on the assumption that PW24 was attempting to tarnish the image of the Church.

17. Next, we come to the admission of A3 to PW19 and PW29. The history given by A3; who voluntarily agreed to a medical examination, admitted herself having indulged in sex and having been twice subjected to per vaginal examination. She admitted having indulged herself with a relative, without actual penetration. The trial Judge having first found no inference possible to the fact in issue, later draws a conclusion to A3's predilection to sexual activities though it offers little connection to her relationship with A1. We cannot but observe that the conclusion is strained for A3 is not on trial for her loose morals or character flaws. PW19, the Doctor who examined A3 deposed that her hymen was not

torn and that there could be no definite opinion regarding A3 having had a sexual intercourse. Admittedly there were interpolations made by PW29 in the medical report marked as Ext.P79; which was sought to be explained away as having been made after consultation with PW19. We would have expected the two Doctors, who were constituted as a team, for the examination of A3, to have carried out a joint examination and made a comprehensive report of the findings, both, agreed upon and differed from. The glaring interpolations cannot be shrouded in high sounding words of the '*intrinsic incompatibility within the semantic outcome of holistic frame work of the report*' not having been brought out. When the relationship with A1 was not established, and there is no concrete evidence regarding any medical intervention done on A3, it cannot be assumed that PW19's opinion on examination was only because of a medical intervention carried out, to cover up the loss of virginity. The opinion also was that there is possibly a surgical intervention to repair the torn hymen, since the examination revealed it to be scarred. The opinion is not

definite and the probable inference again is a breach of the chastity vows, which again do not establish the relationship with A1 or the alleged escapade on the crucial night or more critically connect A3 with the crime of murder.

18. On the medical evidence, we need not enter any finding since at this stage we are not examining the evidence led, in totality, as would be done in the case of a hearing in appeal. But we look at the same only for completeness and both the defence and the prosecution have addressed arguments on the same. We have to first reckon the postmortem certificate, Ext.P62, then the evidence of PW33, the Doctor who conducted postmortem and PW31, the celebrity expert witness. The clear opinion as to the cause of death available in the postmortem certificate is that '*the deceased died of drowning*'. Searching examination was made of the Doctor, in chief-examination, to enter upon an opinion as to how the ante mortem injuries could have been caused. Eventually the Doctor deposed that the possibility of injuries numbered as 1, 2 & 6 being caused by assault

with a hard and blunt object cannot be ruled out. As for injury number 6 it was opined that it caused subarachnoid hemorrhage of the brain, by which the victim could be rendered unconscious or semi-conscious. The Doctor opined in consonance with Ext. P62 that the person would have died due to antemortem drowning but the injuries could also have 'added' (*sic*)-(aided?) the cause of death.

19. Quite interestingly the Doctor deposed that a weapon was produced by the I.O which looked like a 'kaikodali', opined to have possibly caused the injuries on the head, by using its wooden handle. In fact, no hand axe (*kaikodali*) was seized by the Police or produced before Court. As argued by the learned Senior Counsel for the defense, there was an axe recovered in the earlier investigation which again was not produced before Court. The learned ASG would point out that PW1, the maid in the Convent had spoken of a hand-axe. We again went to the deposition of PW11 and find her categorical statement to be that '*there was no hand-axe*' and '*there was an axe lying on the side of the kitchen*'. Obviously the



testimony is not to the effect that a hand-axe, available in the kitchen was missing; but that there was NO hand-axe in the premises. When a weapon is shown to the Doctor, as possible of being used to commit the crime, we should assume that it was seized from the scene of occurrence or recovered on the same being pointed out by the accused or otherwise; both of which circumstance is not available in this case. It would have sufficed to note the injuries having been caused by a hard object or weapon; which is often the case in which no offending weapon is seized or recovered. PW49 the I.O, also speaks of the allegation in the remand report, initially made, of the deceased having been hit on the back of the head with an axe. In the next remand application the description was altered to a hand axe. He does not offer any explanation with regard to the hand-axe shown to the Doctor as deposed by the Doctor.

20. Credible sustenance to the theory of ante-mortem injuries having been caused by the accused, before the body was dumped into the well, is garnered by the ASG from PW31. PW31 is another expert who ruled out suicide

and opined that injuries 1, 2 & 6 could be caused by the butt of a small axe, the first two being lacerated wounds and the last a contusion; which together were capable of causing death. He also opined that the death in the instant case was caused by a combination of drowning and injuries. In cross examination he was confronted with Ext.D23 communication authored by him, which we have perused. After perusing the postmortem report issued by PW33, the letter from one Dr. G.R Bhasker; both received from Dr.B.Umadathan, PW31 has detailed his observations in seven pages and given his opinion in the last page. His opinion was that the postmortem appearances are quite consistent with drowning, the injuries noted on the body minor, and not sufficient or even likely to cause death; which could also be caused in the course of a fall into the well. Injuries Nos.1, 2 & 6 could alternatively be caused in the process of location and retrieval of the body. It was also opined that the medical findings make it difficult to definitely categorize the death as accidental, suicidal or homicidal. He admitted that it was his opinion, but that he was fooled, admitting the

authorship. On his being queried about his opinion in the admitted document that the injuries 1, 2 & 6 did not result in a skull injury or increased intracranial tension and that those were not major injuries, which could cause coma or death; he answered that it was a one sided opinion, without any truth in it. According to the said document, admittedly authored by the witness, the conclusion after perusing the documents of the above case, was that the evidence on record shows that it is a case of typical well drowning. However he responded that he had made the observation only to help a lawyer, cutting at the root of his credibility. He proclaimed vehemently that his tongue would not lie, specifically gesturing to that appendage, but again explained it to be a one-sided opinion made by him, which leads to an inference that his pen may give one-sided opinions; that too, not necessarily truthful. We find no reason to place any reliance on his evidence.

21. The nail marks seen on the neck by the photographer, PW7 is another aspect heavily relied on by the trial Court; which even the Doctor who conducted

post-mortem failed to notice or report. The trial Court laboured on the absence of the negatives, to find it inconsequential, without realizing that even the photographs were not produced. The photographs produced as Ext. P27, are said to be that of the Convent, by the defence; not controverted by the learned ASG, who was assisted by the I.O, before this Court. We also have summoned the photographs, which were send by the trial Court on the Whatsapp through the Registrar General of this Court, which on perusal indicates those to be merely of the Convent and not of the body. PW7 hence had not produced any photographs of the body and it was his unsubstantiated deposition that was relied on in contrast to the testimony of the Doctor based on the post-mortem report. The trial judge for the said purpose found the perception of a photographer to be more precise than that of a pathologist; which we cannot countenance.

22. We do not dwell on the circumstance of lack of explanation or the bizarre ones, of suicide given by the accused since that can only form a link in the chain of circumstances and cannot solely lead to a conviction. On

a *prima facie* look at the evidence as pointed out by the defense, and not effectively countered by the prosecution, we cannot but release the two accused, as an interim measure, suspending their sentence till the disposal of the appeal. The accused shall be released on the following conditions.

(i) The petitioners/ accused shall be released on bail on execution of a bond for Rs.5,00,000/- (Rupees five lakhs only) each with two solvent sureties, each for the like amount to the satisfaction of the trial court;

(ii) If the conviction and sentence of the petitioners/appellants is upheld or even modified, the time during which they are so released shall be excluded in computing the term of their sentence as provided in Section 389(4) Cr.PC.

(iii) They shall not indulge in any other crime.

(iv) For the first six months after release, the petitioners shall report before the S.H.O concerned

on every Saturday at 11 a.m. and thereafter on every  
Second Saturday.

(v) The petitioners shall not leave the State,  
other than with the permission of this Court.

Sd/-  
K.VINOD CHANDRAN, JUDGE

Sd/-  
C.JAYACHANDRAN, JUDGE



mrcs/uu/jma 22.06